

# Provincial Advocate *for* Children & Youth

As the Provincial Advocate for Children and Youth of Ontario, I had the opportunity to speak to members of the House of Commons *Standing Committee on Justice and Human Rights* regarding Bill C-4 which proposes amendments to the Youth Criminal Justice Act (YCJA).

My mandate as the Provincial Advocate instructs me to elevate the voice of youth in conflict with the law and in the deliberations around this proposed Bill their voice has not been heard. If passed, Bill C-4 will have a negative, long lasting impact. It has the potential to significantly alter the principles and philosophy underlying youth justice in Canada.

I thought a great deal about what I wanted to say to the Committee and to find a way to begin to change the dynamic that permeates the discourse around youth justice in Canada. There seems to be two camps pejoratively referred to as the “hug a thug” group and the “get tough” proponents. If we are going to move forward at all, we must change the discourse. In the end, we all want what is best for our children and our communities.

According to background information provided by the Parliamentary Information and Research Service, one of the main objectives of the amendments is to “emphasize the importance of protecting society”. It was also noted that much of the proposed reform is based on recommendations found in the Nunn Commission Report. The Nunn Report recommended highlighting the protection of society in the law to give “courts a tool to ensure the protection of society is taken into account in sentencing youth who commit violent and repeat offences”. What may have been forgotten by the general public and a number of lawmakers is that the Nunn Commission Report also concluded that the Youth Criminal Justice Act has been “highly successful in the manner in which the vast majority of youth [are] handled” and that the YCJA [is] a “very sound piece of legislation”.

I want to share another quote from Justice Nunn that I found compelling. He said, “it is clear from the evidence presented to me that if we want a safer society free of a large part of youth crime, we have to look at our educational system, our social services system, our health and community services, our youth programs and our justice system. It is in those acting together, that a safer society... can be achieved”. I couldn’t agree more.

So, back to “hug a thug” versus “get tough”. Under the Young Offenders Act, Canada had one of the highest incarceration rates for young people in the western world. The number of youth in custody has decreased significantly under the YCJA. So we have had it both ways. I believe public safety is important. But we need to think about increasing public safety in a way that goes beyond investing in the bricks and mortar of a jail cell.

This is why I am troubled about what I see as a change in focus in the Declaration of Principles of the YCJA which, in my view, abdicates our collective responsibility to young people who get into trouble. The current version of the YCJA imposes a duty to “rehabilitate” young persons

and “reintegrate” them into society. The proposed version lowers the bar to “promoting” rehabilitation and reintegration. Similarly, the mandate in the original version to “prevent crime by *addressing* circumstances underlying a young person’s behaviour” has been downgraded to “referring” young people to programs and agencies in the community to address the circumstances underlying their offending behaviour. So we have gone from a strong commitment of “addressing”, “reintegrating” and “rehabilitating” to a more meagre one of “promoting” and “referring”. The Declaration of Principle applies to the entire Act and will affect every decision being made at every stage in the process and will likely result in more young people being incarcerated.

I am also concerned about the notion that denunciation and deterrence should play a part in sentencing. A federal/provincial/territorial review of the Young Offenders Act (1996) found that changing the degree of punishment available will not change youth crime levels. Young persons do not, generally speaking, rationally consider and weigh the risks of being apprehended for their crimes. They may be aware of the risks of being apprehended but, in typical adolescence, they believe that others, not them, will be caught (Cohen and Canela-Cacho, 1994).

I wanted the young people that will be affected by the Bill to be present in the hearts and minds of those deliberating. As the Provincial Advocate I have spent a great deal of time in youth justice facilities. I have met and listened to young people and they told me of their hopes for the future. I know they are someone’s son or daughter. I know that they are, or can be, our future plumbers, accountants, entrepreneurs, social workers, and teachers. They are our future taxpayers.

Public safety is served through preventing crime by addressing the circumstances underlying the criminal behaviour. Public safety is served by “rehabilitating” our young people and “reintegrating” them into our communities. Public safety is served by ensuring that young people receive meaningful consequences for their behaviour in order to learn from their mistakes. All of this is already incorporated in the YCJA.

In my experience I feel that we would be very well served to think more about the implementation of the YCJA. Before we make any changes to our youth legislation we need to talk to the people who work with this legislation and the youth, and to analyze the stages of implementation across the country. There is still a question to be answered. Is the problem with the YCJA or is it really about the implementation of the YCJA and, in particular the resources - or more realistically - the lack of resources, that are available to make this legislation work?

Irwin Elman  
Provincial Advocate for Children and Youth  
Office of the Provincial Advocate for Children and Youth  
401 Bay Street, Suite 2200  
Toronto, ON M7A 0A6  
Tel: 416 325-5669  
Toll Free: 1-800-263-2841  
Fax: 416 325-5681  
TTY: 416 325-2648