

Juvenile Justice in Queensland and Canada: New Legislation Reflecting New Directions

Due to their similar colonial histories and common law heritage, Australia and Canada provide an ideal comparative context for examining legislation reflecting new directions in the field of juvenile justice. Toward this end, this article compares the revised juvenile justice legislation which came into force in Queensland and Canada in 2003 (Canada, *Youth Criminal Justice Act*, enacted on 19 February 2002 and proclaimed in force 1 April 2003; Queensland, *Juvenile Justice Act*, amended 2003). There are a series of questions that could be addressed including: How similar and how sweeping have been the legislative changes introduced in each jurisdiction?; What are likely to be some of the effects of the implementation of these new legislative regimes?; and, how well does the legislation enacted in either jurisdiction address the fundamental difficulties experienced by children who have been caught up in juvenile justice systems? This article addresses mainly the first of these questions, offering a systematic comparison of recent Queensland and Canadian legislative changes. Although, due to the recentness of these changes, there is no data available to assess long-term effects, anecdotal evidence and preliminary research findings from our comparative study are offered to provide a start at answering the second question. We also offer critical yet sympathetic comments on the ability of legislation to address the fundamental difficulties experienced by children caught up in juvenile justice systems. Specifically, we conclude that while more than simple legislative responses are required to address the difficulties faced by youth offenders, and especially overrepresented Indigenous young offenders, the amended Queensland and new Canadian legislation appear to provide some needed reforms that can be used to help address some of these fundamental difficulties.

The article begins with a brief overview of the Queensland and Canadian contexts, and a review of the new legislation in each jurisdiction. In this effort, similarities and differences between these contexts are delineated, and the political background to the issues leading to legislative change is examined. We also offer a comparative analysis of the processing of young offenders through various stages of the newly-legislated youth justice systems, including involvement with police, pre-trial procedures, and court processing and sentencing issues, and an appendix to the article (Appendix A) provides a comparative summary of legislative changes in tabular form.

Although restricted mainly to a descriptive examination of recent legislative changes in Queensland and Canada, this comparative research has potentially broader implications for offering a better understanding of what appear to be more widespread trans-national shifts in policy and practice. Perhaps the most notable of these is the simultaneous two-directional shift that appears to be occurring in a number of jurisdictions toward, on the one hand, treating serious young offenders more like adult offenders, while, on the other hand, implementing more community and 'restorative justice'-based alternative dispositions and sanctions for less-serious offenders.¹ There are also clear similarities in the Queensland and Canadian experience that stand out, including a public perception that juvenile crime is 'on the rise' which is not borne out by the statistical evidence, and the fact that both jurisdictions demonstrate an over-representation of indigenous youth in the juvenile justice system. In addition, it is clear that recent legislative changes in both Queensland and Canada have been influenced by developments occurring elsewhere; for example, the provision for alternate sentencing channels with a move to community conferencing based on the New Zealand model in the case of Queensland; and the diversity of approaches to family-group conferencing now being developed across the Canadian provinces, which reflect both New Zealand and Australian influences along with local innovations. Consequently, our comparative analysis of the experience of Queensland and Canada, framed within this broader international context, may also have implications for

assessing the degree to which different jurisdictions are complying with international human rights obligations on the treatment and detention of young persons in conflict with the law.

A. Historical and Cross-National Legislative Contexts and Trends

1. The Queensland Context

a. Political, Legislative and Social/Demographic Context

As criminal law in Australia is a state matter, Queensland has a Criminal Code, a *Bail Act 1980* and a *Penalties and Sentences Act 1992* which all apply to adult offenders. The recently amended *Juvenile Justice Act 1992 (JJA)* provides a code for the treatment of children, incorporating both bail and sentencing provisions.

Accurate and timely statistics are most important in this area. For this reason, in July 2003, the Australian Bureau of Statistics (ABS) created a National Children and Youth Statistics Unit “in response to the need for a statistical evidence base to support community and government policy related to children and youth” (ABS Themes — Children and Youth Statistics, online, accessed 21 January 2005).

Australia’s population is now over 20.1 million and the age structure of Australia’s population is similar to that of Canada. Official statistics show that in 2002, the number of children in Australia was around 4 million, or 20% of Australia’s population. Between 30 June 1984 and 30 June 2004, the proportion of the population aged under 15 years of age decreased from 24.0% to 19.8%.²

It is important to note however that the number of juveniles in the Indigenous population is quite large. The Indigenous population at 30 June 2001 was 458,500 of which 125,900 (28%) lived in Queensland. Aboriginal people and Torres Strait Islanders make up 2.4% of the total Australian population. In Queensland, up to 39% of the

Indigenous population is under 15, compared to only 20% of the non-Indigenous population.³

The proportion of dependent children living with a single parent increased from 9% in 1974 to 19% in 1996. O'Connor and his co-researchers have concluded from this and other evidence that the "social conditions of children and young people in Australia have deteriorated in the past two decades, especially for those from socially and economically deprived families" (O'Connor et al. 2002, 226). This means that there are a growing number of children with multiple social, economic and family problems which might make them more likely to come to the attention of the police.

Juvenile Crime Statistics

Queensland Police statistics demonstrate that most juvenile crime is property related. The 2003–2004 Report tabulates the Offences against the Person for the 10–17 year age group as totalling 3,764 (3,697), Property Offences 31,569 (31,062) and Other Offences 15,076 (14,210). The Property Offences statistics also demonstrate that the likelihood of this type of offending decreases with age (Queensland Police Service Statistical Review, 2002 to 2004).

The Youth Justice Criminal Trajectories Study has found that:

- Young people sentenced to supervised juvenile justice orders are characterised by high levels of instability in their lives. They also, generally, have low literacy levels and poor prospects of employment.
- From 1998–99 to 2001–02, the number of finalised court appearances decreased from 7,504 to 7,352 — a 3% decrease. This included a decrease in finalised higher court appearances from 878 to 589 — a 33% decrease.
- The decrease in higher court appearances indicates that the most substantial reduction has been in terms of

young people being sentenced for the most serious types of offences.

- As a result of the decrease in finalised court appearances, the number of young people on supervised juvenile justice orders has decreased overall from 2,112 as at 30 June 1998 to 1,679 as at 30 June 2002 — a decrease of about 20%.
- The number of young people in detention centres has decreased from an average daily occupancy of 139 in 1998–99 to 97 in 2001–02 — a decrease of about 30% (Lynch et al. 2003).

However, added to this cameo picture is the fact that Indigenous juveniles have been found to be “17.4 times more likely than non-Indigenous juveniles to be detained in a juvenile justice centre” (Cahill and Marshall 2002).

b. Historical Trends in Juvenile Justice

During the nineteenth century, young people in Australia were dealt with as if they were adults (O'Connor et al. 2002, 231). Following this was a period where the “welfare model” of justice, sometimes referred to as the “child-saving movement,” became more accepted (Hazlehurst 1996). Characteristics identified with the welfare model include more informal hearings, and a key role for welfare workers. Children were sometimes deemed to be neglected and placed under the care of welfare, which resulted in indeterminate outcomes and uncertainty in sentence. This resulted in a lack of due process rights, and was characterised by a doctrine of paternalism (Hazlehurst 1996, 117–18). There tended to be a blurring of the distinction between those children deemed to be neglected, uncontrollable or homeless, with juvenile offenders, which led to uncertain and unjust outcomes.

By the late 1970s, criticisms of the welfare model, embodied in the *State Children's Act 1911* and the *Children's Services Act 1965*, began to

mount and a growing “law and order” lobby argued for a more rigorous “just deserts” approach to juvenile offending. The primary concern was considered to be the protection of the community and to hold young people accountable, with the welfare of young people judged a secondary consideration (O’Connor et al. 2002, 232). This led to more formality in Children’s Court proceedings and the Queensland *Juvenile Justice Act* passed in 1992 reflected these principles (Hil and Roughley 1997, 21–36).

This view of being tough on juvenile offenders has often been inflamed by misinformed media reports of increasing crime rates from this segment of the population. The Australian Law Reform Commission (ALRC) Report cautioned in 1997 that “Community perceptions that youth crime is rampant have lead to particularly punitive legislative developments in many jurisdictions. These developments are harmful to children and endanger community safety.” They also noted that: “The levels of children’s court appearances and formal diversions from the juvenile justice system have remained stable for the last fifteen years. Despite this there is a public perception that youth crime is increasing. This ‘moral panic’ is mirrored in and fuelled by media stories of a juvenile crime wave and by political rhetoric” (ALRC 1997). A Sunday paper, for example, carried a story titled “Our Child Outlaws: a shocking 16,400 crimes in a year — and they were all committed by kids in Queensland,” beginning with “Queensland criminals are becoming younger and younger as thousands of juveniles embark on mindless vandalism, theft and assaults” (Lawrence 2004, 15). This type of rhetoric tends to inflame public sentiment and encourage tougher legislation. As we point out later in this article, Canada has witnessed remarkably similar developments over the last century in its juvenile justice system.

2. The Canadian Context

a. Political, Legislative and Social/Demographic Context

In Canada, the population is approximately 31 million, with around 18% under 14 years of age. One third of the approximately one million Aboriginal people in the Canadian population are under 15, compared with 18% of the non-Aboriginal population. Unlike the situation in Australia, the Federal government has responsibility to enact laws on juvenile justice. The welfare of young people is of primary importance and it would seem, at least on the surface, that much is to be gained by a unified national approach to an issue of such magnitude, rather than the state-based system in Australia. However, it needs to also be pointed out that in Canada, it is the provinces' responsibility to implement federally-enacted juvenile justice laws. Consequently, one of the realities of the Canadian situation is that each of the provinces has a great deal of autonomy to decide how it will implement, or alternatively not implement, federal criminal legislation respecting young offenders. For example, both under the former *Juvenile Delinquents Act (JDA)* (in effect from 1908 to 1984) and the *Young Offenders Act (YOA)* (in effect from 1984 to March 2003), there existed a great deal of inter-provincial variation in treatment of accused and convicted youth offenders. This was exacerbated, in the case of the *JDA*, by the fact that provinces were given the power to decide on the upper age limit of children who would fall under the jurisdiction of the legislation (with this age varying from 15 to 17 depending on the province).⁴ While the *YOA*, which was enacted in part in order to make Canadian juvenile justice legislation consistent with the new *Charter of Rights and Freedoms* enacted in 1982, did away with this inter-provincial age differentiation, it however allowed provincial police and judicial authorities a great deal of discretionary power in areas including diversion, or "alternative measures," and the transfer of serious cases to adult court.⁵ Like Queensland, and Australia more generally, Canada's Indigenous peoples, and especially their youth, are vastly

overrepresented in the criminal justice system. For example, a recent study by Ross Green and Kearney Healy (2003) points out that:

In Saskatchewan the vast majority of young people appearing before our courts are Aboriginal... Aboriginal youth comprise 75% of young offenders being held in Saskatchewan's custodial facilities. At the same time, Aboriginal people account for only approximately 15 percent of Saskatchewan's population. The over-representation of Aboriginal youth with the justice systems of Manitoba and Alberta is similar if not more pronounced. This over-representation, which extends outside of the prairie provinces to other areas of Canada, is clearly unacceptable, especially considering the projected growth of the Aboriginal population over the next decade. If the current high number of Aboriginal youth already in custody were to increase at the same rate as the overall Aboriginal population, the resulting effect would be crippling, both within the youth justice system, and within Canadian society as a whole. (Green and Healy 2003, 91; footnotes in quotation omitted).

While the over-representation of Aboriginal youth was one of the concerns that provided the backdrop to the recent enactment of new youth justice legislation in Canada, it was certainly not the only or most important concern that led to the creation of the YCJA.

b. Government Initiatives and Public Pressure that Led to the Enactment of the YCJA

In order to make sense of recent changes in Canadian juvenile justice that have come about with the enactment of the new *Youth Criminal Justice Act (YCJA)*, it is necessary to look more closely at specific provisions and criticisms of the earlier YOA.⁶ The YOA was put into force in 1984. It signalled a shift in the spirit of both adjudicating and governing erring youth. No longer would the causes of deviance

be managed through legislation and experts, but now youth themselves would be adjudicated and managed. Whereas the “juvenile delinquent” was once viewed as the most conducive to rehabilitation, with the emergence of the YOA the “young offender” became viewed as a deviant adolescent who was “responsible for their actions and should be held accountable” (Canada, *Young Offenders Act*, s3). Throughout the 1960s, criminological discourse and social processes created conditions amenable to new young offender legislation that took a less rehabilitative posture. The emerging discourse, much of it emphasising the importance of legal rights for juveniles, did not deny the importance of intrusions into the lives of the deviant, but increasingly saw the delinquent as a legal subject.

With the introduction of the YOA, youth were to be held accountable for their actions, but not to the same degree as adults. While children were not to be held accountable in the same way as adults, the introduction of the notion that youth should be held criminally responsible for their actions represented a fundamental departure from the *JDA*. It also represented a fundamental shift in the rationale for having a youth justice system. Rather than being viewed as erring children requiring rehabilitation, deviant youth became viewed as responsible offenders. Consequently, with the introduction of the YOA, legislation and the juvenile court became transformed and moved procedurally closer to the adult system. This movement away from the original child-welfare aims of early delinquency legislation is arguably even more pronounced in the discourse which surrounded the introduction of the *Youth Criminal Justice Act* (YCJA) in the late 1990s.

Hogeveen and Smandych (2001) have examined the media discourse and parliamentary debates that led to the enactment of the YCJA, noting the attention that was given by the media and politicians to the inadequacies of the YOA. In particular, they show that the YCJA was developed, in part, as a Federal Government response to constant demands by provincial governments and the public to create a youth justice system that would come down tougher on young offenders

who were purportedly receiving insignificant punishments for their offences under the YOA. They also found that as the new millennium approached, Canadian politicians and citizens alike seemed to be in agreement that youth crime was “out of control” and that a symbolic and instrumental response to the problem was required. Coinciding with the perception that youth, and by extension, youthful deviance, was out of control were calls for increasing punitiveness. Through debates in parliament, media reports and public meetings, federal and provincial members of parliament in concert with the public created the belief that tougher youth justice legislation was needed to deal with the serious and increasing problem of youth crime. At the same time, the Federal parliamentary debates of the late 1990s also contained opposite signs of an openness to more community-based restorative and rehabilitative approaches to preventing and dealing with youth crime. Indeed, Hogeveen and Smandych’s analysis suggests that there was a bifurcation in the Federal government’s approach to youth crime. On the one hand, while the Federal government signalled that it is willing to promote more strict penalties for serious offenders, the proposed YCJA also facilitated the expanded use of “extrajudicial” measures (diversion, police warnings, family group conferencing, and mediation) for first time and non-serious offenders. Consequently, in the end, the YCJA came to include bifurcated legislative provisions aimed at punishing serious young offenders more like adult offenders, while mandating more restorative community-based treatment approaches to deal with first time and non-serious offenders. Although the YCJA has only been in effect since 1 April 2003, even prior to the first day of its implementation, provisions of the YCJA began to be subjected to critical scrutiny by legal scholars, criminologists, and the courts,⁷ and a substantial literature has already emerged dealing with the initial observed effects and issues emerging from the implementation of the legislation.⁸ Later in this article, we will provide a comparison of specific provisions of the newly enacted Canadian YCJA and the recently amended Queensland *Juvenile Justice Act (JJA)*, with the aim of assessing the extent to which these laws

reflect a common trend toward more bifurcated legislative approaches in dealing with youth crime.

B. Queensland's *Juvenile Justice Act* and Canada's *Youth Criminal Justice Act*: Similarities and Differences

1. *The Trend Towards Restorative Justice*

The amendments to the Queensland legislation which came into force in 2003 reflect a new approach to youth justice — restorative justice. This approach was prompted by the high levels of incarceration of disadvantaged groups, and was aimed at healing and the “shared social citizenship” of offender and victim (Australian Institute of Health and Welfare 1998, 5). The process includes “diversion from court prosecution, actions taken in parallel with court decisions, and meetings between victims and pre-sentencing, and prison release,” and is usually only reserved for those offenders who have admitted their guilt (Daly and Hayes 2001). The genesis for this approach was in New Zealand where family group conferencing was first developed based on traditional Maori practices (Condliffe 1998). Youth Justice Conferencing (formerly termed Community Conferencing) was introduced into Queensland in 1997 as a result of the 1996 amendments to the *Juvenile Justice Act (JJA)*. By 2002, these principles were being espoused in decisions in the Children’s Court and were incorporated in the amended Queensland legislation in 2003 (Queensland, Children’s Court, 2002).

Ongoing evaluation of this form of justice is taking place throughout Australia, but there are still many unanswered questions regarding the schemes. In Queensland, Palk, Hayes and Prenzler (1998) analysed survey data collected by the Department of Justice over a 13 month period. Of the 351 offenders, parents (or carers) and victims interviewed, 98 to 100 percent said the process was fair, and 97 to 99 percent said they were satisfied with the agreement made in the

conference (Palk et al, 1998). As Daly and Hayes note in a 2001 report:

Two core assumptions are evident in the literature: offenders and victims are interested in repairing the harm, and when they are brought together in a restorative process, they will know how to act and what to say. To the contrary, there is little in popular culture or day-to-day understandings of justice processes that prepares victims, offenders and their supporters for restorative ways of thinking and acting. The most fundamental challenge to restorative justice, then, lies in awakening new cultural sensibilities about the meanings of “getting justice” and of “just” responses to crime (Daly and Hayes 2001, 6).

The trend toward a more restorative community-based approach to dealing with young offenders in Queensland is also reflected in the significant amendments to the *Juvenile Justice Act* in the 1990s and in 2002, both of which are discussed in more detail in the following part of this article. It remains to be seen to what extent the implementation of provisions of the newly amended *Juvenile Justice Act* will lead to further measurable changes in the way in which youth are processed through Queensland’s juvenile justice system.

The trend toward a more restorative community-based approach to dealing with young offenders is also very evident in the Canadian context, and this trend may well be further promoted through the implementation of the recently enacted YCJA. Related legislative provisions contained in the YCJA concerning extra-judicial measures and conferencing are outlined in the next section of this article and compared to similar parallel provisions contained in Queensland’s *JJA*.

2. Comparison of Provisions in the JJA and the YCJA

a. Declaration of Principle

In Queensland, the *Juvenile Justice Act 1992* and the *Children's Court Act 1992* came into effect on 1 September 1993. There were several amendments in 1996, 1997 and 1998, but substantial changes were made in legislation in 2002 which were all in effect by 1 July 2003.

The principles underlying the operation of the *JJA* are set out in the "Charter of Juvenile Justice Principles" in Schedule 1 of the Act. These cover issues such as vulnerability and accountability of children, diversion, fair and participatory proceedings, sentencing, the "last resort" principle, and victim impact. This change largely arose following Recommendation 15 of the 1999 *Report of the Commission of Inquiry into Child Abuse in Queensland Institutions* (the Forde Report) (Queensland 1999). The Queensland Commission for Children and Young People voiced some concerns about the Charter included in the 2001 amending bill, specifically that "it did not include all the basic rights of young people in detention expressed in the United Nations' Rules." The Commission also expressed concern that the Act did not effectively incorporate the Rules in the actual "legislation" as there was "no obligation on people responsible for administration of the Act to abide by the Charter of Juvenile Justice Principles" (Queensland 2001). In addition, the Commission noted that the amendments to the Queensland legislation did not include a change of name: "The Commission considers that the name of the proposed Act should be amended to the 'Youth Justice Act' as this is the more modern terminology used by the Department of Families as well as youth advocacy agencies." The Commission also proposed that "other provisions of the Act referring to 'Juvenile Justice' should also be amended to 'Youth Justice' for purposes of consistency."

In Canada, Bill C-7, the *Youth Criminal Justice Act (YCJA)*, received Royal Assent on 19 February 2002 and is in force as of 1 April 2003. There are key differences between this Act and the previous legislation such as the inclusion of a declaration of principle, the more explicit encouragement of measures outside the court process, specific

sentencing principles, and a lower age limit (14) for imposing adult sentences in the case of “serious violent offences.” It is interesting to note the differences between this Act and the recently amended Queensland legislation. On the other hand, there are several notable commonalities, including especially the new philosophy of restorative justice encouraging the involvement of families, victims and community members.

The philosophical underpinnings and principles of the YCJA have been subjected to close scrutiny by a number of criminologists and legal scholars (Anand 1999b; Bala 2003; Brodeur and Doob 2002; Doob and Sprott 2004; Green and Healy 2003). The YCJA contains specific sections spelling out the fundamental general principles underlying the legislation (Section 3), as well as declarations of principles regarding the use of extra-judicial measures (Sections 4, 5) and sentencing and committal to custody (Sections 38, 39). What is most significant about this declaration of the purpose of the YCJA is that it recognises the protection of the public as the main goal of the new legislation. This is a significant shift from both the *JDA*, which stressed “the best interests of the child,” and the *YOA*, which emphasised “due process” and the “special needs of young offenders.” At the same time, the YCJA is similar to the *YOA* in that it continues to try to strike a balance between the need for the “protection of society” and the legal rights of accused. However, as recent commentators, including Bala (2003, 83) and Doob and Sprott (2004) emphasise, section 3(1)(a) of the YCJA should not necessarily be read as “sending a law-and-order message and taking a punitive approach to young offenders,” since the focus of the section is also on the “long term” protection of society through the “prevention of crime” and “rehabilitation and reintegration.” Moreover, as Bala (2003, 74) and Doob and Sprott (2004) also point out, in comparison to the *YOA*, “the various provisions of the YCJA that articulate principles and philosophy prove a clearer message for those charged with the operation of the youth justice system and the making of decisions about individual young offenders.” This is stressed throughout the Act, setting a high standard of care to be adopted by youth justice

officials empowered to enforce specific parts of the legislation. This will become more evident as we look at other specific sections of the legislation.

Like the YOA, the YCJA recognises the need for the youth justice system to place greater emphasis on the *rehabilitation and reintegration* of young persons who break the law. In order to accomplish this, the legislation includes new detailed provisions concerning the treatment of less serious young offenders through *extra-judicial measures*. It also attempts to provide for the rehabilitation and reintegration of more serious violent and repeat offenders through *intensive custody* sentences and *post-release supervision*.

b. Age of Criminal Responsibility

Under the *Juvenile Justice Act*, a person is defined as a child if they have not yet turned 17 years (JJA, ss5, 6). This means that once a person turns 17, they are treated as an adult for the purposes of the criminal law. As Judge O'Brien points out in the 2002–2003 Children's Court Annual Report, "Section 6 of the Act does contain provision for the age of 18 to be fixed by regulation but this provision has never been utilised." The Report also notes the disjunction between this situation and the prevailing social and legal framework, "In Queensland, young people are not lawfully permitted to vote or to drink alcohol until they reach the age of 18, yet, at the age of 17, their offending exposes them to the full sanction of the adult criminal laws. There are I believe real concerns involved with the potential incarceration of 17 year olds with more seasoned and mature adult offenders" (Queensland, Children's Court 2003, 5). This view reflects that of the ALRC 1997 report which recommended that there be consistency and that: "The age at which a child reaches adulthood for the purposes of the criminal law should be 18 years in all Australian jurisdictions." At present, in Queensland, children are dealt with in the adult criminal system once they turn 17. From 1 July 2005, the age will be 18 in all the other Australian states (Urbas 2000, 3).

The Commission for Children and Young People has also commented on this anomaly in regard to age in the Queensland system, arguing that “serious consideration should be given to extending the scope of the... Act to children who are 17 years.” It also noted that the United Nations Committee on the Rights of the Child stated that Australia should comply with this requirement. However, the Commission was aware of the resource/infrastructure implications that would be involved in raising the application of the youth justice system to all young people under 18, and considered that move towards achieving this goal be made over a number of years (Queensland 2001, 3).

Section 29 of the Queensland Criminal Code provides that a child under the age of 10 years cannot be held criminally responsible and a child under the age of 14 years is presumed not to be criminally responsible. This means that for children between 10 and 14 years of age, “the prosecution must prove beyond reasonable doubt that at the time of commission of the offence, the accused child had the capacity to know that they should not do the relevant act or make the omission” (Queensland. Department of Families and Legal Aid 2003, 14). What this means is that in order for the child to be held criminally responsible, the prosecution simply has to prove that at the time of the event the child had the capacity to know what he or she was doing was wrong and that they should not do the act (Queensland. Department of Families and Legal Aid 2003).

There has been some discussion about this rule. The previous President of the Queensland Children’s Court Judge McGuire favoured a complete abolition of the *doli incapax* (incapable of crime) rule. The Conolly Criminal Code Advisory Working Group (Qld), in their report in July 1996, “recommended changes to s29 to, in effect, place the onus on the accused child to prove an absence of criminal capacity. This recommendation was not adopted by Government,” although the *Criminal Law Amendment Act 1997* amended s29 by lowering the age from 15 to 14 (Queensland, Children’s Court, 2000). Australian jurisdictions now have uniform rules in regard to this issue, that is, children under 10 years are not held criminally responsible

and there is a presumption against criminal responsibility from when the child turns 10 up to the time they turn 14 (Australian Institute of Criminology, n.d.; Queensland, Criminal Code, s29).

In Canada, the minimum age of criminal responsibility has been maintained at 12 under the newly enacted *YCJA*, despite calls made throughout the 1990s that it should be lowered to 10 (Barnhorst 2004; Hogeveen and Smandych 2001), while, as noted earlier, since the implementation of the *YOA* in 1984, the upper age limit across Canada has been 17. While these lower and upper age limits of criminal responsibility remain the same under the *YCJA*, a series of amendments to the *YOA* in the 1990s, with added changes brought about in the *YCJA*, have had the effect of lowering the age at which a young offender can either have their case transferred to adult court (provided for in the *YOA*) or be sentenced as an adult after being tried in a youth justice court (provided for in the *YCJA*) (Bala 1997, 2003).

c. Sentences

In Queensland, the amendments to the *Juvenile Justice Act* encourage the use of diversionary options by police and the courts. Some of the sentence orders were renamed and a new “intensive supervision order” for children under the age of 13 was introduced. This was done because there was a gap in community-based options for children between the ages of 10 and 12 years. As noted in *Hansard* at the time the amendments were being introduced: “With the age threshold for a community service order set at 13 years. The only sentence option for high-risk children under this age has been probation, detention or release from detention on an immediate release order” (Queensland, *Hansard* 19 June 2002, 1895). “The order will be reserved for those children whose behaviour has put them at risk of a sentence of detention and will be made only after a presentence report is provided to a court outlining what will be provided and required under the order” (Queensland, *Hansard* 19 June 2002, 1896).

The Queensland *Penalties and Sentences Act 1992* does not apply to children. **Rather, the JJA** is a Code in regard to children's offences, and the sentencing principles are set out in the Act in Part 7. The Principles are in s150, and the sentencing options or orders available to a court are laid out in s175. These include:

- a reprimand ss175(1)(a),
- a good behaviour order ss175(1)(b), 188, 189,
- fines ss175(1)(c), 190–192,
- probation ss175(1)(d), 193–194,
- community service orders ss175(1)(e), 195–202,
- intensive supervision orders s175(1)(ea), Division 9 s203–206,
- conditional release orders s175(3) and s220 (generally ss219–226),
- detention s175(1)(g) and s176, and
- publication orders s234.

According to s150(2)(e), s3 and the Schedule 1 Charter of Juvenile Justice Principles Clause 17, detention is only to be used as a last resort. The maximum period set for sentence in a juvenile detention centre is one year, except for the most serious offences for which the court can impose a sentence of up to 10 years and life if particularly "heinous" (*JJA*, s176(3) and see s234 for publication in this situation). Juveniles can be sentenced to serve out their time in an adult prison if they are over 17 years (*JJA*, s333, and Part 6 Division 11).

Penalties for serious offences are set out in s176 (2), which states:

(2) For a serious offence other than a life offence, the court may order the child to be detained for a period not more than 7 years.

(3) For a serious offence that is a life offence, the court may order that the child be detained for —

- (a) a period not more than 10 years; or
- (b) a period up to and including the maximum of life, if —
 - (i) the offence involves the commission of violence against a person; and
 - (ii) the court considers the offence to be a particularly heinous offence having regard to all the circumstances.

Convictions against children cannot be recorded except where the penalty imposed is a fine, community-based order or detention. In these cases the recording of a conviction is discretionary (*JJA*, s183). Findings of guilt, however, form part of a child's criminal history and will be considered in subsequent court proceedings (*JJA*, s154).

There are important points of comparison of the provisions contained in the *YCJA* and the *JJA* related to sentencing. Provisions of the *YCJA* regarding the use of adult sentences are probably the most complicated, and potentially most controversial, of all parts of the legislation. The first section of the Act dealing with adult sentences states that "An adult sentence shall be imposed on a young person who is found guilty of an offence for which an adult could be sentenced to imprisonment for more than two years, committed after the young person attained the age of fourteen years." This section also spells out the more specific criteria that must be met before a young person can be given an adult sentence. In general, the *YCJA* allows for the use of adult sentences: (1) in cases where a youth is convicted of a *presumptive offence* [which includes either first or second degree murder, attempted murder, manslaughter, aggravated sexual assault, or 3 repeat convictions for any *serious violent offence* for which an adult could be sentenced to imprisonment for more than two years] (s2); (2) in *any other case* in which the youth court decides to make an order requesting that an adult sentence be imposed (s61); (3) provided that the Attorney General is of the opinion that sentencing a youth to a less severe *youth sentence* provided for in the Act "would

not be adequate to hold the young person accountable for his or her offending behaviour” (s72 (1)(b)).

Although this is a basic description of the key sentencing provisions of the Act, one could have predicted that there would be many controversial questions and issues that would emerge and come before the courts after the legislation was implemented. Some of the obvious questions are: How will the courts define “serious violent offences”? Is the test for determining who is liable for adult sentences clear enough? And, is it proper (or even legal) that young persons should be presumed to deserve adult sentences? Questions such as these are now being addressed by Canadian judges in the emerging body of case law surrounding the implementation of the YCJA. Unfortunately, an analysis of this relevant recent case law is beyond the scope of this article (however, see Bala and Anand 2004).

d. Publication of Identifying Information

The amendments to the Queensland JJA allow courts to publish identifying information about a child offender where the child has been convicted of a serious violent offence (s234). A District or Supreme Court may order the publication of a child’s identifying particulars where:

- it makes a detention order for a serious life offence;
- commission of violence against a person is involved;
- Court considers the offence particularly heinous; and
- it is in the interests of justice to do so.

The Submission from the Commission for Children and Young People (Qld) was not supportive of this amendment for the following reasons:

- the interest of the victim or the victim’s family is not advanced by publication of the offender’s identity as these parties already have a right to know who the offender is;

- publication is unlikely to have a deterrent effect as the offender has been sentenced to a set period of detention and the publication may actually elevate the young person to “hero status” amongst the young person’s peers in detention;
- the young person may be adversely affected by the publication on release and may be subject to adverse vigilante action outside the legal framework for dealing with young offenders as highlighted by the Bolger case in the United Kingdom;
- publication may have the effect of being contrary to the Juvenile Justice Principles that state that a child should be dealt with in a way that allows the child to be reintegrated into the community; and
- innocent parties such as the young person’s family and friends, in particular, siblings who are children, may be subject to vilification and victimisation (Queensland 2001).

The Children’s Court Annual Report notes that while “[t]hese changes have received a great deal of media attention, and indeed the topic was frequently mentioned in the parliamentary debate”, “[a]ny impression that the change in the law will lead to a significant increase in the publication of names of juvenile offenders is wrong” (Queensland, Children’s Court, 2002; Sampford 1998). More specifically, the Report notes that:

Firstly, the new provision s.191C does not apply to a Children’s Court constituted by a Children’s Court Magistrate. In statistical terms that means that for the current year 92% of young offenders will be unaffected by the provision. Secondly, a Court may only allow publication if the child is found guilty of a serious offence that is a life offence, involving the commission of violence against a person, and which in the Court’s

opinion is a particularly heinous offence... It can be seen therefore that the section will apply to only a very small number of offenders. Even if all these preconditions are satisfied, the Court retains an overriding discretion based on the “interests of justice” (Queensland, Children’s Court, 2002, 4).

Alongside this change there was an expansion of the “confidentiality/publication provisions with increased penalties for breaching these provisions” (Queensland, Department of Families and Legal Aid 2003, 6). To date, no serious juvenile offenders have been named and the Attorney General has rejected calls to strengthen the legislation on this issue (Odgers 2005).

This issue is also a controversial aspect of the new Canadian legislation. Provisions (in Part 6) relate to the publication of information on criminal cases involving young persons. Initially, during the first years of the operation of youth courts under the YOA, access to information on youth court cases was tightly restricted. Subsequent amendments to the YOA decreased the privacy protections afforded young persons (Bala 1997, 215–17). Part 6 of the YCJA contains several sections that further erode the principle of the accused young person’s right to privacy. The YCJA contains the general provision that “No person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.” The Act also contains a number of exceptions to this general rule. These include cases: (1) in which the information relates to a young person who is subject to an adult sentence; (2) in which the information relates to a young person who is subject to a youth sentence for a serious criminal offence, and an application is not made to ban the publication of information about the young person, and (3) where the publication of information is made in the course of the administration of justice, if it is not the purpose of the publication to make the information known in the community (Section 1(2)(c)). Part 6 of the YCJA also contains provisions which allow a youth

court judge to permit the publication of information that identifies a young person who is alleged to have committed an indictable offence, “if there is reason to believe that the young person is a danger to others” and if “publication of the information is necessary to assist in apprehending the young person.” In general, these and other sections of the YCJA relating to the publication of identifying information about young persons represent a significant departure from the provisions contained in the YOA. One indication of the controversy raised by this change is revealed in the fact that on the eve of the implementation of the YCJA in April 2003, the government of the province of Quebec made a formal reference to the Quebec Court of Appeal challenging the constitutionality of Part 6 of the YCJA along with several other parts of the Act, to which the Quebec Court of Appeal responded with the opinion that the Part 6 of the Act, along with specific provisions concerning the imposition of presumptive adult sentences, could be considered unconstitutional, and in violation of the *Canadian Charter of Rights and Freedoms* (Quebec, Court of Appeal, *Reference Re Bill C-7*, 2003; Barnhorst 2004; Anand and Bala 2003).

e. Diversion and Community Conferencing

Although in both Queensland and Canada, community conferencing can occur at any point in the processing of young offenders through the system, it is useful to discuss diversion and community conferencing together since the primary aim of both seems to be to reduce the extent of involvement the young offender has with the criminal justice system.

In Queensland, a Youth Justice Conference takes the form of a meeting between the people who have been affected by a young person’s crime. These include the young person and their family or other support people, and the victim of his or her offence (if they wish to attend) or their representatives and their support people. A convenor brings together the participants and a representative of the police, to assist them in talking about what happened, how they have

been affected by the crime and what actions the young person might take in order to alleviate that harm.

Youth Justice Conferencing is an alternative to having a matter dealt with by a court order, and aims to offer a less punitive approach.

There are three ways that a matter can be referred to a conference under the Queensland legislation. These are:

- Referrals can be made by a police officer, and in this way the young person is diverted from the court process (police referrals);
- A court has the power to refer a matter to conference as an alternative to sentencing (indefinite court referrals); and
- A court can also decide to refer a matter to a conference prior to sentencing to assist them in reaching an appropriate sentence order (pre-sentence referrals).

In all these cases, a matter can only be referred to a conference if the young person either admits to or is found guilty of the offence. There is no limit to the types of offence that can be referred to a Youth Justice Conference. The 2002–2003 Queensland Children’s Court Report states that:

The increased use of conferencing has enabled more young people, victims and families to participate in a process that promotes the reparation of the effects of crime. Conferencing provides an opportunity for the young person to admit the offence and accept responsibility for their actions. It also allows them to understand the consequences of their actions upon others so that they may begin to make amends. For victims and families, the process provides them with an opportunity to be heard, to tell their story and to be involved in decision making about the offending behaviour (Queensland, Children’s Court, 2003, 28).

Statistics on conferencing compiled by the Children's Court for 2001–02 and 2002–03 show a 38.2% increase in the use of conferencing over the period (Queensland, Children's Court, 2003, 29). The data also reveal a large (82.8%) increase in the use of conferencing for "minor assaults" and a smaller (8.1%) increase in the use of conferencing for "major assaults" including sexual assault. Conferencing is also being increasingly used for property offences, including theft, breaking and entering (26.7%) and property damage (45.5%).

Under provisions of the new YCJA in Canada, diversion and community conferencing are both encompassed in the term "extra-judicial measures." Extra-judicial measures are defined in the YCJA as any "measures other than judicial proceedings under this Act used to deal with a young person alleged to have committed an offence." The new provisions of the YCJA concerning extra-judicial measures extend the range of options that existed under the YOA for diverting young offenders out of the youth court system. In addition, the new legislation formalises and gives statutory recognition to forms of pre-trial diversion, such as police warnings, and police and prosecutorial cautioning, that were practised informally under the YOA (Bala 1997). Specifically, the YCJA contains more explicit enabling clauses that allow for police and crown prosecutors to use *warnings*, *cautions*, and *referrals* (Sections 6, 7, 8, 9) as an alternative to judicial proceedings. In addition, the legislation allows for the use of *extra-judicial sanctions* (ss10, 11, 12) with young persons whose offences are considered too serious to be dealt with only with a warning or caution, but not serious enough to warrant formal court proceedings. Subsequent related sections of the YCJA outline the role of *youth justice committees* (s18) in administering extra-judicial measures and provide for the creation of *conferences* (s19) (for example, family-group conferences and community justice forums) to assist youth justice officials in making decisions concerning the treatment of young persons.

Although it is far too early to tell what the effect of these new provisions will be over the long-term, there is already anecdotal and some statistical evidence that these new provisions of the YCJA are having at least a short-term effect in reducing court use and custody sentences for first-time and less-serious young offenders. According to data compiled by Statistics Canada, the country's youth incarceration rate in 2002–2003 hit its lowest point in eight years. Manitoba, which is usually only next to Saskatchewan for having the highest youth incarceration rate in the country, recorded a 30% decrease in youth custodial sentences, along with a substantial reported increase in the use of police discretion in cautioning youths without charging them (Canada, Statistics Canada 2004; Owen 2004). It has also been reported that crown cautions are now routinely being used in Manitoba to deal with less-serious property offences such as shoplifting, with a claimed 90% “success” rate (Rabson 2005). Similar reports of substantial short-term reductions in the use of incarceration of young offenders as a result of the YCJA have been published in various provinces, and youth justice court judges have noted anecdotally and in recent reported case law decisions, the effect of the YCJA in this regard (Bala and Anand 2004; Elliot 2005; Harris et al. 2004). At the same time, recent commentators have noted that there are still many problematic, and far from resolved, issues surrounding the implementation of extra-judicial and conferencing provisions of the YCJA (Bala and Anand 2004; Doob and Cesaroni 2004; Harris et al. 2004; Hillian et al. 2004).

It appears to be the case that there is much more systematic research being undertaken in Australia on outcomes of the implementation of youth justice conferencing. This research has examined satisfaction levels and recidivism aspects. For example, a recent South Australian-based study of youth justice conferencing and re-offending has demonstrated that “youthful offenders who were observed to be remorseful and whose outcomes were reached by consensus were less likely to reoffend” (Hayes and Daly 2003, 725). Another recent study of 200 young offenders who took part in conferences in southeast Queensland concluded that “while there remains uncertainty

about how conference features are related to re-offending, what offenders bring to their conference is highly predictive of what they do afterwards” (Hayes and Daly 2004, 167). Other Australian studies have reported participant satisfaction levels to be high (Strang 2001). According to Hayes and Daly (2004, 170), recent research on conferencing “shows that: (1) offenders and victims rate conferences highly on measures of satisfaction and fairness, (2) compared to offenders going to court, conference offenders are less likely to re-offend and (3) when conference offenders are remorseful and conference decisions are consensual, re-offending is less likely.” Similar conclusions have been arrived at in on-going follow-up research on young offenders and family group conferencing in New Zealand, where it has been found “that conferences that generate feelings of remorse and enable young offenders to repair the harm they cause their victims, to feel forgiven, and to form the intention not to re-offend are likely to reduce the chances of further offending” (Morris 2004, 285; Maxwell et al. 2004). In general, studies have found that the use of conferencing can make a contribution to preventing re-offending despite the importance of long-term negative risk factors that may initially lead youth to commit either property or violent offences.

However, youth conferencing in both Australia and Canada is also not without its critics. In the Queensland context, the following drawbacks have been identified:

- Children can be persuaded to admit guilt and have it over and done with rather than receiving a fair hearing;
- Children can make admissions without receiving legal advice;
- The defence of *doli incapax* “is lost if the child admits the offence”; and
- Police may be able to use information that comes out in the conference in regard to other offences.

- The conference may empower the victim at the expense of giving attention to developing a constructive plan to help the offending child and his or her family (Redfern Legal Centre 2000, 114).

In commenting on conferencing in Canada, with a particular focus on British Columbia, Doug Hillian and his co-researchers have highlighted the need for support for the youths taking part, for example by appointing a support person who will help the offender come up with a plan to address the harm done. More broadly, their analysis points to the cost implications of resourcing these programmes and the tendency for the “government bureaucrats” to be the main ones involved rather than the community (Hillian et al. 2004, 359). Harry Blagg (2001) also voices concern where conferencing is based on the “Wagga model” of reintegrative shaming. Blagg argues that it was not helpful for Indigenous offenders to participate in “Wagga model” (police-led) conferences because the model represented “an ‘Orientalist’ appropriation of a Maori decolonizing process... based on a one-dimensional reading of the New Zealand experience that involved a significant reduction in police powers.” Although youth justice conferencing in Australia is now being carried out based more directly on the New Zealand model, Blagg’s (2001, 225) more generalised concern about the arguably faulty assumption that “all indigenous peoples are amenable to conference-style resolutions and that all operate within shaming structures of social control” is still relevant, considering the fact that both in Queensland and Canada, the juvenile justice system is vastly overrepresented by Indigenous youth.

Conclusion

At the outset of this article we raised three questions. How similar and how sweeping have been the legislative changes introduced in each jurisdiction? What are likely to be some of the effects of the implementation of these new legislative regimes? How well does the legislation enacted in either jurisdiction address the

fundamental difficulties experienced by children who have been caught up in juvenile justice systems? Although we recognise that a great deal more empirical research needs to be done in order to address these questions, this article has attempted to provide a start in this direction, at the same time that it has attempted to point more generally to the crucial importance of comparative cross-national research on juvenile justice reform.

From our brief overview of the renovated juvenile justice systems of Queensland and Canada, it appears that there is a great deal of concern and goodwill within the respective governments of each jurisdiction to ensure that effective action is taken to address the problems of juvenile crime and recidivism. At the same time, our overview points out that in both jurisdictions, there seems to be a public perception that juvenile crime is “on the rise,” but that this perception is not totally supported by statistical evidence. In both jurisdictions, new legislation has been introduced to counter this perceived escalation. While proposing tougher penalties for serious violent offenders, both acts also make provision for alternate sentencing channels with a move to community conferencing. A significant aspect of these changes is the extent to which both jurisdictions appear to be moving in similar directions. They are at the same time experiencing a range of similar pressures, while endeavouring to cope with specific large-scale challenges such as the needs of children in remote areas, Indigenous youth and those experiencing poverty and lack of family nurturing.

Unfortunately, both jurisdictions also continue to demonstrate an over-representation of Indigenous youth in the juvenile justice system.

Government youth crime prevention policy obviously must entail more than simple legislative responses. There are fundamental difficulties surrounding the treatment of young offenders and “at-risk” youth that need to be addressed with more holistic interdisciplinary and interagency approaches (see, e.g., Green and Healy 2003; Howell 2003) and financial resources to ensure progress. Nevertheless, some of the legislative amendments canvassed in this article appear to

offer needed reforms that can be used to help address some of these fundamental difficulties. Particularly promising is the fact that the legislation in both jurisdictions clearly recognises the importance of minimising the use of incarceration as a response to youth crime except for repeat and serious offenders, while also providing increasingly clear mandates for the use of potentially more effective forms of restorative justice and community conferencing. In doing so, the legislative regimes of both jurisdictions also appear to be moving in a direction of greater conformity with principles enunciated in the United Nations *Convention on the Rights of the Child* (Bala 2003; Denov 2004). Hopefully, our initial comparative analysis of the experience of Queensland and Canada, framed within this broader international context, will help pave the way for further comparative research on juvenile justice across these and other jurisdictions.

Appendix A

	<i>Youth Criminal Justice Act (Canada)*</i>	<i>Juvenile Justice Act 1992, Amended 2003 (Qld)</i>
<i>Declaration of Principle</i>	<ul style="list-style-type: none"> • Provides a clear statement of goals and principles underlying the Act and youth justice system. • Includes specific principles to guide the use of extrajudicial measures, the imposition of a sentence of custody. 	<ul style="list-style-type: none"> • Sets out clear objectives in s2.** • Is supplemented by more specific principles which have been placed in the Schedules (s3).***
<i>Measures outside the court process</i>	<ul style="list-style-type: none"> • Creates a presumption that measures other than court proceedings should be used for a first, non-violent offence. • Encourages their use in all cases where they are sufficient to hold a young person accountable. • Encourages the involvement of families, victims and community members. 	<ul style="list-style-type: none"> • According to s11 police are required to consider other measures before taking proceedings against children, except in the case of serious offences. • Part 3 of the Act provides for the use of Youth Justice Conferences. (ss30–41). • Conferences permit the involvement of the victim, parents, family members, legal practitioners, police and support persons. Indigenous community members are also to be included where appropriate (s34).

<p>Youth sentences</p>	<p>Sentencing principles:</p> <ul style="list-style-type: none"> • Includes specific principles, including need for proportionate sentences and importance of rehabilitation. <p>Sentencing options:</p> <ul style="list-style-type: none"> • Custody reserved for violent or repeat offences. • All custody sentences to be followed with a period of supervision in the community. • New options added to encourage use of non-custody sentences and support reintegration. • Creation of intensive custody and supervision order for serious violent offenders. 	<p>Sentencing principles:</p> <ul style="list-style-type: none"> • s150 sets out the sentencing principles for the Act. The <i>Penalties and Sentences Act 1992</i> does not apply to children. <p>Sentencing options:</p> <ul style="list-style-type: none"> • Custody only if the court is satisfied that “no other sentence is appropriate in the circumstances of the case” (s208). • A detention order may immediately be suspended in favour of a “conditional release order” (s220).
-------------------------------	---	--

<p><i>Adult sentences</i></p>	<ul style="list-style-type: none">• Youth justice court empowered to impose an adult sentence, eliminating transfer to adult court.• Age limit for presumption of adult sentences for the most serious offences is lowered to 14 (however, provinces will have increased flexibility in regard to the age at which this presumption will apply within their jurisdiction).• The most serious offences that carry a presumption of an adult sentence are extended to include pattern of serious, repeat, violent offences.• The Crown can renounce the application of the presumption of adult sentence. In this case, the judge who finds the young person guilty has to impose a youth sentence.	<ul style="list-style-type: none">• Special provisions apply to children who become adults (Div 11, s132–148).• When offender must be treated as an adult (s140). <p>When offender may be treated as an adult (s141).</p>
-------------------------------	--	--

Publication	<ul style="list-style-type: none"> • Permitted if an adult sentence is imposed; or if a youth sentence is imposed for an offence that carries a presumption of adult sentence, unless the judge decides publication is inappropriate. • Permitted only after the young person has been found guilty. 	<ul style="list-style-type: none"> • Permitted where there is an order under section 176(3) relating to a child found guilty of a serious offence that is a life offence; and which includes the commission of violence and it is a heinous offence and it would be in the interests of justice to allow publication of identifying information about the child (s234).
Victims	<ul style="list-style-type: none"> • Concerns of victims are recognised in principles of the Act. • Victims have right to access youth court records and may be given access to other records. • Role in formal and informal community-based measures is encouraged. • Establishes right of victims to information on extrajudicial measures taken. 	<ul style="list-style-type: none"> • Under the Charter, victims are given the opportunity to participate in the process of dealing with the child (Charter 9). • The <i>Criminal Offence Victims Act 1995</i> applies to offences committed under the Act. • Victims can participate in conferences (s34).

<p><i>Voluntary statements to police</i></p>	<ul style="list-style-type: none"> • Can be admitted into evidence, despite minor, technical irregularities in complying with the statutory protections for young persons. 	<ul style="list-style-type: none"> • In a proceeding for an indictable offence, a court must not admit into evidence a statement made or given to police, unless the court is satisfied a support person was present with the child at the time and place the statement was made or given (Division 5, s29).
<p><i>Custody and reintegration</i></p>	<ul style="list-style-type: none"> • All custody sentences comprise a portion served in custody and a portion served under supervision in the community. • A plan for reintegration in the community must be prepared for each youth in custody. • Reintegration leaves may be granted for up to 30 days. 	<ul style="list-style-type: none"> • Leave of absence available for the purposes of reintegration (s269). • Also covered in the Charter (h) should receive appropriate help in making the transition from being in detention to independence.

* Table based on Canada Dept of Justice Youth Justice
<http://canada.justice.gc.ca/en/ps/yj/legis/diffs.html> (21/4/04)

** 2 Objectives of Act

The principal objectives of this Act are —

- (a) to establish the basis for the administration of juvenile justice; and
- (b) to establish a code for dealing with children who have, or are alleged to have, committed offences; and
- (c) to provide for the jurisdiction and proceedings of courts dealing with children; and
- (d) to ensure that courts that deal with children who have committed offences deal with them according to principles established under this Act; and
- (e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to —
 - (i) rehabilitate children who commit offences; and
 - (ii) reintegrate children who commit offences into the community.

*** See *JJA*, Schedule 1, Charter of Juvenile Justice Principles.

Works Cited

Ainsworth, Janet E. 1999. "Re-imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court." In *Readings in Juvenile Justice Administration*, edited by Barry Feld. New York: Oxford University Press.

- Anand, Sanjeev. 1999a. "Catalyst for Change: The History of Canadian Juvenile Justice Reform." *Queen's Law Journal* 24: 515–59.
- . 1999b. "The Good, the Bad, and the Unaltered: An Analysis of Bill C-68, the Youth Criminal Justice Act." *Canadian Criminal Law Review* 4: 249–70.
- Anand, Sanjeev, and Nicholas Bala. 2003. "The Québec Court of Appeal Youth Justice Reference: Striking Down the Toughest Part of the New Act." *Criminal Reports* (6th) 10: 397–418.
- Anand, Sanjeev, and James Robb. 2002. "The Admissibility of Young People's Statements Under the Proposed Youth Criminal Justice Act." *Alberta Law Review* 39: 771–87.
- Antonopoulos, Georgios, and John Winterdyck. 2003. "The British 1998 Crime and Disorder Act: A 'Restorative' Response to Youth Offending?" *European Journal of Crime, Criminal Law and Criminal Justice* 11: 386–97.
- Australia Bureau of Statistics (ABS). n.d. "ABS Themes — Children and Youth Statistics." At: <http://www.abs.gov.au/Websitedbs/c311215.nsf/0/35F3E8EFED45CE47CA256DE2008194BD?Open/> (accessed 21 January 2005).
- Australian Institute of Criminology. n.d. "Legal Definition of a Juvenile." At: <http://www.aic.gov.au/research/jjustice/definition.html/> (accessed 2 February 2005).
- Australian Institute of Health and Welfare. 1998. *Juvenile Justice and Youth Welfare: A Scoping Study*. Canberra: Australian Institute of Health and Welfare.
- Australian Law Reform Commission (ALRC). 1997. Report 84. *Children's Involvement in Criminal Process*. At: [<http://www.austlii.edu.au/au/other/alrc/publications/reports/84/18.html/>, 18.3 (accessed 31 January 2005).

- Bala, Nicholas. 1994. "What's Wrong with YOA Bashing? What's Wrong with the YOA? — Recognizing the Limits of the Law." *Canadian Journal of Criminology* July: 247–270.
- . 1997. *Young Offenders Law*. Toronto: Irwin.
- . 2003. *Youth Criminal Justice Law*. Toronto: Irwin.
- Bala, Nicholas, and Sanjeev Anand. 2004. "The First Months under the Youth Criminal Justice Act: A Survey and Analysis of Case Law." *Canadian Journal of Criminology and Criminal Justice* 46: 251–71.
- Ban, Paul. 2000. "Family Group Conferences in Four Australian States." In *Family Group Conferencing: New Directions in Community-Centered Child and Family Practice*, edited by Gale Burford and Joe Hudson. New York: Aldine de Gruyter.
- Barber, Jody, and Anthony Doob. 2004. "An Analysis of Public Support for Severity and Proportionality in the Sentencing of Youthful Offenders." *Canadian Journal of Criminology and Criminal Justice* 46: 327–42.
- Barnhorst, Richard. 2004. "The Youth Criminal Justice Act: New Directions and Implementation Issues." *Canadian Journal of Criminology and Criminal Justice* 46: 231–50.
- Bazemore, Gordon, and Lode Walgrave, eds. 1999. *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*. Monsey, NY: Criminal Justice Press.
- Bishop, Donna. 2000. "Juvenile Offenders in the Adult Criminal Justice System." *Crime and Justice: A Review of Research* 27: 81–167.
- Blagg, Harry. 2001. "A Just Measure of Shame? Aboriginal Youth and Conferencing in Australia." In *Youth Justice: History, Legislation and Reform*, edited by Russell Smandych. Toronto: Harcourt Canada.

- Brodeur, Jean-Paul, and Anthony Doob. 2002. "Locking Up Young Offenders for Their Own Good." Paper presented at XXVIth International Congress on Law and Mental Health.
- Burnett, Ros, and Catherine Appleton. 2004. "Joined-Up Services to Tackle Youth Crime: A Case-Study in England." *British Journal of Criminology* 44: 34–54.
- Butts, Jeffery, and Daniel Mears. 2001. "Reviving Juvenile Justice in a Get-Tough Era." *Youth and Society* 33: 169–98.
- Butts, Jeffery, and Ojmarrh Mitchell. 2000. "Brick by Brick: Dismantling the Border Between Juvenile and Adult Justice." In *Criminal Justice 2000, Vol. 2: Boundary Changes in Criminal Justice Organizations*. Washington, D.C.: United States, Department of Justice, Office of Justice Programs.
- Cahill, Lisa, and Peter Marshall. 2002. "Statistics on Juvenile Detention in Australia: 1981–2001." *Technical and Background Paper Series*, No.1. Canberra: Australian Institute of Criminology. At: <http://www.aic.gov.au/publications/tbp/tbp001.html/> (accessed 31 January 2005).
- Canada. Statistics Canada. 2004. *Juristat: Youth Custody and Community Services in Canada, 2002/03*, 24, 9.
- Canada. *Youth Criminal Justice Act*. 2002. At: <http://canada.justice.gc.ca/en/ps/yj/repository/6legisl/6000001a.html/> (accessed 2 February 2005).
- Carrigan, D. Owen. 1998. *Juvenile Delinquency in Canada: A History*. Toronto: Irwin.
- Carrington, Peter. 1998. "Changes in Police Charging of Young Offenders in Ontario and Saskatchewan after 1984." *Canadian Journal of Criminology* 40: 153–64.
- . 1999. "Trends in Youth Crime in Canada, 1977–1996." *Canadian Journal of Criminology* 41: 1–32.

- Carrington, Peter, and Jennifer Schulenberg. 2004. "Introduction: The Youth Criminal Justice Act — A New Era in Canadian Juvenile Justice?" *Canadian Journal of Criminology and Criminal Justice* 46: 219–23.
- Charbonneau, Serge. 1998. "Restorative Justice Trajectory in Quebec: 360 Degrees in the Last 20 Years." In *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research*, edited by Lode Walgrave. Leuven: Leuven University Press.
- Corrado, Raymond, and Alan Markwart. 1992. "The Evolution and Implementation of a New Era of Juvenile Justice in Canada." In *Juvenile Justice in Canada: A Theoretical and Analytical Assessment*, edited by Nicholas Bala, Raymond Corrado, Rick Linden, and Marc Le Blanc. Toronto: Butterworths.
- Chunn, Dorothy. 1990. "Boys Will Be Men, Girls Will Be Mothers: The Legal Regulation of Childhood in Toronto and Vancouver." *Sociological Studies of Child Development* 3: 87–110.
- . 1992. *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880–1940*. Toronto: University of Toronto Press.
- Condliffe, P. 1998. "Conferencing — Challenging the Parameters of the Criminal Justice System." *Proctor* August: 10–13.
- Coupet, Sacha. 2000. "What To Do With the Sheep in Wolf's Clothing: The Role of Rhetoric and Reality about Youth Offenders in the Constructive Dismantling of the Juvenile Justice System." *University of Pennsylvania Law Review* 148: 1303–46.
- Crawford, Adam, and Tim Newburn. 2002. "Recent Developments in Restorative Justice for Young People in England and Wales." *British Journal of Criminology* 42: 476–95.
- . 2003. *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Cullompton, UK: Willan Publishing.

- Daly, Kathleen. 2001. "Conferencing in Australia and New Zealand: Variations, Research Findings, and Prospects." In *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, edited by Allison Morris and Gabrielle Maxwell. Oxford: Hart Publishing.
- Daly, Kathleen, and Hennessey Hayes. 2001. "Restorative Justice and Conferencing in Australia." *Trends and Issues in Crime and Criminal Justice*, No. 186. Canberra: Australian Institute of Criminology. At: <http://www.aic.gov.au/publications/tandi/tandi186.html> (accessed 2 February 2005).
- Denov, Myriam. 2004. "Children's Rights or Rhetoric? Assessing Canada's Youth Criminal Justice Act and its Compliance with the UN Convention on the Rights of the Child." *International Journal of Children's Rights* 12: 1–20.
- Doob, Anthony, and Carla Cesaroni. 2004. *Responding to Youth Crime in Canada*. Toronto: University of Toronto Press.
- Doob, Anthony, and Jane Sprott. 2004. "Changing Models of Youth Justice in Canada." In *Crime and Justice: A Review of Research*, vol. 31 (*Special Issue on Youth Crime and Justice: Comparative and Cross-National Perspectives*), edited by Michael Tonry and Anthony Doob. Chicago: University of Chicago Press.
- Elliott, Liz. 2005. "Restorative Justice in Canadian Approaches to Youth Crime: Origins, Practices, and Retributive Frameworks." In *Understanding Youth Justice in Canada*, edited by Kathryn Campbell. Toronto: Pearson.
- Feld, Barry. 2003. "Race, Politics, and Juvenile Justice: The Warren Court and the Conservative 'Backlash'." *Minnesota Law Review* 87: 1447–77.
- Green, Ross, and Kearney Healy. 2003. *Tough on Kids: Rethinking Approaches to Youth Justice*. Saskatoon: Purich Publishing.
- Hackler, James. 1978. *The Prevention of Youthful Crime: The Great Stumble Forward*. Toronto: Methuen.

- Hatch, Alison, and Curt Griffiths. 1991. "Child Saving Postponed: The Impact of the Juvenile Delinquents Act on the Processing of Young Offenders in Vancouver." In *Dimensions of Childhood: Essays in the History of Children and Youth in Canada*, edited by Russell Smandych, Gordon Dodds and Alvin Esau. Winnipeg: University of Manitoba, Legal Research Institute.
- Harris, Peter, Brian Weagant, David Cole and Fern Weinper. 2004. "Working 'In the Trenches' with the YCJA." *Canadian Journal of Criminology and Criminal Justice* 46: 367–89.
- Hayes, Hennessey, and Kathleen Daly. 2003. "Youth Justice Conferencing and Reoffending." *Justice Quarterly* 20: 725–64.
- . 2004. "Conferencing and Re-Offending in Queensland" *Australian and New Zealand Journal of Criminology* 37: 167–91.
- Hazlehurst, Kayleen. 1996. *Crime and Justice: An Australian Textbook in Criminology*. Sydney: LBC Information Services.
- Hil, R., and L. Roughley. 1997. "Public Consultation and Juvenile Justice Reform: A Queensland Case Study." *Australian Journal of Social Issues* 32: 21–36.
- Hillian, Doug, Marge Reitsma-Street and Jim Hackler. 2004. "Conferencing in the Youth Criminal Justice Act of Canada: Policy Developments in British Columbia." *Canadian Journal of Criminology and Criminal Justice* 46: 343–66.
- Hogeveen, Bryan. 2001. "'Winning Deviant Youth Over by Friendly Helpfulness': Transformations in the Legal Governance of Deviant Children, 1857–1908." In *Youth Justice: History, Legislation, and Reform*, edited by Russell Smandych. Toronto: Harcourt Canada.
- . 2005. "'If We Are Tough On Crime, If We Punish Crime, Then People Get The Message': Constructing and Governing the Punishable Young Offender in Canada during the late 1990s." *Punishment and Society* 7: 73–89.

- Hogeveen, Bryan, and Russell Smandych. 2001. "Origins of the Newly Proposed Canadian Youth Criminal Justice Act: Political Discourse and the Perceived Crisis in Youth Crime in the 1990s." In *Youth Justice: History, Legislation, and Reform*, edited by Russell Smandych. Toronto: Harcourt Canada.
- Howell, James C. 2003. *Preventing and Reducing Juvenile Delinquency: A Comprehensive Framework*. Thousand Oaks: Sage.
- Karp, David, Matthew Sweet, Andrew Kirshenbaum, and Gordon Bazemore. 2004. "Reluctant Participants in Restorative Justice? Youthful Offenders and Their Parents." *Contemporary Justice Review* 7: 199–216.
- Klein, E.K. 1998. "Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice." *American Criminal Law Review* 35: 371–410.
- Laberge, Danielle, and Bruno Theoret. 1996. "The Juridical Processes of 'Keeping Them in Place': The Creation of Childhood in Manitoban Law." *Canadian Journal of Law and Society* 11: 135–66.
- Lawrence, J. 2004. "Our Child Outlaws: A Shocking 16,400 Crimes In A Year — And They Were All Committed By Kids In Queensland." *The Sunday Mail*, 9 May.
- Lynch, Mark, Julianne Buckman and Leigh Krenske. 2003. "Youth Justice: Criminal Trajectories." *Trends and Issue in Crime and Criminal Justice*, No. 265. Canberra: Australian Institute of Criminology. At: <http://www.aic.gov.au/publications/tandi2/tandi265.html/> (accessed 21 January 2005).
- Mackay, Robert. 2003. "Restorative Justice and the Children's Hearings: A Proposal." *European Journal of Crime, Criminal Law and Criminal Justice* 11: 1–17.
- Maxwell, Gabrielle, Venezia Kingi, Jeremy Robertson, Allison Morris and Chris Cunningham. 2004. *Achieving Effective Outcomes in*

- Youth Justice: Final Report*. Wellington, New Zealand: Ministry of Social Development.
- McCold, Paul. 2004. "Paradigm Muddle: The Threat to Restorative Justice Posed by Its Merger with Community Justice." *Contemporary Justice Review* 7: 13–25.
- Morris, Allison. 2004. "Youth Justice in New Zealand." In *Crime and Justice: A Review of Research, Vol. 31 (Special Issue on Youth Crime and Justice: Comparative and Cross-National Perspectives)*, edited by Michael Tonry and Anthony Doob. Chicago: University of Chicago Press.
- Muncie, John. 1999. "Institutionalized Intolerance: Youth Justice and the 1998 Crime and Disorder Act." *Critical Social Policy* 19: 147–75.
- Muncie, John. 2005. "The Globalisation of Crime Control: The Case of Youth and Juvenile Justice." *Theoretical Criminology* 9: 35–64.
- Muncie, John, and Barry Goldson, eds. n.d. *Comparative Youth Justice*. London: Sage. Forthcoming.
- Myers, David. 2003. "Adult Crime, Adult Time: Punishing Violent Youth in the Adult Criminal Justice System." *Youth Violence and Juvenile Justice* 1: 173–97.
- O'Connor, Ian, Kathleen Daly and Lyn Hinds. 2002. "Juvenile Crime and Justice in Australia." In *Juvenile Justice Systems: An International Comparison of Problems and Solutions*, edited by Nicholas Bala, Joseph Hornick, Howard Snyder, and Joanne Paetsch. Toronto: Thompson Educational Publishing.
- Ogders, Rosemary. 2005. "Law Change Ruled Out." *Courier Mail*, 12 January.
- Owen, Bruce. 2004. "Youth Incarceration Rate Shows Signs of Dropping." *Winnipeg Free Press*, 14 October.
- Peterson-Badali, Michele, Rona Abramovitch, Christopher Koegl and Martin Ruck. 1999. "Young People's Experience of the

- Canadian Youth Justice System: Interacting with Police and Legal Counsel." *Behavioral Sciences and Law* 17: 455–65.
- Palk, G., H. Hayes and T. Prenzler. 1998. "Restorative Justice and Community Conferencing: Summary of Findings from a Pilot Study." *Current Issues in Criminal Justice* 10: 138–55.
- Prichard, Jeremy. 2002. "Parent–Child Dynamics in Community Conferences — Some Questions for Reintegrative Shaming, Practice and Restorative Justice." *Australian and New Zealand Journal of Criminology* 35: 330–46.
- Québec. Court of Appeal. 2003. *Reference Re Bill C-7* [Québec (Department of Justice) c. Canada (Department of Justice)], *Criminal Reports* (6th) 10: 281–396.
- Queensland. 1999. *Report of the Commission of Inquiry into Child Abuse in Queensland Institutions*. At: http://www.families.qld.gov.au/departement/forde/publications/documents/pdf/forde_comminquiry.pdf/ (accessed 2 February 2005).
- Queensland. Children's Court. 2000. *Annual Report 1999/2000*.
- Queensland. Children's Court. 2002. *Annual Report 2001/2002*.
- Queensland. Children's Court. 2003. *Annual Report 2002–2003*.
- Queensland. *Commission for Children and Young People and Child Guardian*. 2001. "Submission on Juvenile Justice Amendment Bill 2001." At: http://www.childcomm.qld.gov.au/publications/pdfs/juvenile_justice_submission.pdf/ (accessed 11 June 2005).
- Queensland. Department of Families and Legal Aid. 2003. *Juvenile Justice: A Legal Practitioner's Guide*, 4th edition. At: http://www.legalaid.qld.gov.au/publications/juvenile_justice/juvenile_justice_guide.pdf/ (accessed 25 March 2004).
- Queensland. *Hansard* 19 June 2002.
- Queensland. *Juvenile Justice Act*, amended 2003. At: <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/J/JuvenJusA92.pdf/> (accessed 11 June 2005).

- Queensland. *Police Service Statistical Review, 2002 to 2004*. http://www.police.qld.gov.au/pr/services/statsnet/0203/pdf/08_offenders.pdf/ (accessed 31 January 2005).
- Rabson, Mia. 2005. "Crack Down On Teen Shoplifters, Tory Urgues: Warning Letters To Parents Rapped." *Winnipeg Free Press*, 3 February.
- Redfern Legal Centre. 2000. *Children's Court Guidebook*. Sydney: Redfern Legal Centre Publishing.
- Reitsma-Street, Marge. 1999. "Justice for Canadian Girls: A 1990s Update." *Canadian Journal of Criminology* 41: 335–63.
- Roberts, Julian. 2003. "Sentencing Juvenile Offenders in Canada: An Analysis of Recent Reform Legislation." *Journal of Contemporary Criminal Justice* 19: 413–34.
- Sampford, K. 1998. *The Naming of Juvenile Offenders*. Brisbane: Queensland Parliamentary Library. At: http://www.parliament.qld.gov.au/Parlib/Publications_pdfs/books/rb0998ks.pdf/ (accessed 2 February 2005).
- Sangster, Joan. 2002. *Girl Trouble: Female Delinquency in English Canada*. Toronto: Between the Lines.
- Strang, Heather. 2001. *Restorative Justice Programs in Australia: A Report to the Criminology Research Council*. At: <http://www.aic.gov.au/crc/reports/strang/> (accessed 3 February 2005).
- . 2004. "The Threat to Restorative Justice Posed by the Merger with Community Justice: A Paradigm Muddle." *Contemporary Justice Review* 7: 75–79.
- Trépanier, Jean. 1991. "The Origins of the Juvenile Delinquents Act of 1908: Controlling Delinquency Through Seeking Its Causes and Through Youth Protection." In *Dimensions of Childhood: Essays in the History of Children and Youth in Canada*, edited by Russell Smandych, Gordon Dodds and Alvin Esau. Winnipeg: University of Manitoba, Legal Research Institute.

- . 1999. “Juvenile Delinquency and Youth Protection: The Historical Foundations of the Canadian Juvenile Delinquents Act of 1908.” *European Journal on Criminal Policy and Research* 7: 41–62.
- . 2004. “What Did Quebec Not Want? Opposition to the Adoption of the Youth Criminal Justice Act in Quebec.” *Canadian Journal of Criminology and Criminal Justice* 46: 273–99.
- Urbas, Gregor. 2000. “The Age of Criminal Responsibility.” Canberra: Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice No 181. At: <http://www.aic.gov.au/publications/tandi/ti181.pdf/> (accessed 10 June 2005).
- White, Rob. 2003. “Communities, Conferences and Restorative Social Justice.” *Criminal Justice* 3: 139–60.

Notes

¹ The relevant research completed in different Western countries that highlights this two-directional shift is extensive. Illustrative examples of studies pointing to the more “adult-like” treatment of young offenders include: Ainsworth (1999); Bishop (2000); Butts and Mears (2001); Butts and Mitchell (2000); Coupet (2000); Feld (2003); Green and Healy (2003); Hogeveen (2005); Hogeveen and Smandych (2001); Klein (1998); Muncie (1999; 2005); Muncie and Goldson (2006); and Myers (2003). Recent studies highlighting the shift toward restorative and community justice include: Antonopoulos and Winterdyck (2003); Ban (2000); Bazemore and Walgrave (1999); Burnett and Appleton (2004); Crawford and Newburn (2002; 2003); Daly (2001); Karp et al. (2004); Mackay (2003); McCold (2004); Prichard (2002); Strang (2004); White (2003).

² These statistics are compiled from: *Australian Bureau of Statistics 3201.0 Population by Age and Sex, Australian States and Territories*. At: <http://www.abs.gov.au/Ausstats/abs@.nsf/lookupMF/B52C3903>

D894336DCA2568A9001393C1/; and *Yearbook Australia Population Projections*. At: <http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/1be550b68482564fca256f7200832f25!OpenDocument/> (accessed 21 January 2005).

³ These statistics are compiled from: *Australian Bureau of Statistics, Yearbook Australia, Aboriginal and Torres Strait Islander Population*. At: <http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca2568200192af2/23a92327d9f53633ca256f7200832f13!OpenDocument/>; and *Australian Bureau of Statistics, Yearbook Australia, Selected findings from the 2002 National Aboriginal and Torres Strait Islander Social Survey*. At: [http://www.abs.gov.au/ausstats/abs@.nsf/00000000000000000000000000000000/294322bc5648ead8ca256f7200833040!OpenDocument/](http://www.abs.gov.au/ausstats/abs@.nsf/000000000000000000000000/294322bc5648ead8ca256f7200833040!OpenDocument/) (accessed 21 January 2005).

⁴ For studies on the implementation of the Canadian *Juvenile Delinquents Act*, see: Anand (1999a); Carrigan (1998); Chunn (1990; 1992); Hackler (1978); Hatch and Griffiths (1991); Hogeveen (2001); Laberge and Theoret (1996); Sangster (2002); and Trépanier (1991; 1999).

⁵ For examples of the range of studies done on the implementation of the Canadian *Young Offenders Act*, see: Bala (1994; 1997); Carrington (1998; 1999); Charbonneau (1998); Corrado and Markwart (1992); Hogeveen (2005); Peterson-Badali et al. (1999); Reitsma-Street (1999).

⁶ The following discussion draws substantially on Hogeveen and Smandych (2001).

⁷ See, for example: Anand and Robb (2002); Anand (1999b); Bala (2003); Brodeur and Doob (2002); Doob and Spratt (2004); and Roberts (2003).

⁸ See: Bala and Anand (2004); Barber and Doob (2004); Barnhorst (2004); Carrington and Schulenberg (2004); Doob and Cesaroni (2004); Hillian et al. (2004); and Trépanier (2004).