Submission to the Justice and Human Rights Committee
of the
House of Commons

Bill C-3

Youth Criminal Justice Act

An Act in respect to young persons and to amend and repeal other Acts

from

The John Howard Society of Canada

January 2000

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A. Introduction

The purpose of this submission to the Justice and Human Rights Committee is to set out for the Committee those aspects of the Youth Criminal Justice Act that the John Howard Society of Canada approves of, those it is concerned about, and to suggest areas where improvements could be made. It is neither practical nor necessary to comment on all provisions of the Act. We will restrict our scope to those areas that reflect our concerns as a community-based organization concerned with the prevention of crime and the rehabilitation of offenders.

We do not agree with the criticism of this *Act* that it does not provide any benefits that cannot be obtained through the provisions of the *YOA*. We agreed with that position in May 1998 when the Youth Justice Strategy was first announced, but now that the full *Act* has been prepared it is clear that there are a number of important provisions in it that should be given careful consideration. In particular, the provision for post trial adult sentencing hearings as opposed to pre-trial transfer hearings is an important change that required new legislation. Likewise, the provisions for conditional release would not have been possible without legislation. We also feel that the statements of principle, the provisions for the use of extrajudicial measures, intensive rehabilitation orders and a plethora of other measures constitute changes that distinguish this legislation from the *Young Offenders Act*. While we do not agree with Bill C-3 in its entirety, we cannot dismiss what we feel are important and positive changes.

Provisions in the *Act* that allow for optional provincial participation in aspects of screening and sentencing provisions concern us greatly. We think that this weakens the *Act* substantially and sets a dangerous precedent for criminal justice legislation. We are of the view that the federal legislation should apply as equally as possible to all Canadian youth. It would be wrong if detention and/or correctional practices were to vary substantially among different provinces . Disparity in sentencing is a serious problem at the best of times without the legislation allowing for disparity.

It is unfortunate that the legislation has been presented and reported on with such emphasis on the punitive aspects of the *Act*. We recognize that polls often report that the Canadian public feels that the justice system is too lenient. We would caution, however, that it is incorrect to assume that because of these polls, Canadians believe that a credible justice system is a harsh one. Clearly, most Canadians do not point to the harshest systems in the world as the best or the ones to emulate. More careful studies have consistently demonstrated that the public are very supportive of rehabilitation as the major objective of correctional departments.

In the comments to follow, we will identify those measures that we agree with and those that we feel can be improved or should be removed. First, however, we need to identify some of the key values that our positions rest upon.

1. Principles and values that guide our analysis.

Punishment alone does not prevent or reduce criminal activity nor promote rehabilitation of offenders. While we recognize that society as a whole expects to see punitive consequences as a way to confirm social norms and expectations, we feel that there can be no justification for punishments that exceed these social goals. Punishment is expensive and can be destructive to the individual and to the community as a whole. Punishment should always be used with restraint, follow coherent and thoughtful principles closely, and be applied in such a fashion that it minimizes unintended and harmful consequences. In particular, punishment should always avoid physical and mental harm, not contribute to the breakdown of family and community links, not be humiliating or emotionally destructive in its intent, and not interfere with the educational, treatment and pro-social opportunities that would otherwise be available.

Punishment does not relieve us of our collective responsibility to care for the young person and contribute to their growth as healthy responsible citizens. We cannot justify removing from the individual those supportive elements of family and community life that we support and recognize as essential for other young persons.

Custody can serve the purpose of punishment and it can also serve the purpose of public protection. In the most serious cases, public protection can be achieved through periods of custody with appropriate treatment and programs, leading to gradual reintegration into the community under supervision. Custody alone offers only very temporary public protection, followed by higher risk after release - particularly when unsupervised. Reliance on custody alone for public protection is unwarranted, destructive and expensive.

Youth justice legislation should recognize the fact that youth are still learning and are less responsible than adults. Youth deserve special attention under criminal justice legislation. The very young who commit crimes should not be brought under criminal justice legislation at all, but rather dealt with through child welfare legislation. It is proper to maintain the age range of 12 to 18 for the application of youth justice legislation.

The recognition of immaturity should be reflected as the primary focus of the youth justice system by ensuring the greatest restraint in the use of punishment, placing priority on the treatment of young persons in their homes and community, engaging the community in their care and treatment, and emphasizing education rather than denunciation.

B. Comments and Recommendations

1. Preamble and Principles

a. Addition of a preamble puts the legislation into context.

The preamble is a useful and appropriate addition to our youth justice legislation. It is increasingly important at this point in the development of criminal justice legislation to continuously reiterate the key values and ideas on which our legislation is based. The *Act* establishes that public protection is the objective of the legislation and that it is to be achieved through measures that command respect, foster responsibility, ensure accountability, place emphasis on meaningful consequences (rather than punishment), and work through rehabilitation and reintegration while showing restraint in the use of custody. We think that these principles provide a good foundation. It covers key ideas in a balanced yet coherent fashion that avoids the scattergun approach to principles that attempts to address inherently conflicting ideologies and in so doing serves none. By avoiding such internal inconsistencies, the principles provide a set of criteria upon which the provisions in the *Act* can be assessed and interpreted.

We think that the attention drawn to international covenants is important as it helps us view our practices in the light of international expectations. The recognition of our over-reliance on youth incarceration gives meaning and importance to the provisions that follow that try to address that problem. The acknowledgement that youth behavioural problems cannot be addressed through criminal justice legislation alone is also an important reminder and justifies using the power of the law with restraint.

b. General and section principles of the Act are comprehensive and more coherent than those the *YOA*.

We approve of the fact that the Act relies more on statements of principles, with such statements being set out in both the general section as well as the sections relating to Extrajudicial Measures and Sentencing. The principles are comprehensive and far more consistent than those of the *YOA* that had a principle for each ideology and no guidance as to how to balance the inherent conflict among them. The principles in Bill C-3 are coherent, positive, helpful and sensible.

The term "meaningful consequences" 3(1)(a)(ii) plays an important part in the Declaration of Principles and the interpretation of the rest of the *Act*. Section 3(c)(iii) appears to define the term "meaningful" as being meaningful to the young person. We agree with the use of the word in this context but think that this link is not sufficiently direct.

Recommendation: The term "meaningful consequences" should be explicitly defined in the Interpretations section.

2. Extrajudicial Measures

a. Criteria are substantial and are spelled out broadly.

The *Act* places considerable emphasis on Extrajudicial Measures. While many of these provisions already exist, the authority to initiate some of them has been unclear and this uncertainty has made some jurisdictions reluctant to implement them. Setting out the range of measures in such a comprehensive way should remove some of the roadblocks to their implementation.

b. Authorization of formal warnings and cautions will help to divert youth from the justice system.

Studies by the Department of Justice show that those provinces that have initiated or allowed improved screening by police and the crown have benefited with lower levels of custody. Measures that support this process are articulated as warnings, cautions and referrals. Because the benefits are so great and the costs to the public reduced when proper screening takes place, and considering the desirability to be consistent in the application of the law across the country, we think that the courts should have the authority to take appropriate action when screening and referrals are not considered by the police. We are concerned that section 6(2) seriously undermines the intent of this Part by not providing the court the option to invalidate charges when the police failed to consider alternatives.

Recommendation: That subsection 6(2) state: *The failure of the police to consider the options set out in subsection 1 in circumstances where the court determines that such action was appropriate may be considered by the court as sufficient reason to have the charges dismissed*.

c. Youth justice committees and conferencing will encourage community participation but are vulnerable to political manipulation.

If the justice system is to be used as a last resort, then measures that provide for community participation in diverting youth are necessary and welcome. Subsection 18 provides for Youth Justice Committees and sets out the terms of reference for their operation. These measures are helpful and are sufficiently specific so as to avoid turning the committees into mechanisms that allow provinces to create a new punitive authority and thereby widen the net of criminal justice. This section could be strengthened with provisions that set out how people are appointed to the committees.

Recommendation: That provisions be articulated that specify that members of the Youth Justice Committees be appointed from a list of potential candidates created by a nonpartisan advisory committee of local citizens representative of local municipal government, social service organizations and police.

d. "Optionality", the ability of provinces to opt out of some extrajudicial measures, is inappropriate.

We are particularly concerned about the clauses in the legislation (subsections 7, 8, 10(2)(a)) that give provinces the ability to choose not to make the measure available. To be consistent with the principles and intent of the *Act*, the justice system should provide for the same opportunities across the country.

Recommendation: Provisions that allow provinces to opt out extrajudicial measures and sanctions should be removed from the Act. Alternatively, provisions should exist that would allow a court to order that the measure be used in any case where the court is satisfied that the objectives of the measure are not likely to be met through the other measures available in the jurisdiction.

3. Sentencing

a. Principles of sentencing show restraint and focus on rehabilitation.

We are substantially in agreement with the Purpose and Principles of Sentencing . Just sanctions are not at odds with the promotion of rehabilitation. Sentencing is more than punishment. The fact that deterrence is not relied upon as a principle is of crucial importance to us. Sentencing is not a vehicle for forced treatment either - an approach to sentencing that can be used in a very tyrannical and destructive way. Public protection and rehabilitation are not seen as mutually exclusive, as was the case in portions of the *YOA*. The Principles are purposeful and positive while recognizing the importance of consistency and fairness.

Section 37(2)(a) states that the punishment should not be greater than the appropriate punishment of an adult who has been convicted of the same offence committed under similar circumstances. To be consistent with the other principles that are based on the notion of lesser culpability of youth, a punishment that is appropriate to an adult under similar circumstances, would inevitably not be appropriate for youth.

Recommendation: That Section 37(2)(a) be amended to read in part: *the sentence shall result in a punishment that is less than the punishment that would be appropriate for an adult.…*

Another weakness is in the lack of definition for the term "proportionate" in section 37(2)(c). The provision that the sentence is proportionate to the seriousness of the offence and the degree of responsibility of the young person might be construed as being inconsistent with section 37(2)(a) and the expectation expressed therein that the punishment should be no greater than that given to an adult. This potential conflict could be avoided in part by implementing our previous recommendation regarding section 37(2)(a).

The principles relating to custody (section 38) are appropriate and should contribute to reduced levels of incarceration for youth. Should this happen, resources would become available within correctional budgets to provide for better community programs and measures. The requirement to have alternatives to custody considered in all cases is good. The provision in subsection 38(5) that custody not be used "as a substitute for child protection, mental health or social measures" is also good although we worry that some provinces may not take sufficient steps to ensure that these other measures exist. In any event, those steps will not likely be taken so long as the provinces choose to use the custody facilities for child welfare purposes.

We are particularly supportive of the measures contained in sections 38(8) and (9) to include community supervision as part of the existing sentence, rather than a lengthening of the sentence. The requirement that the judge express the sentence as a portion of time in custody followed by a period of supervision should go a long way over time to educating the media and public that conditional release and supervision do not detract from the meaning of the sentence given by the court.

b. Inclusion of a broad range of sentencing options, including a reprimand, is helpful.

Setting out the broad range of sentencing options is useful - particularly where direction is given to the court to use measures other than custody. The inclusion of new measures such as the reprimand is welcome.

c. Intensive support and supervision orders must be used with caution.

Subsections 41(2)(l) and (m) have the potential to give the court a very effective alternative but they might also go too far in terms of forcing a young person into treatment. Some treatments are much more intrusive than others which are primarily educative. We have few problems with requiring a young person to attend the less intrusive educational programs, but some safeguards must exist to ensure that those programs that have the potential to harm involve the informed consent of the young person. Examples of the latter would include intensive confrontational therapies, or wilderness and boot camps. Program activity that seriously interferes with normal activity such as school attendance or work activity should require the informed and voluntary consent of the young person.

Recommendation: Subsections 41(2) (m) should be amended by adding: *Informed and voluntary consent should be obtained before a young person is required to participate in highly intrusive, confrontational, risk-taking programs, or those that seriously impede participation in normal school or work activity*.

We do not agree with the provision in subsection 41(3) that the youth court may make an order only with the agreement of the provincial director. This provision can only result in substantial disparity in punishment and opportunity across Canada . Some jurisdictions might well circumvent

the purpose and intent of the *Act* by simply not authorizing appropriate programs. While we recognize that programs must meet standards and that the provincial director has a role to play in approving programs that meet appropriate standards (subsection 41(2)(m)), it appears to us that subsection 41(3) goes well beyond this point.

Recommendation: The words in subsection 41(3)"with the agreement of" be replaced with "after consultation with."

d. Intensive rehabilitative custody and supervision orders have the potential to be very effective if delivered properly

We are encouraged by the idea of the intensive rehabilitative custody and supervision order. This option provides the opportunity to focus attention on youth with the most serious problems. By attaching resources to a specific treatment plan, we can believe that the initiative is a serious one. We agree that these measures, if they are to be implemented as intended, need to be reserved for the most troubled youth.

We do not agree with subsection 41(7)(d) that requires the consent of the provincial director for the young person's participation in the program. While we recognize that the resources and abilities of a province might well be limited and the court needs to consider these limitations if the order is to have viability, it is wrong in our view to allow provincial jurisdictions across Canada to create substantially different rehabilitative opportunities for youth. It would be tragic if the court felt compelled to order an adult sentence in circumstances where appropriate intensive sentences were not available. The final decision must rest with the court. Otherwise, it would be very difficult to argue that the decision of the court was consistent with the principles contained in the *Act*.

Recommendation: Subsection 41(7)(d) be deleted.

Recommendation: The use of intensive rehabilitative custody and supervision orders should be monitored carefully and reviewed by Parliament after three years to ensure that they have served their intended purpose.

4. Custody

a. The expanded provisions for leaves from custody are necessary to meet the principles of the *Act*.

Leaves from custody are extremely helpful in that they give officials the ability to focus on rehabilitative resources in the community and family contacts throughout the term of custody. Terms of custody can serve to disrupt community strengths and opportunities and these disruptions will make the reintegration of the individual all the more difficult. Leaves are a logical and necessary mechanism in a system that strives to implement the principles contained in the *Act*.

b. Conditional supervision, as part of all custody sentences without lengthening the sentence, is a major improvement.

So long as corrections has as its primary purpose the successful reintegration of offenders into the community, mechanisms of gradual release must be used. Most people expect that the youth system would have a supervised release mechanism as a characteristic of the system and are surprised to learn that this is not the case. It is unreasonable to expect that institutional life will, by itself, improve an individual's capacity for successful community living. Support and supervision should be a characteristic of all releases from custody and we welcome the introduction of this mechanism into youth justice legislation.

In introducing supervised community release, those who developed the legislation avoided many of the most serious problems that have haunted and detracted from the adult systems of conditional release. In particular, by making the supervised release part of the sentence that is articulated by the court at the time of sentencing (subsection 41(4)), it is less likely to be viewed as undermining the sentence that the judge intended. By making it mandatory in virtually all cases, it is clear that supervised release has a correctional purpose and is not a form of clemency or a reward for conforming behaviour. Reintegration is important for all who have been incarcerated - not just those who are agreeable. Finally, the provision recognizes that supervision is, in itself, a substantial incursion into a person's freedom and is punitive. In so doing, it avoids making the gradual release mechanism additional to the sentence that would otherwise be given (subsection 38(8)). As such it will reduce the length of custody. The associated cost savings could be used for supervision and support during the period of conditional release.

To be successful, the plans for reintegration must begin at the sentencing stage and resources must be available in the community to provide the support and supervision that is needed. It would be a tragedy if, in the future, the conditional release mechanism was criticised for its failures because significant efforts and resources are not made available. We think that the legislation should articulate some expectations for provincial jurisdictions that will ensure that the conditional release portion of the sentence is not undermined through starvation.

Recommendation: The legislation should contain provisions that set reasonable standards for the support and supervision of young people.

c. Restrictions on use of custody are beneficial.

Subsection 29(2) establishes that detention prior to trial is presumed to be unnecessary. We agree with this provision.

Subsection 38 sets out that custody shall not be used unless specific criteria are met. We agree with the criteria and the fact that the emphasis on non-incarceration is made clear by making the statement read in the negative.

We agree with the recommendations contained in the Report of the Sentencing Commission of Canada (1987) that certain offences should be non-imprisonable. We think that Bill C-3 would be

improved with such a category of offence.

Recommendation: A category of offence should be defined, similar to that proposed by the Canadian Sentencing Commission, for which imprisonment is not permissible.

The requirement that the court always consider alternatives to custody is good as is the inclusion of factors that must exist (subsection 38(3)) before custody can be considered. That said, we disagree with the first factor that the alternative must be available. Jurisdictions can undermine the intent of the legislation by simply not providing the alternative - forcing judges to sentence to custody. Freedom is too important to leave to such matters of convenience. The courts should be able to require that alternative programs be made available if other suitable alternatives are not already available.

Recommendation: Subsection 38(3)(a) relating to the use of custody when alternatives are not available should be removed and replaced with a provision that would allow a court to order that an alternative to custody be made available in any case where the court is satisfied that the provision of the alternative is reasonable, consistent with practices in other jurisdictions and where the principles of the *Act* cannot be met through the other alternatives that are available.

d. The lack of definition of the required levels of security could lead to overly secure facilities for low risk young offenders.

Subsection 84(1) stipulates that "there must be at least two levels of custody for young persons distinguished by the degree of restraint of the young person in them. This provision is not adequate as it could result in institutions that lack key components of reintegration. For instance, it would seem possible that a facility operated within the walls of a secure institution but with greater freedom of movement would meet this requirement. Open custody, as we traditionally think of it, is not characterized only by the degree of restraint *within the institution* but also by *access to the community*. The characteristic that must distinguish the lower level of custody is that the person must normally have daily access to the outside community for work or school, as well as significantly reduced restraints within the facility.

Recommendation: Subsection 84(1) be amended by adding: *…and also distinguished by the degree of daily access to the community for work, school, program participation, treatment and family contact*.

e. Detention with adults should not be permitted except in truly exceptional cases.

Subsection 30(3) permits the detention of young people with adults where the young person's safety or the safety of others is an issue or where a place of detention is not available within a

reasonable distance. The principle of separation is an important one. We realize that occasionally circumstances arise such as those apparently referred to in this subsection, but we are concerned that the wording is so general that it would permit discretion that is too broad. We are also concerned that some jurisdictions do not provide separate facilities, even when they are capable of doing so, because of a lack of commitment to the principle. Issues such as disputes between provincial government departments over who would pay the costs of holding young persons separate from adults at court facilities resulted, in one case, in the principle of separation being violated. Exemptions should be rare and occur only by a court order. The test should be substantial and should fail where the court is of the view that the province has not taken serious and reasonable steps to obtain separate facilities.

Recommendation: Subsection 30(3) should be amended to read as follows (*by adding the phrase in italics*): A young person referred to in Subsection (1) shall be held separate and apart from any adult who is detained or held in custody unless the youth court judge is satisfied that *the province has made every reasonable effort to provide separate facilities and*, having regard to the best interest of the young person, ….

f. Security level classification by correctional officials should be monitored carefully and be subject to review by the court.

We think that there may be advantages to having placement in security levels determined in the first and subsequent instance by correctional officials. This measure could allow for a logical series of steps from higher to lower levels of security. It could also allow for movement to higher levels where warranted. At the same time we have reason to worry that some jurisdictions may let economic and political considerations influence placement decisions in a manner that undermines the objectives and principles contained in the *Act*. We are not convinced that review boards, created by provinces, are an adequate safeguard. Instead, we propose that the courts be empowered to review the placement decisions of correctional officials, when appealed, on the basis of the criteria set out in the Act (subsection 84(5)) and to reverse decisions of the provincial director. Further, we propose that the measures be carefully monitored and reviewed in depth by Parliament after a three-year period.

Recommendation: Security placement decisions should be subject to review by the youth court on appeal rather than a provincially appointed review board.

Recommendation: The practices of placement to levels of custody by provincial directors should be monitored carefully and reviewed by Parliament in three years time.

5. Adult Sentences

a. The abolition of pre-trial transfer hearings in favour of post-trial adult sentencing hearings is an important improvement.

The current provisions of the *YOA* that require a transfer hearing prior to trial for those being considered for transfer to the adult system are inconsistent with notions of fundamental justice. To have a hearing to determine a person's dangerousness and potential for treatment prior to determining guilt seriously threatens the right to a fair trial based on the presumption of innocence. Insofar as transfer of a youth to an adult system can be justified at all, we support the new provisions that allow for the hearing to consider adult sentences to take place after the trial and before sentencing.

b. Placement in adult institutions needs careful review.

Subsection 91(1) permits the court to transfer a person to an adult institution at age 18 and subsection 92(1) requires the same in most cases at age 20. It should be noted that even those who are serving youth sentences may be transferred to adult institutions under these provisions. While we approve of measures that ensure that young people are not transferred to adult institutions until they are at least age 18, we feel that it is unnecessary and destructive to transfer those serving youth sentences. In fact, this provision could completely undermine the value of a youth sentence and the principles that it is based upon if the person must serve the sentence in an adult prison.

Recommendation: No person serving a youth sentence should serve any part of that sentence in an adult prison.

Recommendation: In the event that transfers of those serving youth sentences to adult prisons is permitted, the provision should be subject to a four-year sunset clause and terminated unless otherwise approved by parliament.

c. The test for adult sentences is better than that used in the *YOA* for transfers to adult court.

We view the use of adult sentences for youth to be entirely inconsistent with the purpose and principles of youth justice legislation and would prefer to see such measures abolished. Given that such measures are likely to continue, it is our view that the test for adult sentences contained in the Bill C-3 (subsection 72(1)(a)) is somewhat better than the test for transfer in the *YOA*. The notion of accountability is more restrained than the notion of public protection as reflected in the *YOA*. While the proposed legislation is obviously concerned with public protection, the propensity of officials to seriously over-predict dangerousness should be of great concern to us. The harshest sentences available in the *Criminal Code* relate to detention for the purpose of public protection. Accountability implies public protection but also contains the notion of restraint and proportionality which are appropriate, particularly where youth are concerned.

It troubles us that the provision seems to preclude the use of the sentencing principles that otherwise apply to youth when an adult sentence is given. While it might be argued in some cases that the length of custody needs to be longer than the limits set by the *Act*, it is quite another thing to argue that the principles of sentencing should be different. For instance, the focus on rehabilitation is just as valid for a young person who commits a serious offence as it is for a young person who commits a minor offence. An adult sentence does not make the person older. The focus on rehabilitation and reintegration is equally valid.

Recommendation: That a subsection be added that states: *To the extent possible, an adult sentence shall be made in accordance with the purpose and principles set out in section 37*.

d. Presumptive adult sentences for specified sentences are not necessary.

We see no need for a presumption of an adult sentence. Indeed, we view this presumption as being inconsistent with all of the principles that otherwise apply under the *Act*. Crown counsel should take the initiative to have an adult sentencing hearing and be required to give notice of that intended action prior to trial. Expansion of the presumptive criteria from those in the *YOA* to include those aged 14 and 15 is all the more troubling and unnecessary.

Recommendation: Measures that provide for presumptive adult sentences should be removed from the *Act*. Alternatively, those aged 15 or less should be excluded from the presumptive adult sentencing provisions.

e. The serious violent offence category is vulnerable to abuse.

While we feel that all presumptive adult sentencing hearings are out of place and should be removed, we are particularly concerned about the provisions regarding serious violent offences. The provision is capable of broad interpretation. Violence varies greatly in its scope of seriousness - especially with youth who are much more prone to rough play and schoolyard conflicts. Tying the provision to an offence for which an adult could be sentenced to more than two years ignores the fact that a behaviour that would be more easily tolerated in youth could be viewed much more seriously if done by an adult. For instance, a slap by an adult might be regarded as a serious offence but viewed as being a minor event when committed by a child. The fact remains that the sentencing options available in the Youth Court are substantial for serious offences in the vast majority of cases and provide for as long a term as would typically be given an adult. In those circumstances where the sentences available in the youth court were not thought by the crown to be adequate, notice could be given and an adult sentencing hearing held prior to sentencing. Finally, the requirements relating to two previous judicial determinations (subsection 2 (1)("presumptive offence"))are extremely awkward and unlikely to be used in a consistent and fair manner.

Recommendation: Subsection 2(1)(a)(b) relating to the inclusion of serious violent offences as

a presumptive offence for an adult sentence should be removed.

6. Due Process and Protection of Rights

a. Publication of names serves no useful purpose.

The *Act* permits the publication of names under specific circumstances. Although these circumstances are limited, we think they can only serve destructive purposes. Currently many of those transferred are not serious offenders and the possibility is high that this fact will continue under the proposed legislation. Publishing names can only undermine the community support that might otherwise be available for the young person. It unnecessarily harms the person's family and brings increased risk of community vigilantism after release.

Recommendation: Publication of the names of all persons convicted for offences committed while under the age of 18 should be prohibited.

b. The provisions for the admission of statements as evidence that are otherwise inadmissible are weak and subject to abuse.

Subsection 145 (6) allows the court to admit statements into evidence when officials have failed to comply with the provisions with respect to admissibility if the court is satisfied that admission of the statements would not bring the administration of justice into disrepute. Although the court must consider the principles and objectives of the Act in making its decision, we are not convinced that this provision will not lead to abuse. In effect, the officials are relatively free to use methods that are inadmissible and to argue the relevance afterwards. Inadmissible statements could be obtained as the basis to obtain other evidence. Such statements would not be submitted to the court if they provided no useful information but could be justified when they did. Under this situation, it is difficult to see how the young person's rights are being adequately protected.

The fact is that because young people are less capable of understanding their rights and may be more easily intimidated than adults, officials must assume a greater responsibility to ensure that their rights are protected. This provision removes that responsibility.

Recommendation: Subsection 145 (6) that permits the court to admit otherwise inadmissible evidence should be removed.

c. Recovery of legal aid from parents could lead to inadequate representation of the youth and an unfair burden on parents.

The accused is entitled to a fair trial. Particularly with youth, a fair trial depends on proper representation. The possibility of parents being required to repay legal fees (subsection(25)(10)) will result in guilty pleas in some circumstances simply because the youth would not want the

family to have to carry the burden or because the family puts pressure on the youth to enter a guilty plea. In other circumstances, it is unfair to a parent to be held responsible for the behaviour of their children. There are many factors that relate to the initiation of young people into criminal behaviour. Parenting skill is just one of them. Just as important are issues relating to poverty, employment, racism, cognitive skills, school achievement and neighbourhood associates. Parents cannot control and compensate for all of these factors. As the *Act* recognizes that crime cannot be addressed through legislation alone and is a problem that requires a multitude of community responses, parents should not be further penalized for living in communities where supports are missing and problems are plentiful.

We already have *Criminal Code* offences that relate to child abuse and neglect that address the worst circumstances of poor parenting. Provinces should not be able to set up two-tier youth justice systems through highly politicized attempts to punish parents for the wrongs of their children.

Recommendation: Recovery of legal aid fees from persons other than those accused who are able to pay should be prohibited.

C. List of Recommendations