

**Youth Justice Policy and the  
*Youth Criminal Justice Act***

by Ross Green, Q.C.

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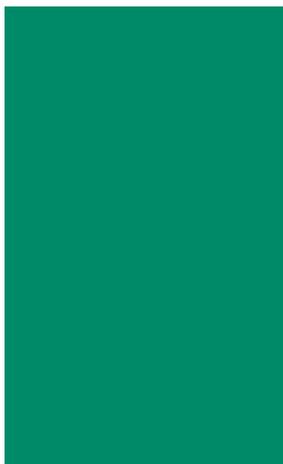
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**Youth Justice Policy and the *Youth Criminal Justice Act*\***

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## Policy Themes within the YCJA<sup>1</sup>

Few issues in Canada have stirred public debate as has youth crime. Over the last decade and more, cries for a more punitive focus to our statutory young offender law have been frequently, and loudly, heard from those wishing to “get tough” on young offenders. The obvious answer to youth crime, from this perspective, is increasing the level of punishment within the youth system. Hence, more frequent and longer sentences of custody are said to be the answer. Others, however, view this punitive focus as narrow minded, and urge a more balanced and broad based view of youth crime and justice. Advocates of the latter view focus more on the root causes of youth crime, and often suggest a very different solution to the problems faced.

The *Young Offenders Act*<sup>2</sup> (YOA), from its inception in 1984, became a lightning rod for these and other debates about youth crime and justice strategies. Largely in response to the many perceived shortcomings of the YOA, the federal government brought forth the *Youth Criminal Justice Act*<sup>3</sup> (YCJA). This act received Royal Assent in Parliament on February 19, 2002, and came into force on April 1, 2003.

The YOA was criticised in a variety of ways. The federal Department of Justice, in introducing the YCJA, described a “lack of clear legislative direction” under the YOA in the following terms:

1. The system lacked a clear and coherent youth justice philosophy;
2. Canada had the highest youth incarceration rate in the Western world, including the United States;
3. Youth courts were over-used for minor cases that could be better dealt with outside the courts;
4. Sentencing decisions by courts resulted in disparities and unfairness in youth sentencing;
5. The YOA did not ensure effective reintegration of a young person after being released from custody;
6. The process for transfer to the adult system resulted in unfairness, complexity and delay;
7. The system did not make a clear distinction between serious violent offences and less serious offences; and
8. The system did not give sufficient recognition to the concerns and interests of victims.<sup>4</sup>

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<sup>1</sup> Portions of this paper are based on and adapted from *Tough on Kids: Rethinking Approaches to Youth Justice* (Purich Publishing: 2003), which I co-authored with Kearney Healy of Saskatoon. I acknowledge and thank Kearney for his many contributions to this project. I also thank Judge Sheila Whelan, of the Provincial Court of Saskatchewan, for her assistance and expertise in suggesting changes to this paper.

<sup>2</sup> R.S.C. 1985, C. Y-1.

<sup>3</sup> S.C. 2002, Ch. 1, Bill C-7.

<sup>4</sup> Improving the Youth Justice System. Department of Justice Canada. December 12, 2002. Found on their web site at <http://canada.justice.gc.ca/en/ps/yj/repository/2overvw/2010001b.html>

In proposing the *YCJA*, the federal government addressed these and other concerns. While almost three times as long as the *YOA* - posing a daunting challenge of interpretation for lawyer, judge, young person, youth worker or member of the public alike - several policy themes do clearly emerge.

### ***General Principles Underlying Act***

Like the *YOA*, the *YCJA* contains a general statement of principles and purposes. This provides a guide to the policy direction being pursued by the federal government in this legislation. Section 3, in defining this act's applicable principles, sets out the goals, strategies and key characteristics of the youth justice system. Many of these factors and principles are similar to those contained in the *YOA*: such as addressing the underlying circumstances and causes of offending behaviour, the need for accountability by offenders, the importance of crime prevention and protecting society, the recognition of procedural fairness for young persons and the need to rehabilitate young offenders. But despite these similarities, new considerations appear in the *YCJA*'s general statement of principle.

The principles governing the *YOA* contained no specific reference to victims. The corresponding general statement of principles in s. 3 of the *YCJA* states that measures taken against young offenders should "encourage the repair of harm done to victims and the community"<sup>5</sup>. Further, section 3(1)(d) contains a special reference to the rights of victims, within the youth justice system, providing that:

(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system, [and]

(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, ...

As a recognition that, in many ways, victims have been pushed to the margins of the youth justice system, these provisions should provide both a greater role for, and a more meaningful and satisfying experience by, victims within the system.<sup>6</sup> Although the provision of information is one

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<sup>5</sup> In s. 3(1)(c)(ii).

<sup>6</sup> The provision of information to victims may place a potentially onerous weight on prosecutors. Professor Sanjeev Anand of the University of Alberta, a former prosecutor, expressed concern over this. While acknowledging the importance of treating victims with courtesy and compassion, and answering their questions and responding to their concerns, Professor Anand stated that prosecutors - already under heavy caseloads in many provinces - will face even more responsibility if required to notify "victims of crime about the sometimes numerous court appearances of a young offender". This, he said, would lead to "the necessity of hiring more prosecutors", and redirecting funding from "much needed youth crime prevention and diversion programs". S. Anand. *The Good, the Bad, and the Unaltered: An Analysis of the Youth Criminal Justice Act*. 4 Can. Crim. L.R. 249 at 253-254..

way of assisting victims within the youth justice system, the new conferencing provisions (in s. 19) should also enhance the ability of victims to participate directly. Conferencing is a key element of the *YCJA*, with s. 19(1) stating that “a youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker may convene ... a conference for the purpose of making a decision required to be made under this Act”. Conferences can consider “conditions for appropriate extra-judicial measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans”. Hopefully, conferencing will provide a new means of constructive involvement by victims, both in terms of helping them to deal with (and be compensated for) what has happened to them, but also in terms of helping them to understand the limits of what can be achieved through the criminal process.<sup>7</sup>

Another theme in the new act, without a parallel in the *YOA*, is the importance of cases proceeding through court in a timely manner. Section 3 of the *YCJA* states that the youth justice system should emphasise “timely intervention that reinforces the link between the offending behaviour and its consequences” and “the promptness and speed with which persons responsible for enforcing this Act must act, given young persons’ perception of time”.<sup>8</sup> These provisions are in response to the reality that young people often have a different sense of time than do adults, and a shorter time-frame within which they see the world. As a lawyer, I have lost track of the number of young people who have told me they want to “finish” with their charges - regardless of the result - so that they can get on with their lives. Although the same view may also be heard (on occasion) from adults appearing in court, there is an obvious benefit for young people in reducing the duration between the impugned behaviour and the resulting consequences. Hopefully, this emphasis on timeliness “may be a catalyst for other changes” within the system, such as greater diversion of less serious cases away from court, greater emphasis on the needs of youth within the system, and more effective decision-making about the availability and use of resources.<sup>9</sup>

In addition to concerns about timeliness, many of the youth I have represented told me they did not feel “listened to” in the justice system. A young aboriginal woman, interviewed during the research for our book, and who had numerous dealings with police and courts, echoed this sentiment:

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<sup>7</sup> From many years of appearing in court, and hearing countless victims express their frustration about the justice system, it is obvious to me that many victims come to court with unrealistic expectations about what can be possibly be achieved. One of the benefits of a more restorative approach to justice is that victims can be heard, and can play a part in forming a response to the crime.

<sup>8</sup> Subsections 3(1)(b)(iv) and (v).

<sup>9</sup> Interview with Judge Sheila Whelan. 9 March 2003.

With myself, they don't involve you in the decisions that effect you, and most of the time they tell you what to do. Like you have probation, you have to be home at a certain time, or you have to go to school or you have to talk to this person or its mediation and they make you feel like you're not important and that everything you do is wrong. Even yourself, your well-being, like who you are is wrong. Like you're not important. You're actually not worth anything. It how a lot of them approach you. Cops, the court system and youth workers and jail. You're just treated like an animal, like you're just there.<sup>10</sup>

The *YCJA* now addresses this concern about youth participation, containing a provision that “young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them”<sup>11</sup>. Hopefully, this provision will encourage courts, as their primary function, to become overseers in ensuring the active participation of youth - especially marginalised youth - within a system which should be characterised by timely court appearances, and by timely bail and pre-sentence reports. The participation of young people is especially important in the development of structured plans for their release or sentence. The conferencing process, referred to above, will provide a key opportunity in enhancing greater participation by young people within the youth justice system.

A frequently heard criticism of the Statement of Principles in the *YOA* was that it contained “a number of potentially conflicting, inconsistent, and unprioritised principles”<sup>12</sup>. Although the new general statement of principles in the *YCJA* contains more guidance than did its counterpart in the *YOA*, these general principles still retain the often-conflicting goals of accountability, on one hand, and rehabilitation, on the other. To some extent this ambiguity is addressed by a focus in the *YCJA* on seeking alternatives to custody.<sup>13</sup> As well, other areas of this act speak directly to the purpose and principles underlying interpretation of the *YCJA*. In particular, the principles and objectives of extrajudicial measures are set out in sections 4 and 5, and the purpose and principles of sentencing are codified in s. 38.<sup>14</sup>

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<sup>10</sup> Interview with S.N. 18 December 2002. Saskatoon, Saskatchewan.

<sup>11</sup> In s. 3(1)(d)(i).

<sup>12</sup> S. Anand. *The Good, the Bad, and the Unaltered: An Analysis of the Youth Criminal Justice Act*. 4 Can. Crim. L.R. 249 at 251.

<sup>13</sup> As discussed later under the heading **Reducing Custody Levels**.

<sup>14</sup> For example, s. 5 of the *YCJA* says “Extrajudicial measures should be designed to (a) provide an effective and timely response to offending behaviour outside the bounds of judicial measures; (b) encourage young persons to acknowledge and repair the harm caused to the victim and the community;(c) encourage families of young persons - including extended families where appropriate and the community to become involved in the design and implementation of those measures; (d) provide an opportunity for victims to participate in decisions related to the measures selected and to receive reparation; and (e) respect the rights and freedoms of young persons and be proportionate to the seriousness of the offence”. Similarly, s. 38 sets out the purpose of sentencing, a series of principles to be used in deciding on an appropriate sentence and a last of factors to be considered by the judge before sentence a young person.

### *Needs and Level of Development*

In comparison to the *YOA*, the principles governing the *YCJA* show a greater recognition of the challenges faced by, and the needs of, young people within the justice system. Sections 3(1)(c) contains a direction that, “within the limits of fair and proportional accountability, the measures taken against young persons who commit offences should ... be meaningful for the young person given his or her needs and level of development ...”. This section further says that such measures should “respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements”. The references to “level of development” and “special requirements” seems to be a recognition of the problems faced by many youth within the justice, such as Fetal Alcohol Syndrome and Fetal Alcohol Effect.<sup>15</sup>

A person would have difficulty spending any significant time observing a Canadian youth court today without hearing the words Fetal Alcohol Syndrome (FAS) or Fetal Alcohol Effect (FAE). The issue of neurological damage, and cognitive impairment, resulting from prenatal exposure to alcohol has become a significant focus of youth court judges, lawyers, youth court workers and others employed within the youth court system. Yet the attention now being paid to this issue is most shocking given its recency, leading many to speculate on the number of cognitively impaired youths who have been processed, and incarcerated, in the past, without any acknowledgement of, or compensation for, their disability. In addition to prenatal exposure to alcohol, a diagnosis of FAS requires evidence of a delay in growth, a distinctive pattern of facial features and a central nervous system (or brain) dysfunction.<sup>16</sup> FAE - also described as partial FAS - refers to those people who have suffered prenatal exposure to alcohol, and who meet some but not all of the formal criteria for FAS.<sup>17</sup> Experts in this field stress that FAE “is not a ‘milder’ form of FAS, and people with FAE have the same risk of developmental and behavioural disabilities as those with FAS”.<sup>18</sup>

The neurological damage resulting from prenatal alcohol consumption is permanent and irreversible. The effects of FAS and FAE are wide-ranging and profound. Judge Mary Ellen Turpel-Lafond of the Provincial Court of Saskatchewan, in *R. vs. W. D.*<sup>19</sup>, stated:

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<sup>15</sup> The reference to the needs of aboriginal young people will be considered later in this paper.

<sup>16</sup> J. Conry & D. Fast, *Fetal Alcohol Syndrome and the Justice System* (Vancouver: Law Foundation of BC, 2000) at 1.

<sup>17</sup> F. Boland, R. Burrill, M. Duwyn & J. Karp, *Fetal Alcohol Syndrome: Implications for Correctional Service* [unpublished: July, 1998] at 14.

<sup>18</sup> Conry & Fast, *supra* note 16 at 1.

<sup>19</sup> [2001] S.J. No. 70 (QL) (Sask. Yth. Ct.).

The pre-natal brain damage which causes FAS leaves its victims with neuro-developmental abnormalities such as diminished IQ, fine and gross motor delays, learning disabilities relating to language dysfunction, verbal learning and memory deficits, and behaviour effects such as impulsivity and a failure to learn from mistakes.<sup>20</sup>

Hopefully, the *YCJA*'s reference to "needs and level of development" will signal a heightened sensitivity about the number of youth appearing in court that may be suffering from FAS or FAE.<sup>21</sup> Indeed, in a criminal justice system focussed largely on the deterrent effects of penal sanctions, the inability of those suffering from FAS or FAE to connect unacceptable behaviour with consequences is of paramount concern. As Judge Henning of the Provincial Court of Saskatchewan stated in *R. vs. R.C.P.*, in sentencing an offender diagnosed with partial FAS (who had spent much of his youthful years either in foster care or in custody), "[s]ocially unacceptable and criminal behaviours may result without any true appreciation of why such behaviour is not acceptable". Judge Henning went on to observe "[t]he ordinary connection between negative consequences of unacceptable behaviour and the behaviour does not exist, and so deterrent sentencing is wholly ineffective".<sup>22</sup>

### ***Emphasis on Diverting Cases Away From Court***

Trying to reduce the number of youth appearing in youth court, especially for the first time, is clearly a policy objective of this legislation. This is a response to the reality that Canadian youth courts have become clogged with less serious charges and system generated offences (such as breach of probation and fail to appear). As evidence of this, in 1998-99, 43% of the charges before Canadian youth courts were made up of the offences: theft under \$5,000, possession of stolen property, fail to appear in court, and breach of disposition.<sup>23</sup>

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<sup>20</sup> *Ibid* at par. 25.

<sup>21</sup> In Saskatchewan, there does not appear to have been any empirical study which identified the number or percentage of youth within the criminal justice system effected by FAS or FAE. Anecdotally, I experience few weeks when, during my tour of rural court points in north-east Saskatchewan, there is not a youth or adult before the court who is suspected of suffering from FAS or FAE. Judge Sheila Whelan, in a paper entitled *FAS and the Risk of Criminal Behaviour* [April 1, 2002, unpublished] referred to several factors in assessing the prevalence of FAS and FAE in Saskatchewan courts: (1) that Aboriginal people are over-represented in Saskatchewan's criminal justice system, (2) that the studies she reviewed indicated "an over-representation of aboriginal persons in the cases diagnosed with FAS" and (3) that the percentage of aboriginal persons in Saskatchewan will increase rapidly over the next decades. Taken together, these findings should, at the least, promote a focus on ensuring that the youth justice system has sufficient resources to assess which youth are so afflicted, and to help and supervise such youth after they are finished in court.

<sup>22</sup> *R. vs. R.C.P.* [2000] S.J. No. 373 (QL) (Sask. Youth Ct.)

<sup>23</sup> Statistics Canada (2000). Youth Court Statistics 1998-99. Ottawa: Canadian Centre for Justice Statistics. Charges were identified by the most serious charge facing a young person before the youth court.

In attempting to promote a greater diversion of charges away from court, the *YCJA* provides, in section 4, that “extrajudicial measures are often the most appropriate and effective way to address youth crime” and that “extrajudicial measures are presumed to be adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence”. Sections 6 to 8 set out a detailed set of alternatives to court proceeding, including options available to police in dealing with young people (in the form of warnings, cautions and referrals), and an option available to prosecutors (a Crown cautioning program).<sup>24</sup> Sections 10 to 12 set out a scheme of extra-judicial sanctions, previously called alternative measures in the *Young Offenders Act*. Keeping less serious and first time offenders out of the court system will obviously leave more of the system’s scarce resources available to deal with more serious offences and offenders.

### ***Reducing Custody Levels***

Another key policy theme found in the *YCJA* is reducing the numbers of young offenders in custody. This concern over custody levels was articulated, in 1999, by Judge Lilles of the Yukon Territorial Court. In *R. v. J.K.E.*<sup>25</sup> Judge Lilles described a little-known fact to most Canadians - that we as a country jail nearly four times as many youth as we do adults, and we imprison more youth per capita than the United States, usually considered the world leader in “getting tough”. Judge Lilles described this situation in Canada as a “national disgrace”.<sup>26</sup>

In addressing this concern, a number of the *YCJA*’s sections stress that the criminal justice system is not to be used in place of other appropriate treatment and community services and measures. For example, s. 39(5) provides that a “youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures”. Section 29(1) provides that a “youth justice court judge or a justice shall not detain a young person in custody prior to being sentenced as a substitute for appropriate child protection, mental health or other social measures”. As well, this act places limits on which cases may result in custody. Section 39(1) says that a young person shall not be sentenced to custody unless a youth has committed a violent offence, has failed to comply with non-custodial dispositions, has committed a serious indictable offence and has a significant criminal record, or in an exceptional case as defined in this sub-section. Taken together, these provisions show a clear intent that the overall resources in a society be coordinated and applied towards the issue of youth crime, in a way that will reduce the number of young persons in criminal custody.

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<sup>24</sup> Both police and Crown cautioning programs must be established by the appropriate provincial Attorney General.

<sup>25</sup> [1999] Y.J. No. 119 (Yukon Ter. Ct. - Youth Ct.).

<sup>26</sup> At paragraph 61.

### ***Reintegration Back into Society***

The idea of reintegrating youth back into the community, after their time in custody, was not a focus of the *YOA*. It has become so in the *YCJA*. The *YCJA*'s statement of principle, in s. 3, emphasizes the principles of both "rehabilitation and reintegration". Unlike the *YOA*, all custody sentences now include a mandatory period of supervision in community - usually one third of the overall sentence.<sup>27</sup> As well, the act now, in s. 90, mandates active preparation for release and reintegration during a youth's time in custody:

**90.** (1) When a youth sentence is imposed committing a young person to custody, the provincial director of the province in which the young person received the youth sentence and was placed in custody shall, without delay, designate a youth worker to work with the young person to plan for his or her reintegration into the community, including the preparation and implementation of a reintegration plan that sets out the most effective programs for the young person in order to maximize his or her chances for reintegration into the community.

In further preparing for return to the community, the act also allows youth to apply for reintegration leaves of up to thirty days.<sup>28</sup>

Reintegration stands out as a key policy theme being advocated in this act. Many, if not most, of the youth found in our custodial facilities are marginalised in one way or another; whether by poverty, disability, race or some other factor. Although it could be argued that a significant number of youth in custody have never been properly integrated into society in the first place, my experience as a lawyer in youth court has taught me that the most productive way to stop a youth from re-offending is to find a way for that youth to become engaged in the economic, social or educational activities of his or her community. In my view, helping young people to become productive members of the mainstream society is a far more rational and efficacious approach to changing behaviour than further marginalizing these youth within custodial institutions.

### ***A Focus on Violent Offences***

Although many provisions of the *YCJA* suggest a less punitive approach to youth justice - which some might euphemistically label a "kinder gentler" approach to youth justice - there is one area of the new statute that does not support such an interpretation. The *YCJA* shows a clear intent to focus the system's response most heavily on youth committing violent offences. This happens in a number of ways.

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<sup>27</sup> See sections 98 and 104.

<sup>28</sup> See s. 91.

The transfer process under the *YOA* - by which youth charged with serious crimes of violence could be transferred to and tried in adult court - has been replaced. The *YCJA* now provides that all accused young people are initially tried in youth court (which can now be either a provincial or superior court), but that the Crown can apply (after giving notice at the time of plea) to have a youth sentenced as an adult. If the youth is convicted, the court then holds a hearing to determine whether the youth will be sentenced as an adult.<sup>29</sup> The offences for which a presumption of adult sentence exists (called “presumptive offences”) includes those offences which the *YOA* defined as presumptive for transfer purposes - murder, attempted murder, manslaughter and aggravated sexual assault - but also includes a so-called “serious violent offence”, where the accused has been convicted twice previously of such an offence. This presumption, where it applies, does so to youth as young as fourteen years, compared to the presumptive transfer age of sixteen years under the *YOA*.<sup>30</sup> The net effect of these new provisions is that the number of youths presumed to be sentenced as adults will increase significantly over the *YOA* (both by a broadening of the presumptive offences but also by a reduction in the presumptive age).<sup>31</sup>

Other provisions of the act, as well, show a focussing on violent offences. The sentencing provisions, for one, allow a court, in sentencing a youth convicted of the most serious violent offences other than murder, to increase the proportion of the sentence spent in custody, and in so

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<sup>29</sup> The provisions in the *YCJA* setting out the process used in determining whether a youth should be sentenced as an adult are complex (see ss. 61-78). A detailed discussion of these is beyond the scope of this paper. In effect there are two key scenarios. Where a youth is convicted of a “presumptive offence” - an offence for which a presumption of adult sentence exists - he or she can apply to the court to be sentenced as a youth rather than an adult. Where a youth is convicted of an offence (other than a “presumptive” one) for which an adult is liable for imprisonment for a term of more than two years and which was committed after the young person turned fourteen year of age, the Crown can apply to have that youth sentenced as an adult. The evidential onus, in each case, is on the applicant. Section 72 sets out the criteria governing the court’s decision on whether the youth is to be sentenced as an adult, fundamentally whether a youth sentence “would have sufficient length to hold a young person accountable for his or her offending behaviour”.

<sup>30</sup> The act, in s. 61, allows each province to increase the age (at which the presumption that a youth be sentenced as an adult exist) above fourteen years but not more than sixteen years. It is understood that in most provinces, including Saskatchewan, this age will remain at fourteen years.

<sup>31</sup> Presumptive offences, however, may be the first aspect of the *YCJA* to see substantive change. The government of Quebec, in a reference to the Quebec Court of Appeal, challenged the constitutional validity of several provisions of the new legislation. [*Renvoi relatif au projet de loi C-7 sur le système de justice pénale pour les adolescents* [2003] J.Q. (QL) No. 2850 (Qué. CA). Quotations are taken from the English translation of this decision.] This court - although finding the *YCJA* was within the legislative jurisdiction of the federal government and that the impugned provisions did not violate international law - found certain provisions to violate section 7 of the *Charter of Rights and Freedoms*. In particular, the court held that the sections pertaining to the sentencing of a youth convicted of a presumptive offence (ss. 62, 63, 64(1) and (5), 70, 72(1) and (2) and 73(1)) violated the *Charter* “insofar as they place on a young person who has committed a presumptive offence the burden of proving the factors that justify imposing a youth sentence instead of an adult sentence” [at paragraph 286 of translation]. As well, the court held that sections determining whether a youth convicted of a presumptive offence but sentenced as a youth should have his or name published (ss. 75 and 110(2)(b)) violated section 7 of the *Charter*, “insofar as they require the young person to justify maintaining the ban instead of placing the burden on the prosecution to justify lifting the ban”. [at paragraph 290 of translation] The federal government was reported to have decided not to appeal the case, but rather to amend the *YCJA* to address the court’s concerns. [C. Gillis & R. Benzie. *Ontario fights youth-crime changes: Ottawa to soften new act*. National Post. 6 May 2003.]

doing to decrease the period of community supervision following custody.<sup>32</sup> Similarly, youth convicted of the most serious crimes of violence, may be sentenced to an intensive rehabilitative custody and supervision order, if that youth is suffering from “a mental illness or disorder, a psychiatric disorder or an emotional disturbance”.<sup>33</sup> Although depending on the program put into place by each province’s provincial youth director, it appears that the intensive rehabilitative custody and supervision order will impose impatient psychiatric and psychological treatment. As well, the *YCJA* now allows a court, on the Crown’s application, to require a youth to remain in custody for all or part of the last portion of his or her custody sentence, rather than being released on community supervision. In the case of a youth serving custody for the most serious of violent offences, the onus on the Crown to show why such a youth should remain in custody during all or part of the community supervision portion is less demanding.<sup>34</sup>

As mentioned earlier, the *YCJA* is a lengthy statute, containing many interwoven sections that will take some time to interpret, providing much opportunity for legal, judicial and academic debate. Given the myriad of provisions contained in the *YCJA*, this paper is intended to discuss only some of the major policy directions in this act, rather than providing any detailed study of the individual sections and provisions. The following sections of this paper consider, in more depth, aboriginal youth and the justice system, interdisciplinary and inter-agency approaches to justice, the goal of crime prevention and keeping youth out of the justice system, and the overall directions for the youth justice system under the *YCJA*.

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<sup>32</sup> See s. 42(2)(o). This section applies to the offences of attempted murder, manslaughter and aggravated sexual assault.

<sup>33</sup> See s. 42(2)(r) and 42(7). The intensive rehabilitative custody and supervision order applies to a young person convicted of a “presumptive offence” as defined in s. 2(1).

<sup>34</sup> See s. 98(3) as compared to s. 104(1). This is a similar process previously referred to as “gating” for adult offenders. A further example of how this act focusses on violent offences is found in s. 42(2)(p), where a deferred custody and supervision order (very similar to a conditional sentence of imprisonment under the *Criminal Code*) is not available to youth convicted of a serious violent offence. This restriction is found in s. 42(5) of the *YCJA*.

## **Aboriginal Youth and the Justice System**

Over a decade ago, Professor Michael Jackson of the University of British Columbia, in an article entitled *Locking Up Natives in Canada*,<sup>35</sup> detailed the over-representation of aboriginal people within Canadian prisons and observed that, “[m]ore than any other group in Canada they are subject to the damaging impacts of the criminal justice system’s heaviest sanctions.”<sup>36</sup> Ten years later, in *R. v. Gladue*<sup>37</sup>, the Supreme Court of Canada revisited this concern. Describing the difficult position of Canada’s aboriginal people - which they said resulted, in part, from the negative effects of past decisions by government - and after citing a number of studies and commission reports over the years, the court said “aboriginal offenders are, as a result of these unique systematic and background factors, *more adversely affected by incarceration* and less likely to be ‘rehabilitated’ thereby. . . .” [emphasis added].

Concerns about participation rates in the justice system as a whole and custodial facilities in particular, apply with greater force to aboriginal youth, especially considering the number of aboriginal young people currently in custody in the prairie region. The Canadian Centre for Justice Statistics recently reported that Saskatchewan’s aboriginal youth made up 75% of secured custody admissions, while only comprising 15% of the youth population. In Manitoba, aboriginal youth made up 79% of secured admissions compared to 16% of the overall youth population, and in Alberta, these youth comprised 35% of secured admissions, while representing 5% of the overall youth population.<sup>38</sup>

As one way of addressing this concern, section 38(2)(d) of the *Youth Criminal Justice Act* now requires a court, before imposing a youth sentence, to consider the principles set out in section 3 of the Act, together with a list of principles including a requirement that “all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons”. This provision is accompanied by section 3(1)(c)(iv) which provides that measures taken against young persons under

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<sup>35</sup> Jackson, M., *Locking Up Natives in Canada* (1988-89), 23:2 U.B.C.Law Review 215.

<sup>36</sup> *Ibid.*

<sup>37</sup> [1999] S.C.J. No. 19 [1999], 1 S.C.R. 688 (1999), 171 D.L.R. (4th) 385, (1999) 238 N.R. 1, (1999) 121 B.C.A.C. 161, (1999) 133 C.C.C. (3d) 385, [1999] 2 C.N.L.R. 252 (1999) 23, C.R. (5th) 197.

<sup>38</sup> Canadian Centre for Justice Statistics. *Youth Custody and Community Services Canada, 1999/00*. Stats Can Cat. No. 85-002-XPE Vol. 21 No. 12 at page 4 (Figure 1). A year later, Statistics Canada figures showed the situation had actually become more pronounced in Saskatchewan and Manitoba, with the percentage of aboriginal youth in secure custody at 76% for Saskatchewan and 83% for Manitoba. Alberta’s rate reduced to 33%. Regarding the percentage of aboriginal youth in open custody, 2000/2001 figures showed the rates were 75% in Saskatchewan, 81% in Manitoba and 33% in Alberta. Canadian Centre for Justice Statistics. *Youth Custody and Community Services Canada, 2000-2001*. Stats Can Catalogue No. 85-226XIE, ISSN 1492-8590.

the *YCJA* should “respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young people with special requirements”.

The reference to “particular attention to the circumstances of aboriginal young people” in s. 38(2)(d) is a mirror image of the adult provision found in s. 718.2(e) of the *Criminal Code*, in effect since 1996. The Supreme Court, in *Gladue*, interpreted this *Criminal Code* section as mandatory in application, remedial in nature and a “direction to sentencing judges to undertake the process of sentencing aboriginal offenders differently, in order to endeavour to achieve a truly fit and proper sentence in the particular case”.<sup>39</sup> Trial courts were directed to pay particular attention to whether aboriginal offenders had suffered the effects of poverty, substance abuse, overt racism and family and community breakdown. The Supreme court said the search for alternative sentences was to utilize, wherever possible, restorative principles of justice; including healing and rehabilitation, and restoration of the relationship between the offender, victim and community.

Many commentators have questioned what public good is being achieved through the current level of youth custody admissions, in general, and the numbers of aboriginal young persons in custody, in particular. In *Gladue*, the Supreme Court, while considering the over-representation of aboriginals within Canadian jails, cited with approval the following words of Professor Jackson who described the negative effect of prison on youthful aboriginal offenders in Saskatchewan:

Put another way, this means that in Saskatchewan, prison has become for young native men, the promise of a just society which high school and college represent for the rest of us. Placed in an historical context, the prison has become for many young native people the contemporary equivalent of what the Indian residential school represented for their parents.<sup>40</sup>

Indeed, many links have been drawn between the residential school experience of previous aboriginal generations, and the current reality of aboriginal youth. Eugene Gamble, On Reserve Justice Co-ordinator for the Saskatoon Tribal Council, drew this connection in reflecting on the causes of youth crime:

First of all I think there are a lot of causes, a lot of them being historical, and going back to the colonization of reservations, and residential schools. Many things have been taken away from us, particularly for aboriginal youth. These include a structure and a culture; traditions of parenting, community based parenting, extended families, grandparents, guidance and understanding of the issues as First Nations people. [These were taken away] particularly through the residential schools and attempts by governments to assimilate First Nations People, taken away by the fact that the Church was the deciding factor in how people were going to be raised, and how youth were going to be raised in the residential schools. How families were no longer important. How language was no longer important, basic parenting skills weren't taught any longer. It was every person for themselves, as opposed to a First

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<sup>39</sup> At paragraph 33.

<sup>40</sup> Jackson, M., *Locking Up Natives in Canada* (1988-89), 23:2 U.B.C.Law Review 215 at 216.

Nation culture and traditions, a community based process. So, in the long run, the damage that was done to First Nations youth was a lack of guidance and understanding, a lack of a true community process where the survival of the community was ultimate, as opposed to being individualistic.<sup>41</sup>

There is little doubt that the *Gladue* decision will be used in interpreting and applying these sections of the *YCJA*.<sup>42</sup> While the *YOA* was still in effect, Judge Lilles of the Yukon Territorial Court, in *J.K.E.*<sup>43</sup>, found the *Gladue* principles to “apply with greater force in the sentencing of young offenders.” Similarly, Judge Turpel-Lafond of the Provincial Court of Saskatchewan, in *R. v. M.L.*<sup>44</sup>, stated that the objectives of restorative justice articulated in *Gladue* applied equally to youth dispositions and that youth courts should “consider alternatives to custodial dispositions which would be meaningful to” aboriginal youth.

In considering the application of the *Gladue* decision to aboriginal youth within the justice system, the discrepancy between the “haves” and “have nots” can often be seen in court. As only one example, recently a young adult aboriginal offender, in his late teens and with a significant criminal record, appeared in custody at a rural Saskatchewan court during my attendance there. This fellow was charged with possession of stolen property, and had missed a court appearance. He had been arrested by the Saskatoon City Police and had been returned to this town which was near his home reserve. He had come from what could only be described as a horrific upbringing characterized by alcohol abuse, and violence. He had moved from home to home during his childhood, and had most recently been living off the street in Saskatoon. By contrast, also appearing in court that day was a professional man who had been charged with a firearms offence. His lawyer provided a glowing recitation of his career accomplishment and the devastating impact that being charged with this offence had on him, including his client’s future plans for retirement. As these able representations about this professional were put forward, the aboriginal offender sat desolately in the front row waiting his turn. In turn, the only track record that could be cited for him was one of poverty, neglect and abuse.

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<sup>41</sup> E. Gamble. Interview. 19 April 2000. Saskatoon.

<sup>42</sup> Section 50 of the *YCJA* provides, in effect, that the sentencing provisions of the *Criminal Code* do not apply sentencing young people under the *YCJA*, except for some stated exceptions. Key amongst these exceptions is s. 718.2(e) of the Code, which refers to the sentencing court paying “particular attention to the circumstances of Aboriginal offenders”.

<sup>43</sup> [1999] Y.J. No. 119 (Yukon Territorial Court).

<sup>44</sup> [2000] S.J. No. 17 (Sask. Yth. Ct.).

If the new focus on the circumstances of aboriginal youth within the *YCJA* is to have any effect, hopefully it will be to emphasize the importance of considering how a number of social and economic factors - beyond the influence of individual offenders and often linked to the historic treatment of aboriginal people in Canada - have contributed to the presence of an offender in court. The past, however, need not be the only - or even the most - important consideration flowing from this decision. The words in *Gladue* should also encourage lawyers, judges, police officers, youth workers, and other involved community members to search for alternatives to incarceration, for many of the most marginalised of society's members.

The general statement of principle in s. 3 of the *YCJA* provides, in part, that the criminal justice system for young persons should emphasize rehabilitation and reintegration of youth into society. Yet, any discussion of how these aims can be achieved with delinquent and marginalised youths must not neglect one obvious, and perhaps rhetorical, question. How can we expect to see significant changes in behavior when young offenders are returned from custody, or remain in, the identical environment they experienced at the time of offending? A young aboriginal woman, interviewed for our book, described the difficult home circumstances of many aboriginal youth:

You have a family that can't provide for you, plus there's no growth involved either. If your family is unhealthy, you're just stuck there. Like for boys they do b and e's, and girls they get into sexual exploitation or prostitution because they lack opportunities to grow and expand. Instead of just the positive effect, they go to the negative effect and it just becomes a part of their lives. For myself, I started stealing when I was young. I started when I was eleven, and eventually went to prostitution. It's just that there has to be more opportunities for the development of children and youth, to expand more and give them a chance to be a child or a youth, and for their parents and community to accept them for who they are. There's not enough out there, especially for aboriginal youth or children.<sup>45</sup>

In seeking to address the causes of youth crime, many people (like the aboriginal woman quoted above) and many workers on the front lines of our justice system, understand the need to focus resources on improving the home circumstances of troubled youth. They also understand the obvious link between the availability of community resources and the extent of viable alternatives for police and youth court judges. That such resources exist, and are assessable within the youth justice system, is important. But even more critical is the ability of those delivering such services to coordinate their efforts in a manner which addresses unmet needs of young people and, ultimately, reduces the level of youth crime. The coordination and breadth of resources is key to the following discussion of interdisciplinary and inter-agency approaches to justice.

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<sup>45</sup> Interview with S.N. 18 December 2002. Saskatoon, Saskatchewan.

## **Interdisciplinary and Inter-agency Approaches to Justice: Is the Justice System an Island Apart?**

Looking for answers within the justice system leads to an unavoidable conclusion that many - if not most - solutions to the problems of crime, and of need, among troubled youth lie outside the control of police, lawyers and courts. This realization has led many to support a move towards interdisciplinary and inter-agency approaches to justice. These approaches necessitate the involvement and cooperation of a broad spectre of people and organizations, including employees working in various services and agencies (inside and outside the conventional borders of the justice system), together with other groups and individuals within each community. Although many of these people and agencies were not previously considered to be part of the formal criminal justice system, their involvement is now increasingly seen as a key to providing the resources needed to assist offenders and victims. In effect, this approach means putting a new emphasis on a cooperative view of justice.

As a recognition of the need for interdisciplinary, and wide-ranging, approaches to youth crime and justice, the *YCJA* now contains, in its preamble, a statement that “communities, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes”.<sup>46</sup> In a society where public sector cutbacks have become a way of life - in the wake of a public clamor for tax cuts - there is an obvious need to pool resources in attempting to address the causes and effects of crime, and, as a result, to provide safer communities.

If my experience as a lawyer tells me anything, it is that maintaining the justice system as an island apart from the rest of society’s resources, is a recipe for further failure. The extent to which the justice system has remained aloof from the rest of society, in contrast to many other institutions, was explained by Chief Judge Barry Stuart of the Yukon Territorial Court in *R. v. M.N.J.*<sup>47</sup>:

How can a system remain so robust when no one can make the case it is succeeding and everyone can agree it should be doing much better on almost every front? When the evidence for changing to a holistic, coordinated, value-based approach is so overwhelming, how can the justice system remain a jungle of complex, disjointed interactions that preserve numerous self-serving fiefdoms, all with different values, different objectives? When the public has not merely challenged, but penetrated and participated directly in the shaping of other public processes (Education, Health, Environment, Labour Relations, etc.), how has the justice system managed to keep the public at its outer gates, misinformed and ineffective in changing our arcane processes? We have achieved,

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<sup>46</sup> This is the second WHEREAS in the Preamble.

<sup>47</sup> [2002] Y.J. No. 49 (Yukon Territorial Court).

often despite our best intentions to be otherwise, a level of excellence in maintaining the status quo, despite constant external pressures to change.<sup>48</sup>

As a signal that those employed within the justice system must be open to new partnerships with other agencies and community members, the general principles of the *Youth Criminal Justice Act* state that measures taken against young persons who commit offences should, “where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration”.<sup>49</sup> This section is also a recognition of the complexity of today's society, and hence the need to pool and focus the efforts of people and organisations in providing service and supports to young people, and an increased sense of safety at the local level. Unfortunately, the most common changes I have seen within the youth justice system over the past decade, have been attempts at strengthening the established enforcement system, with more police, more Crown prosecutors and more emphasis on offender accountability through the ultimate weapon: custody. This strategy appears to have had, and arguably in the future will have, little positive effect, unless these resources are coupled with a coexisting strategy of addressing the underlying causes of crime for those young person caught within the criminal justice system.

As a particularly numbing measure of how far our Canadian society, as a whole, has strayed from dealing with a primary, if not “the” primary, cause of youth crime, statistics on child poverty are not encouraging. In a report entitled *Child Poverty in Canada: Report Card 2000*, the group Campaign 2000 recalled and restated a resolution of the House of Commons in 1989 to “seek to achieve the goal of eliminating poverty among Canadian children by the year 2000”. This report found that goal to be elusive, observing in the year 2000 that “one in five children in Canada still lives in poverty - an increase of 402,000 since 1989”. Indeed, the extent to which “the rich are becoming richer and the poor are becoming poorer in our society” was shown in a report on poverty released by the Canadian Council on Social Development in November 2002. That found between “1984 and 1999, the average net wealth of the top 20 per cent of couples with children increased by 43 per cent” while for “families at the bottom of the income scale, net wealth fell by more than 51 per cent”.<sup>50</sup>

To say the obvious, the need for justice professionals to step outside their conventional boxes, in considering new partnerships, and new approaches to helping young offenders, has never been more pressing. In considering how this transformation can happen, and in addressing the cycles of crime and

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<sup>48</sup> At paragraph 129.

<sup>49</sup> Section 3(1)(c)(iii).

<sup>50</sup> “Persistent poverty” crippling Canadian children. CBC News Online. 4 November 2002.

suffering and repeat offending (frequently seen within the justice system), Chief Judge Stuart suggested a holistic approach, involving a partnership between agencies, families and community members:

The justice system alone cannot stop this cycle. The state, even if it finally turned from its turf-conscious, truncated approach to an integrated systemic approach, could not stop this cycle. The cycle can be stopped - but only if we turn to address the causes and not the symptoms; only if we recognize that professionals and state agencies cannot do the work that communities and families must do, only if we accept that legal solutions have never, and can never, solve social issues, and especially only if we acknowledge that simple solutions, like punishment, exacerbate rather than solve complex social problems.

There is hope, but it does not lie with more justice resources - it lies with less. It lies with a different approach, with different objectives, different resources, different people. It lies with giving a greater voice to communities and to those skilled in rehabilitating individuals, families and communities. Let us embrace crime as an opportunity to understand what is wrong, not just with an individual like M.N.J., but with our system that would enable M.N.J. to become so estranged from us that he could commit such a crime. Let us use crime as an opportunity to discover what is wrong with our institutions, with our communities that hindered our ability to intervene long before this crime.<sup>51</sup>

Recognition of the benefits of broad-based interdisciplinary approaches to justice can also be found outside of Canada. In the United States, Shay Bilchik, Administrator of the Office of Juvenile Justice and Delinquency Protection of the US Department of Justice, in a 1998 article, stressed the need for an integrated, coordinated and community-wide approach to youth justice:

An effective juvenile justice system must meet three objectives: (1) hold the juvenile offender accountable; (2) enable the juvenile to become a capable, productive, and responsible citizen; and (3) ensure the safety of the community ... These objectives are best met when a community's key leaders--including representatives from the juvenile justice, health and mental health, schools, law enforcement, social services, and other systems--are jointly engaged in the planning, development, and operation of the juvenile justice system. Juvenile justice system reform must be part of a broad, comprehensive, community-wide effort to eliminate factors that place juveniles at risk of delinquency and victimization, enhance factors that protect them from engaging in delinquent behaviour, and use the full range of resources and programs within the community to meet the varying needs of juveniles ... It is essential that, in engaging the community in this undertaking, the juvenile justice system also include greater public access to both the court and the system. This access will ensure a proper role for victims, a greater understanding of how the system operates, and a higher level of system accountability to the public.<sup>52</sup>

The idea of involving a broad cross-section of people and organizations in assisting young people within the youth justice system is an approach now promoted in a number of areas within the *YCJA*. The community conferencing provisions of this act (in section 19), mentioned earlier in this paper, presumably, will involve the participation of a variety of people who previously would not

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<sup>51</sup> At paragraphs 139 and 140.

<sup>52</sup> S. Bilchik. *A juvenile justice system for the 21st century*. Crime & Delinquency, January 1998, Vol. 44:1 at 89.

have had their voices heard in youth court, or elsewhere in the youth justice system. The use of conferences should support a less confrontational and more consultative approach to youth justice, especially - but not limited to - the areas of judicial interim release (bail) and sentencing. As well, youth justice committees are another organization that will play a part in promoting community-wide consultation and cooperation on youth justice matters. The *YCJA* provides that the functions of youth justice committees, regarding a young person in the justice system, include “ensuring that community support is available to the young person by arranging for the use of services from within the community, and enlisting members of the community to provide short-term mentoring and supervision” and “when the young person is also being dealt with by a child protection agency or a community group, helping to coordinate the interaction of the agency or group with the youth criminal justice system”.<sup>53</sup>

In considering interdisciplinary approaches and strategies for youth justice, it is important that lessons and successes from one discipline be considered and adopted elsewhere, if applicable. One example of an integrated and coordinated process for working with high risk youth, and their families, is the so-called Wraparound process. Based in large part on the work of Dr. John VanDenBerg, this process is used by social workers to “help communities to develop individualized plans of care”.<sup>54</sup> The Wraparound process has been implemented broadly across North America by social service agencies, and focusses on an individualized plan for each youth and their family. Such a plan is to be developed by a Wraparound team - usually four to ten people who know the youth and family well.<sup>55</sup> Dr. VanDenBerg described the nature and prerequisites of an individualized Wraparound plan:

The plan is needs-driven rather than service-driven, although a plan may incorporate existing categorical services if appropriate to the needs of the consumer. The initial plan should be a combination of existing or modified services, newly created services, informal supports, and community resources, and should include a plan for a step-down of formal services. This plan is family centred rather than child centred. The parent(s) and child are integral parts of the team and must have ownership of the plan. No planning sessions occur without the presence of the child and family. The plan is based on the unique strengths, values, norms, and preferences of the child, family, and community. No interventions are allowed in the plan that do not have matching child, family, and community strengths.<sup>56</sup>

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<sup>53</sup> In subsections 18(2)(iii) & (iv).

<sup>54</sup> J. VanDenBerg, *Wraparound Planning: Training and Presentation Materials*. Available on the Internet at <http://cecp.air.org/wraparound/intro.html>.

<sup>55</sup> *Ibid.* This Wraparound team “must be no more than half professionals”.

<sup>56</sup> *Ibid.*

The Wraparound process, which focusses primarily on youth and family strengths (rather than deficits), is an encouraging example of how individual plans can be prepared for high risk youths. Although, in one sense, this approach looks more to helping individual trees, rather than setting policy direction for the community-wide forest, its application toward an increasing network of high-risk youth and families would clearly pave the way towards preventing youth crime, and bringing more and more marginalised youth into the mainstream of society. Indeed, as a practising lawyer, my experience has been that, in the sentencing process, placing a detailed and thought-out plan for a youth before a judge is the most effective way to avoid a custodial disposition. Hence, the application of the Wraparound planning process to the front lines of our youth justice system is of obvious utility.

Despite the potential advantages of interdisciplinary and inter-agency approaches to justice, one practical problem marginalised families and youth face is the number of agencies, and workers, they must deal with. Chaos can result if these services are not coordinated. In Saskatoon, for example, between 1993 and 1995, the Saskatoon Children's Services Integration Project discovered that one family (in a two year period) had forty different agencies working with them, and had one hundred and twenty different people acting as service providers.<sup>57</sup> This example makes obvious the absolute necessity of ensuring coordination and cooperation between agencies.

The factual scenario in the *M.N.J.* case provided a vivid example of a lack of community and inter-agency coordination and programming over this offender's life. By any standard, this offender's life was characterized by a shocking history of neglect and abuse, from four years of age onwards. Court records showed "*M.N.J.* was sexually and physically abused by uncles living in the home". As an often neglected child, he was frequently placed with, or apprehended by, the Department of Social Services for months at a time. Chief Judge Stuart described how, since "1981, doctors, public health nurses, teachers, foster parents and people in the community have reported to the department various concerns about the abuse and neglect *M.N.J.* suffered."<sup>58</sup> But despite the many people who tried to help this offender, during his developmental years, there was an obvious lack of co-ordination. Chief Judge Stuart described a breakdown in community and professional services in this case:

Without the necessary support systems of family, community, friends or professional services desperately needed to diffuse his well-documented capacity for sexually inappropriate and aggressive expression, Mr. *M.N.J.*, living alone in the community, was a ticking bomb. He had been through more than a dozen placements before he was 18. Numerous professionals had worked with him or assessed him. Everyone knew his propensity for violence and for

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<sup>57</sup> When they documented this, the Children's Service Integration Project entitled the table that listed agencies and providers *How Can One Mother Make Sense Of This?*

<sup>58</sup> *supra*, fn. 47, *M.N.J.* at paragraphs 35 and 36.

sexually inappropriate behaviour. No effective intervention occurred to help him change or to prevent further anti-social behaviour.<sup>59</sup>

As sad as these circumstances are, they also form a blueprint for how the various players within the justice system, and the larger community, might better organize and coordinate their services, to avoid a repeat, or escalation, of *M.N.J.*'s story. Chief Judge Stuart used the analogy of moving a rock, when he described the need for integrated community planning which was capable of making a difference:

The M.N.J.s within our system are victims of the lack of an integrated plan. Imagine for a moment that the cumulative effect of all the abuse youth such as M.N.J. endure creates a festering mass of anger, pain, frustration, and an irrepressible yearning to strike out at authority. Think of this mass as a large rock - so large that no family, no community, no professional, no agency can alone lift this rock to a better place. Everyone tries. Repeated efforts leave them exhausted, burned out, despairing and resigned to failure. Yet if all took on the challenge in a coordinated effort, the rock can be moved. M.N.J. was too much for his family to manage. He was too much for social workers, probation officers, judges, psychologists - too much for any one person or agency to manage alone. So many times in dealing with young people like M.N.J. everyone struggles essentially alone, without an integrated effort that reaches far beyond the specific resources they possess. They all do their jobs, but the job needed to make the difference does not get done. As long as we fail to work together, we will fail to make a difference.<sup>60</sup>

There are no easy answers about exactly how, as suggested in the *YCJA*, professional agencies, community leaders and volunteers, families and youth can work together in a more integrated and productive manner, ultimately keeping more trouble youth out of our courts and custodial facilities. There are, however, some positive signs, if we only take the time to see them. For example, in the northeast area of Saskatchewan, the Nipawin Integrated Services Committee has been functioning for about four years. This committee has broad representation from this town, including Metis Local 134, the RCMP, the Nipawin School Division, the Kelsey Trail Health Region, Cumberland Community College, the town of Nipawin administration and the Department of Social Services. It works to facilitate integrated planning and service delivery which meets the needs of at-risk populations in Nipawin, specifically: early childhood (0-4 years), children (5-11 years), youth (12-19 years), young adult (20-30 years) and citizens generally in vulnerable situations.<sup>61</sup> In its short

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<sup>59</sup> Ibid., par. 61.

<sup>60</sup> Ibid., par. 161.

<sup>61</sup> J. Sekulich. *Making it Work: Integrated Services*. Materials from Sixth National Congress on Rural Education. Saskatoon. 1 April 2001. This committee's goals are to: co-ordinate local needs assessments, work towards integrated service delivery, co-ordinate funding allocations, research and access funding to support integrated services and establish project and program accountability at the local level.

existence, the committee has coordinated a variety of programs to the Nipawin community, including a youth counsellor, a youth group, an outreach program, a student support centre, a preschool program for at-risk children, a nutrition program, and a pre and post natal program for at-risk mothers and children.<sup>62</sup>

### **Crime Prevention: Keeping Youth Out of the Justice System**

Although there is much to be said about how inter-agency and interdisciplinary approaches to justice can help youths caught up within the justice system, another very significant aspect of this form of cooperation lies in preventing youth crime in the first place. As a recognition of the importance of crime prevention, the *Youth Criminal Justice Act* now provides, as a key principle of interpretation, that the youth criminal justice system is meant to “prevent crime by addressing the circumstances underlying a young person's offending behaviour”.<sup>63</sup> Crime prevention is an overarching goal that most politicians, at the federal, provincial and local level, will claim to support. Yet the movement of resources away from enforcement and punitive arms of the youth justice system, towards services - which will in the short run address the root causes of crime and in the long run reduce crime levels - can be a tough sell. I believe this has much to do with issues surrounding the reporting of youth crime, and how public perceptions are shaped by the sensational accounts of individual cases. The notoriety and public reaction garnered by one serious youth crime, often overrides any possibility of publicity about a multitude of success stories involving youths who received help, and then stayed out of trouble. This is likely a broader reflection of how negative-based much of our society has become. We so often look to, and highlight, failures, rather than successes.

One way of trying to reverse this practice and trend, is continued and increased emphasis on crime prevention. One example of this comes from England. The English use of Youth Offending Teams (YOTs) - integrated teams made up of social workers, education and health staff, prison staff, magistrates and probation officers - has brought a new emphasis on dealing with the underlying causes of youth crime, and hence on crime prevention. An article evaluating these inter-disciplinary YOTs stated that the “teams not only work with 10 to 17 years olds within the criminal justice remit,

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<sup>62</sup> *Ibid.*

<sup>63</sup> In s. 3(1)(a)(i).

such as supporting a young person through their community punishment orders, but also provide preventative work for young people who have yet to get involved in the criminal justice system”.<sup>64</sup>

In a Canadian context, the importance of crime prevention as a social priority can be seen in the report of the Manitoba Aboriginal Justice Implementation Commission. This commission devoted an entire section of its report to the important connection, and causal link, between community development and crime prevention. The commission observed that the roots of over representation of aboriginals in the justice system are not “found only in the justice system, but in the broader social setting, and will require concerted action from all three levels of government in Canada”.<sup>65</sup> The commission suggested a coordinated crime prevention approach, addressing the many problems faced by aboriginal people:

The justice system is reactive. The changes proposed in this section are preventative. They build on people’s strengths and encourage community building. And, at the same time, they recognize that Aboriginal people who are at risk of becoming involved in crime often face multiple problems: racism, domestic violence, community violence, poor access to health care and education, inadequate housing and limited employment options. These problems generate hostility, stress and demoralization, and can lead to criminal behaviour. A successful crime prevention approach will address all these issues in a coordinated fashion.<sup>66</sup>

Obviously, a key strategy in preventing youth from getting caught up in the justice system, is keeping them out of it in the first place. Regarding young people, the Manitoba commission recognized the interconnectedness of young people, their families and their communities, and stated “there is clear evidence that money spent on early years’ education decreases the likelihood of a young person’s coming into conflict with the law”.<sup>67</sup>

Indeed, prevention strategies can begin at, and be focussed on, an early age, even including prenatal concerns. An example of this is the *Kids First* program, currently operating in a number of Saskatchewan communities. *Kids First* is a “voluntary program that helps families build on their strengths and have the healthiest children possible”. The *Kids First* program is focussed on providing for the unique needs of each family, and is designed to “enhance existing programs already” in the

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<sup>64</sup> H. Foxcroft. *A solution that benefits everybody*. The Independent. 24 September 2002 at 5.

<sup>65</sup> P. Chartrand & W. Whitecloud. *Aboriginal Justice Implementation Commission: Final Report and Recommendations*, (Statutory Publications Office: Winnipeg, 2001) at 135.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid* at 137.

community.<sup>68</sup> The long term benefit of such a program for all of society is obvious: fewer high risk youths coming into the justice system.

Programs such as *Kids First* show a response to the obvious need for preventative services, and for early diagnosis of behavioural problems. For too long, the justice system has been the site where such problems, and hence troubled youth, are identified. In many cases this is grossly after the fact. As a result, other locations, within our communities, need to be used to identify trouble signs, long before a youth finds him or herself in a prisoners box, looking across at the prosecutor and judge. In *R. v. J.K.E.*<sup>69</sup> Judge Lilles of the Yukon Territorial Court suggested that schools are one such location:

In many cases, schools are in a position to identify problems at an early stage. Currently youth who, without obvious reason, begin missing school or are habitually late or whose classroom performance and participation deteriorates noticeably are disciplined and may eventually be suspended or expelled. The underlying problems are neither identified nor addressed. A community circle at this point will greatly increase the likelihood of identifying the issues, which are often complex, and the solutions, which are beyond the capability of any one agency.<sup>70</sup>

Few would dispute the correlation between regular and active school attendance by youth, and a reduction in criminal risk for such young people. But the importance of our educational institutions goes far beyond this. Schools are a place where potential problems can be identified (and corrected) as an alternative to involving the criminal justice system. They are also a place which can serve as a hub of social activity, and a central point from which service delivery can occur. As an example, the *School PLUS* strategy, of the Government of Saskatchewan, envisions schools as an integral and central part of the inter-agency network serving and supporting at-risk youth. To meet the diverse and holistic needs of children, “schools need access to array of social services and supports”.<sup>71</sup> In February 2002, the Saskatchewan government stressed the importance of continued service integration and inter-agency collaboration in addressing the needs of high risk youth:

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<sup>68</sup> *Kids First: Nipawin*. Pamphlet obtained at Northeast Regional Forum on School PLUS in Melfort. 3 December 2002. The range of services provided under the *Kids First* umbrella can be grouped under the headings prenatal outreach, home visiting, childcare and early learning, and family support services. This program benefits youth and families in a number of ways. Prenatal women benefit from being “offered the support they need to have the healthiest babies possible”. Postnatal women and their families benefit by being “assessed and offered services based on needs identified”. Families benefit “through programs built around parenting, literacy, nutrition, and other needs”. Children benefit “through early learning opportunities”.

<sup>69</sup> [1999] Y.J. No. 119 (Yukon Territorial Court).

<sup>70</sup> In paragraph 66.

<sup>71</sup> *Securing Saskatchewan’s Future: Ensuring the Well-being and Success of Saskatchewan’s Children and Youth*. Provincial Response [of the Government of Saskatchewan] to the Role of the School Task Force Final Report. Regina, 2002 at 3.

Volunteer efforts at inter-agency collaboration and service integration have achieved important advances. Heightened efforts and more systemic actions are needed, however, for these initiatives to realise their potential in supporting the developmental and educational needs of children and youth. The Task Force [on the Role of the School] identified that up to 25% of children and young people are at risk of not completing high school and thus of experiencing limited life chances, and that this number could rapidly climb to 40% unless significant action is taken. Moreover, because schooling is compulsory and because schools are located close to families at the community level, they are a logical place from which to deliver needed support services. The need to access other human services in support of learning has reached a critical state.<sup>72</sup>

How our society can best direct its resources to address and prevent the underlying causes and facilitators of youth crime is one significant, and perhaps overriding, aspect of crime prevention. An equally important issue, however, is how youth, who initially get into some form of trouble, can be kept out of, and hence not be at risk of, becoming frequent participants within the justice system. Research suggests that low-risk youth may actually become more likely to re-offend once put through the sentencing mechanisms of the court system.<sup>73</sup> This should cause us to rethink the widely held view that charging youth, and forcing them through the court system, deters future crime. As an example of the potential benefit of keeping first time offenders, and less serious offences out of the court system, the province of Quebec has a significantly high rate of diversion from youth court. Recidivism statistics from Quebec, however, show that only 4% of the youth diverted there re-offend.<sup>74</sup>

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<sup>72</sup> *Ibid.*

<sup>73</sup> See J. Bonta. *Offender Rehabilitation: From Research to Practice*. Association of Parole Authorities International Conference, 2000. Dr. James Bonta, of the Policy Branch, Solicitor-General of Canada, in an address to the Association of Parole Authorities International, pointed out that where treatment of sentenced persons was appropriate then a 50% reduction in recidivism could be expected. In his paper Dr. Bonta explained the characteristics of an appropriate program. Just as significant as the effects of appropriate treatment on high risk offenders, however, Dr. Bonta showed that using intensive programs (for example counselling or monitoring) for those who were not at a high risk to re-offend, actually increased recidivism.

<sup>74</sup> Interview with youth worker Michel Cote of Trajet Jeunesse. Montreal, Quebec. 23 October 2002.

## **Directions for the Youth Justice System Under the YCJA**

Making sense of directions, and strategies for the youth justice system under the new *Youth Criminal Justice Act* is a complex challenge. So many factors come into play, and so many people - both adult and youth - are involved. But although the issues and policy debates are often interwoven, and confusing, I believe there should be one guiding light. Underlying all thoughts about how the system should, and can, be made better, is the reality that we have a responsibility to our youth to provide them support, training, guidance, protection and assistance. This point was articulated by Justice Brian Weagant of the Ontario Court of Justice in *R vs. E.T.F.*<sup>75</sup>. In this case, a youth was remanded for ten days at the Toronto Youth Assessment Centre. During this time, the young person was repeatedly assaulted by other residents at the centre, and was otherwise mistreated in this secure custody facility. Justice Weagant referred first to the statutory obligations placed on the youth justice system in protecting and supervising such a young person:

By law, *E.T.F.* was entitled to different treatment. The principles of the *Young Offenders Act* ... which reside in section 3, are very clear that young persons should be afforded the necessary supervision, control and assistance they need and there should be a special guarantee of these rights at all stages of youth court proceedings. Further, the juvenile justice scheme is premised on the principle that society should be afforded protection from youth crime. *E.T.F.* was a member of society each time he was the victim of a crime at the hands of another resident. He was not protected.<sup>76</sup>

The *YCJA* stresses these societal obligations. Section 83(1)(a) establishes the purpose of the youth custody and supervision system as contributing “to the protection of society by ... carrying out sentences imposed by courts through the safe, fair and humane custody and supervision of young persons”. As well, in its Preamble, the act proclaims that “members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood”.<sup>77</sup> These provisions are significant, yet not all of our societal obligations within the youth justice system are statutory.

Our communal responsibilities to young people also arise under constitutional provisions and international covenants. The *YCJA* Preamble recognizes this, providing that “Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights

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<sup>75</sup> [2002] O.J. No. 4497 (QL). Toronto Registry No. YW000914 (Ontario Court of Justice).

<sup>76</sup> At paragraph 11.

<sup>77</sup> The *YCJA* Preamble further says that “communities, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes”.

and freedoms, including those stated in the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, and have special guarantees of their rights and freedoms”. In *E.T.F.*, Justice Weagant considered both this constitutional protection, and Canada’s international obligations.<sup>78</sup>

Regarding Canada’s international-based responsibilities, Judge Weagant said:

I also note that Canada is a signatory nation to the 1989 United Nation Convention on the Rights of the Child, [1992] Can. Tr. Ser. No. 3, wherein Canada undertook to ensure such protection and care as is necessary for the well-being of children and to take all appropriate legislative and administrative measures (article 3). Further, Canada agreed to recognize the right of every child in the juvenile justice system to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth (article 40). *E.T.F.* fits the definition of “child” for the purpose of the Convention and Canada’s obligations thereunder.

Correctional workers and court security personnel knew that this young person was being injured and knew that he faced further potential victimization in the unsupervised atmosphere of the back of a transportation cube van. The system made no changes to itself to prevent peer-on-peer violence. The system then, or its commanders, was arguably complicit in the resulting peer-on-peer violence; the lack of supervision in known high-risk situations amounts to a reckless disregard for the well-being of the young person in provincial care.

Clearly, we, as a society, are obligated to support, and care for, young people found within the institutions and processes of the youth justice system. Our societal obligations, however, go broader. The youth found in our custodial facilities in no way represent a random sample of young people across our communities. Indeed, among these youths there is an undeniable over-representation of disabled, aboriginal, poorly educated and poverty-ridden young people. In short, most of the youths in custody are marginalised in one way or another. As a result, a further, and perhaps the most critical, challenge for our society is how these youth can be brought into the mainstream.

In pursuing this goal, strategies about how to bring marginalised youth back into mainstream society have come largely from outside the strict confines of the justice systems. Parenting experts, such as Barbara Coloroso, tell us that the most important focus, in making better lives for our children, should be on giving education and training, and hence in creating skills in our children.<sup>79</sup> Such education and training requires often-expensive resources. But to put this into perspective, the Crime Prevention council of Canada, in 1997, estimated costs of up to \$100,000 per year for each

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<sup>78</sup> Regarding protections under the *Charter of Rights*, he cited the case of *R. v. T.M.* (1991), 4 O.R. (3d) 203, [1991] O.J. No. 1382, 1991 CarswellOnt 107 (Ont. Prov. Div.), which considered the right of young people to be free from cruel and unusual punishment. In the *T.M.* decision, Provincial Judge Lynn King found “substandard conditions in a holding cell” contravened the *Charter*, and directed a judicial stay of proceedings.

<sup>79</sup> See generally B. Coloroso. *Kids are worth it: giving your child the gift of inner discipline.* (Penguin Books: Middlesex, 2001).

youth in custody.<sup>80</sup> Considering the *E.T.F.* case, and other stories I have heard from youth I represent, I wonder what lessons are being taught to children in custody, and how the dollars currently being spent in the youth correctional system might better be re-directed. Directing at least some of these funds towards resources which would provide youth with the necessary skills to make them contributing members of their community, and keep them out of the criminal justice system, seems to be a much more promising strategy than the one currently being pursued.

When asked where the money currently being spent on custodial facilities could be redirected, a young aboriginal woman, interviewed during the research for our book and with broad experience in the youth justice system, suggested it could be better spent on programming for the youth and their families:

Maybe they could spend it on programs that help youth. For example, it could be a program to help kids wanting to exit the sex trade. We know for a fact that no one will help us do this, and we can't wait forty years for it to happen, so it has to be ourselves who change it; for youth to change it and to exit the street trade. And we don't want to focus on the youths alone. We also want to focus on their families, or people they have in their lives. When we do something positive, like going out to eat, or a movie, or doing a workshop or a conference or a meeting, it has a positive effect not only on the youth but also on their family.<sup>81</sup>

In considering the challenging questions of how to provide education and training for our youth, we must never forget that penal institutions, themselves, are a form of education. As world renowned sociologist Dr. Nils Christie explained:

Instead of looking at prison as an answer to crime, one might turn it upside down and look at social phenomena as an answer to prison conditions. Children are sent to business school to learn. From teachers, from fellow students. And they will gain friends, and colleagues - for life. Prisons are no different, and they have their own curriculum.<sup>82</sup>

Vice-Chief Lawrence Joseph of the Federation of Saskatchewan Indian Nations stressed this point during an to an aboriginal justice conference in Regina. Vice-Chief Joseph described the impact of prison on young people, and the lessons learned there. Vice-Chief Joseph referred to jails as “universities of crime”, and reminded conference delegates that sending an offender to prison has the effect of “locking up the family” as well. Indeed, discussion at this conference on so-called youth gangs confirmed that recruitment by these gangs has now become focussed in correctional

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<sup>80</sup> Crime Prevention council of Canada. *The Dollars and Sense of Comprehensive Crime Prevention Strategy for Canada*. January, 1997.

<sup>81</sup> Interview with S.N. 18 December 2002. Saskatoon, Saskatchewan.

<sup>82</sup> N. Christie. *Crime Control as Industry: Towards Gulags Western Style (third edition)*. Routledge: London, 2000 at 108.

facilities.<sup>83</sup> As a way of gaining some insight into to which youth become the peers of young people in custody, an aboriginal youth (interviewed during the research for our book and recently released from custody) said:

If you're shoplifting, and you are on probation, you are going to jail. More rules. Every time I go to jail, I see the same people in there. They may have just got picked up. The same old people. Obviously, they'll end up in jail. Some that's all they know how to do. They don't want to go to school. They think it's a waste of their time. Ten years to learn stuff, and then go to college. All I learned how to do was b and e's and stealing cars. Friends and relatives taught me, a fast way to get cash. That's all I knew how to do.<sup>84</sup>

This brings us back, again, to the question earlier posed by Justice Weagant in Toronto: to what extent are young people being endangered and put at further risk, as opposed to being protected and then rehabilitated, within our custodial facilities?

In further considering the myriad of policy implications within the *YCJA*, we should not lose track of one simple fact. There is no one way to “do” justice for young people. This means the future of the Canadian youth justice system is not set in stone and, indeed, it is dynamic, and fluid. As a society we do have the power to change our practices in a way that will reduce crime, reduce the number of youth in our justice system and ultimately make better citizens of these troubled young people. In considering new approaches and policies towards youth crime and justice issues, we must not lose track of some stark realities in the Canadian youth justice system. These discrepancies - found in comparing Canadian incarceration rates between youths and adults and in comparing Canadian youth incarceration rates with other countries - were evidenced in the remarks of Judge Lilles of the Yukon Territorial Court:

... Canada incarcerates young people under the age of 18 at a much higher rate than adults, 447 per 100,000. Moreover, this is considerably higher than the corresponding youth incarceration rate of 311 per 100,000 for the United States, 86 per 100,000 for Scotland and 69 per 100,000 for England and Wales ...<sup>85</sup>

Youth incarceration rates, however, are not the only area that we could consider “doing” differently within our youth justice system. Another equally important question relates to the court process used within our system. The system we essentially use now in youth court is one of conflict and confrontation, with professionals (lawyers, judges and social workers) dominating the process.

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<sup>83</sup> L. Joseph. Opening address at File Hills Qu'Appelle Tribal Council Justice Conference. 26 April 1999. Regina, Saskatchewan.

<sup>84</sup> Interview with R.T. 19 December 2002. Saskatoon, Saskatchewan.

<sup>85</sup> *J.K.E. supra* note 25 at par. 60.

At the level of “rights protection”, this makes sense, as we want to ensure that rights of accused youth, victims and the public are protected. But at another level, an atmosphere of confrontation is the antithesis of what is needed to effect positive change for troubled youth, and to help victims achieve some say in the system and some sense of being heard and compensated. In many ways, the process we use effects the product we achieve.<sup>86</sup> Hopefully, the conferencing provisions in section 19 of the *YCJA* signal that restorative approaches to youth justice - involving youth, family members, victims, social service providers and other community members - will become a more common feature of the youth justice system.

In Canada, with the proclamation of the *YCJA*, we have just embarked on a new statutory regime. This act draws, to a significant extent, on international experience in the area of youth justice. The sections dealing with extra-judicial measures (otherwise called diversion or alternative measures), conferencing and inter-disciplinary and inter-agency approaches to justice are clear examples of this.<sup>87</sup> Yet, making sense of the *YCJA* requires some consideration of the diverse, and at times diametrically opposed, views that the federal government was faced with in drafting this legislation. On the one hand, many provincial voices, and federal politicians (largely from the right wing), urged a tougher and more punitive response to youth crime. Other voices cried out about the phenomenally high levels of youth custody in Canada, and questioned whether there was any evidence that locking up our youth was having a positive effect on our society.

Because the *YCJA* has tried to satisfy many diverse demands, it sometimes seems divided in outlook. On the one hand it contains provisions that lower the age at which youth can be sentenced as adults for more serious crimes of violence, and reduces the courts discretion to deal with these youths. It also makes less onerous the preconditions of admitting the statement of young persons in

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<sup>86</sup> In trying to make sense of the benefits of new approaches within the justice system, Chief Judge Barry Stuart of the Yukon Territorial Court, speaking at a conference on restorative youth justice, argued that the process used in “doing justice” directly effects the outcomes achieved. He said that, in many ways, process is product, as the justice process followed determines who participates, how these participants are involved, the relationships between parties, whether agreements are reached, and, if so, what the content of such agreements are and what commitment the parties bring to carrying out the agreement. In his speech to an Ottawa conference, he urged participants to consider new justice processes approaches, which would empower local communities to take back responsibility for crime. He described this as “creating space to move from a few doing a lot, to a lot doing a little” and as a “move from experts doing it, to little people doing it”. *Restorative Justice - Working with Youth Conference*. Ottawa, Ontario 3 November 2001.

<sup>87</sup> The codification of front end measures in the *YCJA* draws a number of parallels to the statutory framework in England under the *The Crime and Disorder Act 1998*, and to the practices of cautioning and referral used by English police officers. The *YCJA*'s conferencing process, and the emphasis on interdisciplinary approaches to youth, clearly draws on the youth justice experience with family group conferencing in New Zealand (under the *The Children, Young Persons and their Families Act* of 1989) and in various Australian states.

court, and provides for broader publication of names of young people after conviction.<sup>88</sup> On the other hand, the act loudly asserts that every reasonable alternative to custody should be pursued, and states that the criminal justice system should not “use custody as a substitute for appropriate child protection, mental health or other social measures”.<sup>89</sup> Despite its mixed message, this act clearly forms a framework underpinning the youth justice system. It sets out the principles and policies underlying the system, and establishes the processes, and the options open, for police and youth courts. But as important as the *YCJA* is to the justice system, it paints only part of the youth justice picture. Just as significant are the resources available to support offenders and victims within a community. The *YCJA* expands considerably the variety of dispositions that can be used to deal with offending youth. Unfortunately, the act gives each province a discretion as to whether many of these alternatives will be put into force. The extent to which this will create a patchwork quilt of options and resources for young offenders across Canada remains to be seen.<sup>90</sup> Ultimately, it is the range and availability of resources within the youth justice system, and the collective ability of those employed within these institutions and services in helping and educating at risk youth, that will make a difference for these young persons and, as a result, for the safety of our broader community.

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<sup>88</sup> See sections 110(2)(a) and 75(3).

<sup>89</sup> As a front line worker in the youth justice system, I see this as, in all likelihood, the greatest point of frustration. Few lawyers, judges and police officers view custody as the preferred alternative, especially when the case more properly could be dealt with by child protection or mental health authorities. The stark reality, however, especially in rural areas, is that often the needed resources simply don't exist or are inaccessible. In these cases, the reality is that, in the absence of a youth court remand or disposition, there will be no intervention.

<sup>90</sup> For example, the *YCJA*, under extra-judicial measures, provides that police and Crown prosecutors can administer cautions. However, a precondition to this happening is that the provincial Attorney General must establish a cautioning program for police and/or prosecutors. In Saskatchewan, it is understood that a police cautioning program will be piloted somewhere in the province, and that a Crown cautioning program will not be established at this time. Under the act's sentencing provisions, s. 42(2)(l) and (m) allow a court to order a youth into a intensive support and supervision program or a non-residential program. Both options require provincial approval (by creating the required program). In Saskatchewan, it is understood that neither program will be created at this time, although intensive supervision can still be ordered as a condition of a probation.

## **About the Author**

Ross Green, Q.C. holds a B. Comm. degree (University of Saskatchewan, 1979), an LLB degree (University of Saskatchewan, 1985) and an LLM degree (University of Manitoba, 1995). He lives in Melfort with his wife and two children, where he practices with Melfort Area Legal Aid. Mr. Green's book *Justice in Aboriginal Communities: Sentencing Alternatives* (Purich Publishing, 1998) was nominated for a Saskatchewan Book Award. His second book *Tough on Kids: Rethinking Approaches to Youth Justice* (co-authored with Kearney Healy) has recently been published by Purich Publishing, and has been nominated for three Saskatchewan Book Awards. Mr. Green was awarded the Manitoba Law Journal Prize in 1998, and was qualified as an expert in community sentencing by the Saskatchewan Court of Queen's Bench in *R. vs. Carratt* in 1999. He has written and spoken on justice topics in both provincial and national forums, and was recently named as a 'leading edge' world contributor to the field of restorative justice by Prison Fellowship International (on their web site <http://www.restorativejustice.org/>). He has lectured at the Law Society of Saskatchewan's Bar Admission Course since 1993, and was appointed Queen's Counsel by the Saskatchewan Minister of Justice in December, 2001.



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