

**BRIEF PRESENTED TO
THE STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS
CONCERNING THE STUDY OF AMENDMENTS
AND APPLICATION OF THE *YOUNG OFFENDERS ACT* (STAGE II)**

September 1996

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INTRODUCTION

The Commission des droits de la personne et des droits de la jeunesse wishes to make comments to the Standing Committee on Justice and Legal Affairs, which is currently in the second phase of its study of the phenomenon of juvenile crime, the legal system applicable to juveniles in Canada and the effect of the coming into force of the *Young Offenders Act*.

The Commission de protection des droits de la jeunesse was merged with the Commission des droits de la personne on November 29, 1995¹.

The Commission was given the mission of upholding and promoting the principles set out in the *Charter of Human Rights and Freedoms*, and overseeing protection of the interests and respect for the rights of children under the *Youth Protection Act* and the *Young Offenders Act*². Under the *Youth Protection Act*, the Commission is required to investigate any situation where the rights of a child may be infringed, unless a court has already been apprised of the problem. Here, the Commission works in cooperation with the family to attempt to correct a situation that threatens the security or development of a child, and to prevent the situation from arising again in the future.

Given the unique nature of its mission, the Commission is extremely concerned by the recent amendments to the *Young Offenders Act*. In particular, this second phase of the study could, in the Commission's view, lead to new legislative amendments that would threaten certain aspects of the *Young Offenders Act* and affect the various bodies involved in the application of the Act.

The Commission, with its mission of overseeing the protection of children's interests, is extremely concerned by the current deterioration of the socioeconomic climate in our society, and considers this to be a vital component in any study of the phenomenon of juvenile crime. In fact, there seems to be a line of thought which states that society should confine itself to protecting its own interests rather than taking steps to prevent criminality among young people. The Commission believes that in this period of far-reaching change to economic and family structures, society should provide all the support it can to the young people and families who are threatened by the changes, to prevent criminal behaviour among young people.

In the Commission's view, the main ideas to emerge from the legislation, i.e. the protection of society through prevention, the accountability of young people and the respect for their rights, freedoms, needs and environment, are vital principles which should not be called into question.

Consequently, the Commission des droits de la personne et des droits de la jeunesse will direct its attention mainly to the following subjects:

¹ S.Q. (1995), c. 27.

² *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, sections 57 and 72.
Youth Protection Act, R.S.Q., c. P-34.1, section 23a.
Young Offenders Act, R.S.C. (1985), ch. Y-1.

1. The legal apparatus and juveniles.
2. Delays.
3. The age at which the Act applies.
4. The application for transfer.
5. The length of sentences.
6. Alternative measures.
7. Prevention.

1. THE LEGAL APPARATUS AND JUVENILES

1.1 The Need for a Legal Apparatus specifically for Juveniles

In the Commission's view, the objectives of the *Young Offenders Act* suggest that a legal apparatus should be maintained specifically for young people.

Section 3(1): It is hereby recognized and declared that

...

(a.1) while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions;

(c) young persons who commit offences require supervision, discipline and control, but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;

(c.1) the protection of society, which is a primary objective of the criminal law applicable to youth, is best served by rehabilitation, wherever possible, of young persons who commit offences, and rehabilitation is best achieved by addressing the needs and circumstances of a young person that are relevant to the young person's offending behaviour.³

Thus, the Act, while making juveniles accountable for their actions, also states that young offenders cannot be treated in the same way as adults. The fact that the legislator believes it is necessary to consider the needs and circumstances underlying the behaviour of young offenders in order to protect society provides the clearest possible illustration of the necessity of maintaining a legal apparatus

³ *Young Offenders Act, supra*, note 2.

specifically for young people.

As the Jasmin Report points out, the needs of young people charged with offences come into play at two levels:

"It seems to us that the needs of young people must be taken into account so as to impact on decisions in two ways. First, they can be used to guide the choice of a decision from the options made available by the seriousness of the offence. They can also be used as a basis for mitigating a decision that might be justified by the offence, but whose consequences would be in contradiction with the needs of the juvenile."⁴

The need to grant children special legal protection is in conformity with international declarations and conventions concerning the rights of the child. For example, the preamble to the *Convention on the Rights of the Child* states that:

"The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection ..."⁵

Similarly, Article 40 of the Convention states that:

Article 40:

"States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".⁶

For the Commission des droits de la personne et des droits de la jeunesse, the need and effectiveness of a legal apparatus specifically for young people requires no further demonstration. There is no doubt whatsoever that the goal of protecting society would be better served by maintaining the specific nature of legal proceedings against minors.

1.2 Representation of Juveniles in the Legal Apparatus

⁴ *Les jeunes contrevenants: Au nom... et au-delà de la loi*, Report of the Task Force charged with studying the application of the *Young Offenders Act*, February 1995, 275 pages (p. 24, our translation).

⁵ *International Convention on the Rights of the Child*, adopted by the United Nations General Assembly on November 20, 1989. Ratified by Canada on December 11, 1991 and by Québec on December 9, 1991 (Order in Council 1676-91 of 09-12-91 (1992) 124 G.O. II 51).

⁶ Idem.

The *Young Offenders Act* guarantees young people the right to be represented "at any stage of the proceedings against the young person ... under this Act"⁷.

The same right is guaranteed to juveniles upon arrest or detention, or when alternative measures to legal proceedings are suggested⁸. A juvenile court also has the duty to inform juveniles of their right to be represented by counsel at several different stages of the legal process⁹.

The court can even order that an attorney be assigned to a juvenile accused of a crime that would normally fall within the jurisdiction of an adult court, if it is not convinced that the juvenile fully understands the charges and the consequences of being tried by an adult court, or if it feels the juvenile is not fully aware of his right to ask to be tried by a juvenile court¹⁰.

In addition, the court is required to submit the case of a juvenile to a legal aid service if the juvenile is unable to pay for the services of a legal counsel¹¹.

In this respect, it is vital that, in periods of budget cutbacks, the right to free legal assistance for disadvantaged young people charged with criminal offences should be maintained. In fact, according to article 14, paragraph 3(d) of the *International Covenant on Civil and Political Rights* and article 6, paragraph 3(c) of the *Convention for the Protection of Human Rights and Fundamental Freedoms*¹²,

⁷ *Young Offenders Act*, section 11(1).

⁸ Section 11(1)(2) YOA.

⁹ Section 11(3)(a)(c)(d)(e) and 12(1)(b), YOA.

¹⁰ Section 12(3.1)(5) and section 16(1.01) YOA.

¹¹ Section 11(4) (5) YOA.

¹² *International Covenant on Civil and Political Rights* (1976) 999 U.N.T.S. 187. Ratified by Canada with the agreement of Québec: Order in Council 1438-76 on 21-04-76.

Article 14:

(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

Convention for the Protection of Human Rights and Fundamental Freedoms (1955) 213 U.N.T.S. 221

Article 6:

(3) Everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has

any person charged with a criminal offence is entitled, "when the interests of justice so require", to free legal assistance if they do not have sufficient means to pay for it themselves.

For the Commission, any legislative amendment aimed at restricting this personal right would constitute a major setback to a fundamental guarantee for juveniles at all stages of criminal proceedings against them.

Finally, the Commission points out that in every case where a child is represented by counsel, the counsel must be independent of the parents or the persons holding parental authority. In the interests of the child and to ensure credible representation, all confusion concerning the role of the child's counsel must be avoided. It is fundamental that the counsel's relationship with the parents should be limited to giving progress reports on the proceedings, and should not breach the professional secrecy owed to the child. In 1995, the problem of legal representation for children appearing before the courts led to the production of a brief on the issues raised by this very specific practice¹³.

1.3 The Consequences of Providing Juveniles with Legal Safeguards and Official Procedures

In the Commission's view, maintaining a legal apparatus specifically for juveniles most certainly does not mean calling into question the validity of the adversary process in legal proceedings against juveniles. However, the legal safeguards provided by the *Charter of Human Rights and Freedoms* protect the fragile balance between two objectives of the *Young Offenders Act*, i.e. protection of society and social rehabilitation of young offenders. Subsections (e), (f) and (g) of section 3(1) of the *Young Offenders Act* are significant in maintaining this balance, stating that:

Section 3(1):

(e) young persons have rights and freedoms in their own right, including those stated in the *Canadian Charter of Rights and Freedoms* or in the *Canadian Bill of Rights*, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms;

Section 3(1):

(f) in the application of this Act, the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society, having regard to the needs of young persons and the interests of

not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

¹³ *La représentation des enfants par avocat*. Brief from the Committee of the Barreau du Québec on legal representation for children. February 1995.

their families;

Section 3(1):

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

Québec's concern with protecting the rights and freedoms of all citizens arose well before the *Young Offenders Act* came into being. In the early 1970s, the creation of a legal aid system gave underprivileged citizens much greater access to the courts, since they could then defend themselves against any charges brought. The subsequent adoption of the *Charter of Human Rights and Freedoms*, in 1975, also contributed to the growing recognition of fundamental rights and freedoms and judicial rights. In 1977, the adoption of the *Youth Protection Act* was a major step forward in recognizing the rights of children whose safety or development were considered to be jeopardized.

Thus, in the Commission's view, the right of juveniles to be presumed innocent, the right to be informed of charges brought against them and to receive appropriate legal assistance for their defence, the right to be protected from self-incrimination, the right to be heard and to question witnesses, and the right to respect of their privacy at all stages in the proceedings, constitute minimum safeguards. Far from hindering the goal of the *Young Offenders Act* to protect society, these legal and procedural safeguards have the effect of reinforcing the respect of young people for human rights and fundamental freedoms, and for the democratic nature of our institutions.

2. DELAYS

"Teenagers and adults do not have the same conception of time. If legal intervention is to have meaning, it must occur quickly enough for the young people to place it in the same context as the offence, the circumstances of which must still be fairly close to them. The further apart the offence and the punishment, the less serious the offence becomes, subjectively; and the greater the chances that the offender will perceive himself or herself as the victim of the law instead of the transgressor."¹⁴

It is an accepted fact that systemic delays are the worst enemy of justice for minors. Everyone has a responsibility in this, especially in the present context where government funding is being cut back, necessarily affecting the speed of interventions.

¹⁴ Report of the Task Force charged with studying the application of the *Young Offenders Act* in Québec, Appendix 1, Ministère de la Justice and Ministère de la Santé et des Services sociaux, 1995, 274 pages, p. 30. (our translation).

Delays have negative consequences at various levels. As the authors of the Jasmin Report II pointed out, they can result in juveniles considering themselves to be victims rather than aggressors. However, there are also situations where, as time passes without young offenders knowing what will happen, they decide to plead guilty even though a defence might be available. This may be the case, for example, where a decision on an application for transfer is appealed. It is easy to understand that in such cases delays become sources of worry for young people.

On the other hand, we must be careful not to go too far in the opposite direction. In other words, things take time, and trying to speed up the process may produce as many negative effects as long delays. If young people and their parents are eventually to accept the court's decision, we believe they must understand the ins and outs of the process. For example, juveniles should be able to plead guilty if they wish, at the first opportunity available to them. However, they must actually be guilty within the meaning of the law. They must therefore be given legal advice by counsel who have been able to examine the evidence put forward by the Crown and discuss it with their clients. It is vital that, when they leave the court, people have the impression that justice has been rendered. The court must therefore take the time it needs to do this, otherwise none of the goals will be achieved.

What is therefore required is a balanced view, instead of concentrating only on the harmful effects of delays.

3. THE AGE AT WHICH THE LAW APPLIES

"Adolescence, the last stage of childhood, is the consolidation of educational learning and, in some ways, the testing of that learning through the new possibilities generated by physical development and the new feelings this development ushers in. The shared lot of this period of change is a new physical image, moods moderated by a new, intense sexual drive, and a trial-and-error search for belonging, to contain the new agitation and break the solitude into which the loss of familiar reference points can drive individuals. On top of this is the social requirement to postpone actualization of the drives. Adolescence is a procrastination."¹⁵

The various stages of child development are well-known. Although some individuals may progress more quickly or lag behind others on the road to adulthood, the experts nevertheless agree on the different developmental stages and their content.

Based on the stages of human development, the age of majority in Québec has long been set at eighteen (18) years. The United Nations used this same age in its definition of the notion of "child"

¹⁵ GAUTHIER, Louisiane, *De la turbulence à l'autonomie*. Report of the Task Force charged with studying the application of the *Young Offenders Act* in Québec, Appendix 1, Ministère de la Justice and Ministère de la Santé et des Services sociaux, 1995, 274 p., p. 237. (our translation).

within the meaning of the *Convention on the Rights of the Child*¹⁶.

This age determines what we might call adulthood, when certain rights (e.g. the right to vote) and privileges (e.g. entry to discotheques) are obtained.

In our view, it is important that we maintain a certain consistency in determining the time at which society grants individuals the responsibilities and rights associated with the adult world. How can people be expected to understand and accept a principle by which a minor child is thought to be mature enough to answer for an offence as though an adult, while still being considered a child when it comes to selecting a government?

The Commission des droits de la personne et des droits de la jeunesse believes that the age of majority should be left unchanged at eighteen (18) years. This seems particularly reasonable if we consider that the *Young Offenders Act*, through enforcement of the application for transfer to the authority normally having jurisdiction, makes it possible for individuals who cannot take advantage of the juvenile system to be considered exceptionally as adults.

Is not the best way of protecting society, not only in the short term but in the long term too, to re-educate children who can be re-educated, and punish only those who have already, despite their young age, adopted the behaviour and values of adults?

The same applies to the minimum age, which should remain at twelve (12) years.

Naturally, younger children commit offences, sometimes serious ones. However, they remain the exception. We sincerely believe that the legislator should not legislate on the basis of a handful of unfortunate and rare events, even if those events leave their mark on the collective memory.

The most recent statistics on juvenile crime do not support the idea of further amendments to the Act.

Statistics Canada has revealed that, in 1995, the rate of accusation among young people remained stable. The violent crime rate decreased by 4.1%, and Québec led the field with a decrease of 7.5%. In comparison, Saskatchewan's rate rose by 5.8%.

In Québec, these children and their parents are not left to their own devices, but are taken in hand by the Director of Youth Protection under the *Youth Protection Act*¹⁷. Interventions are made in the lives of these children, in their best interests and with proper regard for their rights, in an attempt to respond as adequately as possible to their needs. The response to these needs may be a predetermined period in a rehabilitation centre, or a series of other measures, always with the goal of keeping the child in, or

¹⁶ *International Convention on the Rights of the Child*, adopted by the United Nations General Assembly on November 10, 1989, *supra*, note 5, Article 1.

¹⁷ *Youth Protection Act*, R.S.Q., c. P-34.1.

returning the child to, the family environment¹⁸.

Interventions may be voluntary if the people involved consent to them¹⁹, or by legal ruling if necessary²⁰. In other words, the needs of a child offender under twelve (12) years of age will certainly be met.

In fact, is it really necessary to suggest that children under twelve (12) years of age are not capable of understanding all the subtilities of the criminal process? Lowering the age limit for the *Young Offenders Act* would mean that a ten (10)-year-old child charged with murder would be tried by a jury and a superior court with criminal jurisdiction. We cannot believe that this situation would be in the best interests of the child, or even of society. Such proceedings, where a young child, even if represented by an attorney, would be subjected to the full complexity of a legal system that he did not understand, would inevitably result in a decision that he would not grasp.

A first-class child and family support service must be created and developed, to recover young child offenders who are not mature enough to be subjected to criminal proceedings. Such a service would also be able to carry out preventive work among children at risk, especially as regards delinquency.

In fact, research has shown that delinquent personalities begin to emerge at school age, in the form of serious behavioural difficulties. Intervention with these children, and treatment of their problems, often leads potential cases of delinquency being removed at the source.

This was highlighted by the Canadian Criminal Justice Association in its September 15 bulletin:

"... the causes of adult crime have their roots in childhood."

Reporting on the position of the National Crime Prevention Council, the document says this:

"The most effective way of preventing crime is to ensure that children are in better health, that family ties are strengthened, and that schools and communities demonstrate better cohesion."

The Commission des droits de la personne et des droits de la jeunesse therefore believes that the minimum age should remain unchanged at twelve (12) years, and reiterates the importance of the impact of application of the *Youth Protection Act* to child offenders not covered by the federal Act.

¹⁸ Id., ss. 54 and 91.

¹⁹ Id., s. 52.

²⁰ Id., ss. 73 and following.

4. THE APPLICATION FOR TRANSFER

The recent amendments have made significant changes to this procedure. It is not our intention here to examine the validity of the changes. However, Québec's experience with old and new provisions concerning the application for transfer leads us to make some observations on the procedure applicable when such applications are heard.

In fact, practice leads us to conclude that the current transfer procedure does not respect the fundamental rights of juveniles prosecuted under the *Young Offenders Act*.

Case law has established that the investigation is administrative in nature²¹ and concludes that, in light of the arguments proposed, it is constitutional within the meaning of the *Canadian Charter of Rights and Freedoms*²². Moreover, raising the juvenile's level of stigmatization, for example by increasing sentences or through the possibility of automatic transfer, leads to a reassessment of the procedure applicable to the application for transfer.

In the present legislative context, it is impossible for the court to obtain a fair picture of the personality of the juvenile about whom it is required to make a decision that will necessarily leave a mark for the rest of the person's life.

First, according to the procedure, the court must presume that the juvenile is guilty of the offence with which he is charged. This is obviously a major breach of the individual's fundamental right to be presumed innocent in criminal law. The second trap lies in the accused offender's silence about the crime, the main factor in the court's intervention. How can we expect the accused to discuss the facts of the crime before the trial takes place?

It is clear that counsel will not advise the child to be open and transparent at this stage in the proceedings. Thus, this element also goes against another constitutional right, the right to silence.

Without going into details of what might constitute a new procedure, and without assessing all the potential impacts of our suggestion, it nevertheless seems to us that the time at which the application is presented, or at least heard, should be changed.

We believe that before deciding on the type of sentence that would be applicable to a given situation and a given individual, that individual's guilt or innocence should be established. With the introduction in all but a few exceptional cases of trial by jury in the juvenile courts, the procedure is now very similar to an adult trial. Consequently, we feel that once one of the parties has given notice of its intention to

²¹ See *R. v. Williams Y.* [1988] 4 W.C.B. (2d) 267 (C.A. B.C.); *R. v. N.B.* [1985] 21 C.C.C. (3d) 374 (C.A.Q.).

²² See: *R. v. L.A.M.* [1987] 33 C.C.C. (3d) 364 (C.A. B.C.); *R. v. R.V.B.* [1993] A.J. 41 (C.A. Alb.); *P.G.Q. v. Dubois* [1993] R.J.Q. 2480 (C.S.).

seek a transfer, the trial should then take place so that a clear verdict is reached as soon as possible.

If the accused is acquitted, a long and costly procedure will have been avoided. If, on the other hand, the accused is found guilty, the court can then hear the application for transfer. After all, the only thing this decision establishes is whether juvenile resources or adult resources are best equipped to produce the balance between criteria established by the federal legislator. The court will then have a fair and accurate picture of the individual before it, since everyone concerned will be able to work on the basis of the ruling of the court on the accused offender's guilt.

We will not push this recommendation further at this time. We believe it is vital that the impact of this suggestion on the application for transfer should be properly assessed, in particular in terms of reducing costs and risking a "forced" plea (because of negotiations or delays).

5. THE LENGTH OF SENTENCES

The increase in penalties is not without certain difficulties at the practical level, and we feel we cannot let it pass without saying a few words.

Under the combined effects of sections 20(1) k.1 and 24.5(1) of the *Young Offenders Act*, some juveniles tried by the juvenile system, will find themselves in an adult penitentiary. It is easy to understand that a seventeen (17)-year-old individual sentenced to a period of detention of six (6) years (perhaps ten (10) years in all) poses a serious difficulty for the juvenile resources, whose clientele does not include twenty-three-year-olds. Hence the inevitable application for the juvenile to complete his sentence in an adult penitentiary.

In our view, this is a major mistake, because the young person who is initially sent to a re-educational system aimed at social rehabilitation suddenly finds himself instead in a prison environment with very different goals. What a lot of wasted work and effort.

The Commission des droits de la personne et des droits de la jeunesse believes it would be appropriate to consider this difficult aspect of the new provisions. For example, would it not be possible to introduce a special national program for juveniles sentenced to long periods of detention, and in respect of whom it was decided at some point that they should not be subjected to the adult system despite the objective gravity of their crime?

6. ALTERNATIVE MEASURES

In a recent judgment²³, the Supreme Court of Canada declared that a provincial government was acting constitutionally when it decided not to create a program of alternative measures as permitted by the *Young Offenders Act*.

²³ *R. v. S. (S.)* [1990] 2 S.C.R. 254.

Although we do not wish to question the legality of this decision, we nevertheless find the situation created by the absence of such a program surprising, particularly in the case of an overall review of the *Young Offenders Act*.

Since such a program was created in Québec, nearly half of all cases (47% in 1993) have been directed to it.

The failure rate is very low (1.43% in 1993) and the number of repeat offences following application of the alternative measures remains minimal.

In addition to the measure itself, there is a certain impact in respect of other elements than the simple aspect covered by the Act. In fact, depending on the type of measure selected, it would be possible to achieve goals other than the accountability of the juvenile, including:

- community involvement;
- socialization of the juvenile;
- valorization of the juvenile;
- development of certain skills.

We believe this is one of the important features of the *Young Offenders Act*. It is certain that this particular federal Act can have meaning and meet its initial goals only when all the instruments of which it is composed are brought into play.

Is it always necessary for a minor offence to stigmatize a young person by exposing him to the legal process? We believe it is not. Moreover, we do not believe in the idea of simple diversion with no other intervention aimed at instituting accountability.

The idea of non-judicial intervention is applied in New Zealand, Great Britain and Australia through a formal process known as "police reprimand". The approach used is similar in many ways to Québec's alternative measures program, except that it is administered by the police forces.

Thanks to this program, the repeat offence rate has dropped to 15%, and the detention rate for young people is now just 2%, compared with 30% in Canada.

The importance and consequences of the decision by some Canadian provinces not to introduce an alternative measures program is therefore clear.

Moreover, the creation of such a program reduces the number of cases brought before the courts, thus also reducing the delay in taking cases through to a final decision.

Although this step may have appeared to some to be a major problem in reducing delays, it is

reassuring to read the latest report of the Ministère de la Santé et des Services sociaux on its plan of action²⁴ for the young offender sector. In the document, the Department follows up on one of the recommendations of the Task Force charged with studying the application of the *Young Offenders Act* (Jasmin Report II), by reassessing the practices of each region at the alternative measures stage, with the aim of reducing administrative delays as much as possible.

Reassessment of the application of the *Young Offenders Act*, not only in this area but in many others too, has received special attention in Québec. Changes to the practical framework of the Act are monitored constantly, and adjustments made so as to obtain better results with regard to the goals set by the legislator.

The Commission des droits de la personne et des droits de la jeunesse therefore considers the use of alternative measures to be an important aspect of the *Young Offenders Act*, and sees the maintenance of Québec's program as a major element in controlling juvenile crime.

Finally, it is worth remembering that adults can now take advantage of such a system, instead of automatic imposition of legal proceedings.

7. PREVENTION

Section 3(1)(b) of the *Young Offenders Act* makes it compulsory for society to prevent crime among young people.

Clearly, delinquency is a highly complex phenomenon with a variety of causes.

According to the Jasmin Report, there are two main types of prevention: prevention focused on situations and prevention focused on individuals²⁵. The second component requires, among other things, joint action to counter the factors contributing to delinquency, including poverty, violence against children, dropping out of school and several others. For the Commission, the poverty in which many children live is a factor that has consequences in both the short term and the long term. Not only are these children deprived of sufficient resources to meet their basic needs, but in many cases poverty also has the effect of depriving them of equal access to education, health and eventually employment, thus perpetuating the cycle. We are not trying to claim that poverty and delinquency go hand-in-hand.

On the contrary, the phenomenon of juvenile crime is not restricted to underprivileged youth. However, it seems that this already complex problem is magnified by the presence of certain socioeconomic factors.

Clearly, the scope of the *Young Offenders Act* is restricted to young people who have been charged

²⁴ *Plan d'action ministériel pour le secteur des jeunes contrevenants*, Ministère de la Santé et des Services sociaux, 1996, 60 p., p. 23.

²⁵ *Supra*, note 4, pp. 41-50.

with or found guilty of offences. From this standpoint, the goal of prevention is aimed mainly, if not uniquely, at preventing repeat offences.

"By assuming their responsibility to make rapid, consistent and quality interventions, police officers, attorneys, judges, social workers, parents and other members of the community can fulfill society's legal obligation to take reasonable steps to prevent criminal conduct among young people."²⁶

The authors of the Jasmin Report were of the opinion that ad-hoc prevention programs (countering poverty, failure at school, environmental violence, identification of young people at risk) would not completely eradicate delinquency.

This means that we must continue to invest in the services created to govern the phenomenon of juvenile crime, within the framework of measures introduced under the *Young Offenders Act*.

At a time when the government is withdrawing from programs, the Commission notes that it may be dangerous not to give sufficient priority to prevention, and simply content ourselves with governing delinquency by so-called "curative" measures within the scope of legislation.

Consequently, we approve the recommendation made by the Round Table on the prevention of crime and the Jasmine Report, to the effect that a true prevention policy must recognize "the absolute necessity of intervening as a priority with the most underprivileged young people, in their families, at their schools and in their neighbourhoods"²⁷. Clearly, if this policy is to materialize, it will have to be supported by a firm commitment on the part of the government to provide the necessary funding. Concretely, the Task Force for Youth²⁸ made the following recommendations in the area of prevention:

- the creation of a body mandated to disseminate information on prevention, to offer training and consulting services, to facilitate or encourage the development and assessment of innovative programs;

²⁶ Idem, p. 45. (our translation).

²⁷ Round Table on the prevention of crime, *Pour un Québec plus sécuritaire: partenaires et prévention*, Québec, Ministère de la Sécurité publique, 1993, p. 197 (our translation).

²⁸ Task Force for Youth, *Un Québec fou de ses enfants*, Québec, Ministère de la Santé et des Services sociaux, 1991, pp. 153-159 (Bouchard Report).

- the adoption of measures to ensure the availability of adequate, effective funding for prevention.

Finally, the Commission considers that the area of prevention requires concerted action by everyone involved. The government departments and organizations concerned must make prevention an absolute priority and assign the necessary resources.

CONCLUSION

The Commission des droits de la personne et des droits de la jeunesse considers that there is no need, especially in the present context of economic difficulties that are shaking the foundations of our society, for a philosophy that would emphasize the repressive nature of the legislation applicable to young offenders. Québec has been a pioneer in the application of the *Young Offenders Act*. The use of alternative measures provides an excellent example of a distinct, avant-gardist approach to the control of juvenile crime. We believe that the Committee should maintain the current limit and promote the balance between the three main principles of the current legislation: the protection of society through the prevention of crime, the accountability of young people for their offences, and social rehabilitation of young people according to their specific needs and circumstances.

For the Commission, the best guarantee of social protection is the concerted intervention of everyone concerned in the prevention of crime and the adoption of concrete measures to rehabilitate young offenders and make them aware that certain behaviours are unacceptable.