Public attitudes and juvenile justice in Canada

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The issue of juvenile justice in Canada has, since the 1984 enactment of the Young Offenders Act, continued to evoke antithetical responses from the general public and from professionals. Whereas professionals express concern about increased youth incarceration rates and insufficient treatment, the public calls for ever harsher penalties. The purpose of the study described here was twofold. First we aimed to identify predictors of the public’s punitive attitude. Second, we tested whether provision of young offender background information would lessen the harshness of attitudes toward young offenders. The impetus for this study is the need to facilitate Canada’s compliance with Articles 37 and 40 of the United Nations Convention on the Rights of the Child, the key articles on juvenile justice. According to the Convention assumes that young offenders should be treated differently from adult offenders with age and immaturity taken into account. In sharp contrast are current movements in Canada to treat young and adult offenders in a similar manner.

The old Juvenile Delinquents Act (JDA), which the Young Offenders Act (YOA) replaced, had a paternalistic child welfare philosophy (Awad 1987). Those committing offences were believed to be misguided children in need of training and help. The YOA, in contrast, has a more legalistic philosophy (Awad 1987). Consistent with a more rights oriented society (Howe 1995), the YOA emphasized youths’ rights to due process of law, and rights to participate in decisions that affect them (Milner 1995). The principles underlying the YOA presume that children 12 years of age and older are capable of independent thought and of adult-like judgment, although still requiring special protections to enable the exercise of their legal rights. These principles are consistent with the provisions of the Convention. At this time, however, the rights of youth and their special protections are in little evidence. Youth continue to be detained with adults in adult facilities (under a reservation in the convention), there is wide provincial variation in application of the YOA.

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(provinces have jurisdiction in the enforcement of law in Canada); there are significant fiscal restraints on provision of treatment, and there are continuous public pressures for tougher sentences and harsher treatment of young offenders.

One rationale for replacing the JDA with the YOA was to provide consistent treatment for youth across the country. Under the JDA there were a number of differences in provincial prohibitions, variations in maximum age limits, and a wide range of financial commitment (Wilson 1990). However, the YOA goal of consistent treatment remains unrealized. The actual treatment of young offenders is found not only to be poor across the country, but also to vary substantially with geographic location (Lithwick and Lithwick 1995; Wilson 1990), and presiding judge (Doob and Beaulieu 1992). Most notable in terms of location is the province of Ontario, Canada's most populous province. Ontario has been unwilling or unable to implement the types of programmes and services required by the YOA and consistent with Article 40 of the Convention (Clark and O'Reilly-Fleming 1993). In Ontario, custody dispositions prevail; treatment orders are rare. This is at odds with Article 40 which calls for a variety of dispositions including counselling, care, guidance and supervision orders.

Ontario does not stand alone in its emphasis on custody dispositions. Lescheid and Gendreau (1994) note the general lack of attention to youth's needs and treatment aspects under the YOA, despite its principles. In fact, there is a substantial body of evidence showing juvenile incarceration rates have increased significantly under the YOA, and that overall Canadian youth are receiving less treatment or less effective treatment (Clark and O'Reilly-Fleming 1993; Doob and Meen 1993; Lescheid and Gendreau 1994; Reitsma-Street 1993).

Despite an obvious increase toward more punitive treatment of young offenders by the Canadian courts under the YOA, the general public continues to express outrage over the perceived lenient treatment of juvenile offenders (Kaihla 1994; Lescheid and Gendreau 1994). In response to the demands of the public, amendments were made to the YOA in 1992 and again in 1995 that reflect an even harsher more adult-like approach, one further removed from compliance with the Convention. For example, maximum sentences for first degree murder have been doubled (from five to ten years) parole has been made more difficult, automatic transfer to adult court is easier and the release of records is now permissible in some cases. Scholars and professionals agree that such measures are ineffective and likely to exacerbate existing problems for youth (Lithwick and Lithwick 1995). But the Canadian public remains unsatisfied. Recent surveys clearly demonstrate that the overwhelming majority of the Canadian public (82–90%) believe youth should be treated