BRIEF TO THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS IN RELATION TO THE YOUTH CRIMINAL JUSTICE ACT (C-3)

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TABLE OF CONTENTS

1. Introduction
2. Accountability
3. Victims Issues
4. Serious Offenders
5. Gang or Group Crimes
6. Counselling and Rehabilitation
7. Bail
8. Consecutive Sentencing
9. Publication of Names
10. Conclusion
11. Amendments for Consideration

1. INTRODUCTION

It is probably fair to note that few pieces of federal criminal justice legislation have been the subject of as widespread public discussion, and dissatisfaction as the Young Offenders Act (YOA). From our experience with Members of Parliament, we suspect that constituent inquiries and public petitions calling for dramatic overhaul of the YOA have also been on a near unprecedented level. In short, while disagreement obviously exists on what should be changed about the Youth Justice system in Canada, there can be no doubt that the desire for change is both real and widespread. Indeed, we cannot help but notice that t he federal government has actually chosen to not merely amend the existing Act (as is the normal practice) but instead to replace it with a statute with a different name. Whether the result is substantive reform or merely a cosmetic name change requires analysis of the problems under the old Act and the consequential responses under the new one.

At the outset, it should be acknowledged that the adult or regular criminal justice system in Canada is one, the procedures of which, generally apply to persons under the age of 18. Equally, our adult criminal justice system features broad discretionary consequences. Unlike many other jurisdictions, with some few exceptions, Canada does not use tariff or grid sentencing, relying instead on a judicial assessment of what is the appropriate disposition in each case. (Often referred to as 'this offender-this offence"). Thus, with a largely incorporated adult procedural process and a broad discretionary sentencing process already in place, the very need for a separate system of justice for young people, however defined, is by no means an obvious necessity. This is borne out by the practice in provincial courtrooms across the country prior to the introduction of the YOA when Provincial Court judges simply declared that they were now conducting proceedings under the Juvenile Delinquents Act. Thus, the choice of having a separate, age restricted, criminal justice system with specialized measures restricted to young people is just that, a choice. It is by no means inherently necessary.

Public concern with the YOA was never focused on the inappropriateness of its provisions in dealing with minor crime. Instead, it was repeat and serious violent youth offenders that were viewed as not belonging within the artificial and clearly more 'liberal' (to use the words of the Act itself) youth justice system. Incomprehensibly, C-3 goes to great and disturbing lengths to purge minor (and not so minor) offences from the youth justice system and clings to the most serious, violent and repeat offenders even more tenaciously than the YOA. In short, far from improving things, the drafters of C-3 have literally made a bad situation worse.

Our Office makes these submissions in the context of a petition prepared by an Ontario father of a young teen severely beaten by a gang of young offenders. It touches on, and expands, on a number of issues germane to both the YOA and its severely defective successor, C-3. It is, however, by no means a complete review of the Bill which we urge on all members of the Committee less they saddle Canadians with yet another failed youth justice system.

Petition Points and Commentary

1. **Violent young offenders must be held accountable and government must restore public safety as the priority of the justice system.**

Hard to disagree with. Unfortunately, C-3 does not deal with this at all. In fact, s. 2 of the Act actually defines a "non-violent offence" so as to exclude assault. Only assaults (rapes robberies etc) that "…cause or create a substantial risk of bodily harm" constitute 'violent offences'. Even then, C-3's measure of accountability for violent young offenders is palpably weak as before such a person is even *presumed* to be liable to adult consequences (themselves with wide discretion), they must be charged with killing someone or aggravated sexual assault (mere rape or armed robbery is not good enough) or be charged with a 'serious violent offence (causing or risking bodily harm is not enough - it must be *serious* bodily harm) AND have at least two previous convictions for serious violent offences. One other thing. The two previous convictions have to be entered on two different dates so getting convicted for 4 serial rapes, shootings etc wouldn't count if you had plead to them all on one day. Apparently that kind of record and a new serial rape or robbery would not be 'serious' enough to even presume you should be liable to adult penalties which, by the way, isn't binding and even if you're one of the handful of offenders to get transferred, the adult sentences include probation as an option. Accountability and public safety this isn't.

Further, rather than specify individual offences as qualifying, this Act unwisely uses subjective characterizations like serious violent offence, and presumptive offence. Thus, determination of that fact will be a litigatable issue, including being subject to appeal. This is not speculation or assumption; it is confirmed by sections 41(8) and 41(9).

As for the government listening that law and order or public safety are the priorities of the justice system, C-3, hard as it is to believe, is at least as bad as the old YOA. Consider section 3 and the Statement of Principles.

"DECLARATION OF PRINCIPLE"

Policy for Canada with respect to young persons

2. (1) The following principles apply in this Act:

(a) "the principal goal of the youth criminal justice system is to protect the public by
(i) preventing crime by addressing the circumstances underlying a young person's offending behaviour,
(ii) ensuring that a young person is subject to meaningful consequences for his or her offence, and
(iii) rehabilitating young persons who commit offences and reintegrating them into society;
(b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:
(i) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
(ii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected, and
(iii) a greater emphasis on rehabilitation and reintegration;
(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
(i) reinforce respect for societal values,
(ii) encourage the repair of harm done to victims and the community,
(iii) be meaningful for the individual young person and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and
(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of young persons with special requirements; and
(d) special considerations apply in respect of proceedings against young persons and, in particular,
(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,
(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,
(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and
(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.
(2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1)"

By stating the principles of the Act in so pre-determined a fashion, the Act, like its predecessor before it, has essentially rigged all the future decisions made in its name. Even in stating that 'protection of the public' is the principal goal of the youth criminal justice system, the Bill unashamedly defines what means will be used to achieve that protection. [Section 3(1)(a)]
Nowhere in these lofty principles are the concepts of deterring future offender conduct (specific deterrence), deterring other persons' conduct (general deterrence) or societal denunciation of wrongful conduct or conversely affirming valued societal principles (denunciation) appear. These are all, of course, principles of sentencing which have evolved as part of Anglo-Canadian judicial (and political culture) over centuries. Their absence, as it was in the YOA, is a guarantee of failure for this new Act no matter what snappy new title it is given. While there is no question that the age, immaturity, vulnerability and greater prospect of rehabilitation of a young person that has committed a crime should be taken into account (as they were before the YOA and are currently in the adult system), they are only factors that do not exist in a vacuum and are, instead, part of the competing interests that should be properly considered in each case. Once again, the federal government has opted for smoke and mirrors rather than substantive and honest improvement. Actually, in fairness there is a disclaimer of sorts in Section 3(2) which reads, in part, "This Act shall be liberally construed…" That's the problem.

Lest anyone think youth crime and violent crime is not a problem, consider the following statistics from Juristat.

FACT: Young people (12-17) constitute 8% of the population but make up 22% of persons charged with offences.
FACT: Violent youth crime has increased since 1986 by over 120% although half of this we are told is for 'minor assault'. How comforting.
FACT: Almost half (49%) of the youth case load is made up of 16 and 17 year olds but the increase in cases involving 12 and 13 year olds has ominously begun to rise.

FACT: 40% of all young offenders have previous convictions
And here's what's truly wrong with the YOA. In their Report on Youth Crime, the federal government stated, *"The most troublesome offender for the criminal justice system is the persistent offender, that is, the young offender that has been through the system many times, defined here with at least three previous convictions. "*

A full 10 % of the entire caseload of 111,027 (1997 Report) offences were committed by these persistent offenders. What does this mean? To use their own stats again, it means that if we take just the worst, violent and sexual offenders and exclude the 'minor assaults' and break and enters, for that same time period there were 10,966 serious violent offenders in 1995-96. Using their own figures again means that about 1100 of these worst crimes were committed by the chronic offender with at least three previous convictions who are exactly the group that our government, and others, suggest demonstrate the need to overhaul the YOA. Some might say (especially if you're a Justice Department bureaucrat) these worst offenders are covered by the transfer provisions of the YOA so what's the problem. Unfortunately, there is a very big problem. Of these 1100 most violent repeat offenders how many were actually transferred to adult court under this 'liberally construed' law in that time period? (And remember, this does NOT include first time killers or rapists.) It's just the offenders with at least three convictions or the worst of the worst, these 1100. How many were transferred to face adult time for their adult crimes? Seventy four. And that, in a nutshell is what's wrong and why so many continue to press Ottawa to listen, admit the grand experiment has failed and to put public safety and the safety of our kids who are overwhelmingly the predominate victims of violent youth crime ahead of the interests of repeat and serious violent young criminals.
It's why Ottawa has consistently been urged to:

- Allow prosecution of serious violent offenders under the age of 12
- Mandate adult trials and adult consequences for 16 and 17 year old offenders that commit serious violent crimes, or commit a crime using a weapon or repeatedly commit crimes like break and enter or auto theft or drug trafficking
- Permit sentencing courts to order restitution against the parents or guardians of a young offender where the court concludes the parents or guardians were negligent in supervising their child
- Allow publication of the names of young offenders convicted of serious offences
- Eliminate the current YOA rules that make it so difficult to get a statement from a young offender admitted into evidence even where it's shown to be freely and voluntarily given.

Before thinking that the situation is getting better, one should check the newest statistics from the federal government on youth crime where, unfortunately, it's clear that the situation is just more of the same.

- Rate of Violent youth crime *increased* by 2% from previous year (p. 3).
- Rate of violent youth crime *increased* by 9. 5% since 92-93 (p. 13).
- Number of violent youth crimes *increased* by over 2,000 cases since '92-93 (p. 13).
- Number of YOA charges (breaching conditions, ie ignoring the current YOA) *increased* by 37. 5% since '92-93 (p. 13).
- Rate of robberies committed by youths *increased* 35% from '95-96 (p. 3).
- Rate of assault with weapon or aggravated assault committed by youths *increased* by 16% from '95-96 (p. 3).
- Rate of youths failing to appear *increased* 12% since '92-93 (p. 3).
- Rate of youths breaching YOA orders *increased* by 30% since '92-93 (p. 3).
- Rate of Violent crime committed by female youths *increased* 25% since '92-93 (p. 5).

- 56% of all victims of youth violent crime were other youths (an additional 10% were children under 12) (p. 6).

- Number of youths convicted who were repeat offenders (recidivism rate) *increased* by 3% since '95-96 [40% to 43%] (p. 8).

- Number of youths convicted who were "persistent offenders" (at least 3 previous convictions) *increased* by 2% (10% -12%) from '95-96 (p. 9).

Not exactly a glowing endorsement of the current YOA approach to youth crime, which the new Youth Criminal Justice Act replicates and actually makes worse. We regret we cannot provide the number of most serious violent crimes committed by 'persistent offenders' that actually got transferred to adult court for '97-'98 as for '95-'96. It appears Juristat stopped gathering this information.

1. **Victims rights should be increased especially when considered in the context of the offender and a greater effort should be focused in schools on identifying and trying to rehabilitate violent young people before they become fixed as adult criminals.**

Enhancing victim rights or participation is an issue of mixed jurisdiction with the provincial 'administration of justice' power predominating over much of what the federal authority is. Notwithstanding this, federal legislation can, and does, have direct impact on *how* victims of crime participate in the criminal justice process and what they have as rights once a crime is committed. (How they are treated and the way in which the various players in the justice system interact with victims is generally provincial jurisdiction) Bill C-3 accomplishes very little with respect to enhancing victims especially vis a vis offenders.
A quick review of various provisions of the Bill demonstrate how little this new Youth Justice system will take into account the view of a victim in its operation.

- No reference to victims in relation to protection of public (or deterrence or denunciation) as part of principles [3(1)(a)].

- Only non mandatory direction in relation to victims in terms of proceedings [3(1)(d)].

- Section 3(1)©(ii) encourages "repair of harm to the victim and the community".

- Part I (ss4-5) do not require victim consent for not invoking criminal procedure.

- Section 4 makes no mention of victims whatsoever.

- Sections 6-8 permit (and arguably mandate) not laying charges where a crime has occurred without input from the victim. (Text below).

<u>"WARNINGS, CAUTIONS AND REFERRALS "</u>

6. *(1) A police officer shall, before starting judicial proceedings or taking any other measures under this Act against a young person alleged to have committed an offence, consider whether it would be sufficient, having regard to the principles set out in section 4, to take no further action, warn the young person, administer a caution, if a program has been established under section 7, or refer the young person to a community-based program.*

<u>Saving</u>

(2) The failure of a police officer to consider the options set out in subsection (1) does not invalidate any subsequent charges against the young person for the offence.

Police cautions

7. *The Attorney General may establish a program authorizing the police to administer cautions to young persons instead of starting judicial proceedings under this Act.*

Crown cautions

8. *The Attorney General may establish a program authorizing prosecutors to administer cautions to young persons instead of starting or continuing judicial proceedings under this Act. "*

- Above and beyond all of these measures to avoid the criminal process there also is now created 'extra-judicial sanctions [s. 10] which equally do not permit victim impact or veto.

- More ominously, section 10(5) severely restricts the long held right of citizens to initiate criminal proceedings by laying a private information and seeing it prosecuted unless the Crown intervenes and stays the process. This is a disturbing attack on the individual liberty of citizens in a democracy as it virtually extinguishes the notion that the courts do not belong to the Crown, residing instead with the population for whom the Crown acts as agent in criminal prosecution. This nasty little section means that the Crown will now functionally decide whether the criminal law is enforced or not and a citizen victimized by crime (and this is not a debate on whether what the law defines as a crime has been committed) will not be able to disagree and have resort to the public courts. This is an invitation to abandonment of the rule of law and the entire notion that citizens forego their personal claim against a person that has offended against them by relying on the Crown.

- Section 12 requires a victim to *request* notification of the extrajudicial sanction disposition and the identity of the offender which is retrogressive and contrary to the direction of victims rights legislation in this country.

- Youth justice committees are provided with a mandate [18(2)(ii)] to support the victim by soliciting their concerns and facilitating reconciliation with the offender which contemplates a highly restrictive role for victims (including ones who don't want reconciliation). Equally, while such Committees have roles to ensure community support for the offender, there is nothing mentioned about such support for the victim.

- Section 19 "conferences" (vague as they are) have no mandated obligation to consider victim participation includingat sentencing [Section 40].

- Section 23 creates a pre-charge screening process without reference whatsoever to consideration or participation of victims of crime.

- The definition of principles of sentencing in Section 37 includes, as the last phrase, "acknowledgement of harm done to victims". This afterthought reference demonstrates the low priority this Bill assigns to victims.

- Section 39(2)(b) does not make victim interview mandatory.

- Section 49 continues the non applicability of victim fine surcharges to convicted young persons although section 52 permits deduction of a per centage of a fine ordered to be paid into a victims fund. Sort of making the Crown pay the victim fine surcharge which is an odd way to demonstrate acknowledgement of harm to victims by the *offender.*

- Sections 55-9 seem to permit variation of the terms of various sentences and orders without notice to the Crown or victim.

- The application of the CCRA provisions with the new mandatory 1/3 off custodial sentences continues the non involvement of victims in the process.

While there are other examples of victims being excluded, ignored or worse in this Bill, this summary should suffice to illustrate its deficiency.

1. **Mandatory adult court for the most serious violent offenders and those who use weapons.**

Regrettably, C-3 doesn't even come close. There are no automatic transfers, irrespective of age, offence or past record. Ontario and others have suggested several variations on this including the following:

- lowering age of application of Act to 10 and 16 (the lower age {applicable only on serious violent offences} simply permits state intervention and removal following serious criminal conduct for which provincial child welfare is inadequate. The upper age of 16 is a reflection of the view that if you're old enough to drive to court, you're old enough to face what's there when you get there,

- mandatory adult trial and sentence for designated serious violent, weapons and drug offences for all persons over 14 and mandatory adult trial for repeat offenders charged with specified offences (break and enter/auto theft etc).

C-3 creates a highly artificial and complex process of potential transfer to adult court with one significant improvement from the YOA. In the proposed procedure, the Crown can provide an offender charged with the most serious offences with notice that it will seek an adult sentence should a conviction follow. While this potentially avoids the current absurd transfer process, it is still anything but certain that a violent young offender will face adult consequences for serious crimes. To the contrary, actual resort to custodial sentences has been limited and by designation of presumptive offences (excluding sexual assault or robbery even with a record of similar offences, for example,) C-3 perpetuates the abdication of any sense of balance of public and offender interest. It is, in short, more of the same albeit with a different name.

1. **Increased penalty for crimes of violence committed while in a group or 'gang'.**

Over the past number of years, violent crime committed by a group or gang of young people has become dramatically more prevalent in urban Canada. We are unaware of any statistical information which can pinpoint whether this is simply happening more frequently or that it is reported more prominently or a combination of the two. Frankly, whatever the reason, group violence, "swarmings" or group beatings of an individual are actions so repugnant to our sense of order that directly addressing through the criminal law (and youth justice) is appropriate. Making participating in a group that inflicts or threatens violence an *aggravating* factor in assessing consequences also has great practical worth as well. When such offenders are brought to court, inevitably each and every person involved becomes a 'follower' meriting more lenient treatment than their cohorts. This attempted diminution of criminal responsibility is, of course, the function of defence counsel but its artificiality need not be the position of the law. Instead, participation in a group that does or threatens violence should be a mandatory aggravating factor in sentencing rather than an excuse.

This approach was suggested in relation to Organized Crime amendments in the past and has an analogy in sections 718. 2 and section 264(4) of the Criminal Code. An amendment of this type should be introduced to apply both to appropriate Criminal Code offences and convictions pursuant to the Youth Criminal Justice Act. Wording such as what follows should be considered:

The Criminal Code of Canada is amended by adding the following after section 718.. 3:

718. 4 (1) Where a person is convicted of an offence involving violence or the threat of violence and the court imposing sentence is satisfied that the violence or threat of violence was committed as part of a group of two or more other persons, the court shall, in addition to any other sentence imposed, sentence the person to a period of incarceration of not less than thirty days and not more than two years.

(2) Any sentence imposed pursuant to sub section (1) shall be served consecutively to any other sentence imposed and consecutively to any other sentence the person was serving at the time the offence was committed or when the sentence was imposed.

The Youth Criminal Justice Act is amended by adding the number "718. 4" after the word section in section 49 of that Act.

An amendment such as proposed would make it clear that society recognizes the special circumstance of group violence and has resolved to convert it from an excuse into a liability…. . for the offender.

2. **Mandatory counselling for violent offenders in custody and, where required thereafter.**

This suggestion is a reflection, gained in the adult system some years ago, that protection of the public is best attained by a persons who choose not to re-offend and that, regrettably, this is not universally achievable. As such, it is also necessary to understand that dangerousness and the concurrent societal entitlement to take reasonable steps to be protected from it, does not end at warrant expiry date.

C-3 does add two new powers to a sentencing court by permitting placing an offender into an intensive support and supervision program run by a province (the terms and conditions of which are undefined) [41(2)(L)] or to attend a facility offering a program approved by the Province. [41(2)(m)]. Neither specifically authorize compulsory treatment or counselling and indeed the facility program can only be ordered if it does not interfere with normal school or work hours. [Section 53]. This is a rather limp way to compel treatment and counselling of violent young offenders, although arguably such a condition is possible as a general condition of a probation order. New subsection (q) permits a sentence of "intensive rehabilitative custody and supervision" for up to two years although with a direction that only the first portion be custodial This is likely 16 of the 24 months as per the new mandatory last 1/3 of all custodial sentences being served out of custody. [section 103/4] Finally, *only* the following violent young offenders qualify:

- those young offenders found guilty of a presumptive offence (murder/attempt murder/manslaughter/aggravated sexual assault or serious violent offence (potentially none of sexual assault, robbery etc. .) AND with two separate convictions (on different dates) for other such offences, AND

- suffering from a mental illness or disorder or emotional disturbance AND,

- a plan of treatment is in place that there are grounds to believe will reduce the risk of such further presumptive offences (more robberies or rapes apparently not good enough) AND,

- the Provincial Director consents.

While it will obviously be necessary to see how these measures work, or not, in the future, they certainly seem highly restrictive and technical in nature. Further, given the clear imposition on provincial authorities, it would be valuable to know if federal funding were to be forthcoming to meet these new duties. Alternatively, perhaps the federal correctional authorities may wish to consider taking administrative responsibility for the sentences imposed by their own legislation.

1. **Strengthening Bail, Consecutive Sentences and Identification of Offenders.**

More than one commentator, and indeed the federal government's own statistical agency, have remarked on the particular recidivism rates among some young offenders, including the commission of further offences while on bail. C-3 contains no new provisions designed to tighten or restrict access to bail for violent and repeat offenders. Instead it expands the application of section 7. 1 of the YOA whereby an undefined 'responsible person' can assume custody of a young offender pending trial irrespective of past record or previous failure to adequately supervise the youth. Further, section 29 of the new Act states presumptions against custody and prohibits custody in circumstances which are clearly relevant and legitimate in determining whether public safety is jeopardized by granting bail, not to mention the ultimate welfare of the young person. Additionally, section 29(2) appears to create a presumption against detention irrespective of whether there are legitimate reasons to be concerned that the young person will fail to appear or potentially violate conditions of release.

Worse, the new obligatory regime of "do nothing", "warn", "caution" or "refer", mandated under the soothing title of 'Extrajudicial Measures' (not to be confused with "Extrajudicial Sanctions"[you still don't have to go to court!]) also stipulates in Section 9 that no reference can be made to a youth having been so diverted in the future should their criminal conduct continue. This tendency to wilfully fudging the truth runs throughout this Bill and is shocking

inasmuch as, honesty and public safety aside, it appears that the lessons of the past have not been learned. As an aside, it is difficult to appreciate how, or why, on earth the police will keep track of these extrajudicial measures which is surely relevant in determining whether they are rightly invoked in a particular case or not.

Section 33(8) restricts the release of a young offender charged with murder to a youth court judge. It may be appropriate to transfer authority for this to a superior court justice as per section 522 of the Criminal Code and or add a designated list of serious offences for which only a youth court judge can grant bail.

While consecutive sentencing is permissible under the Youth Criminal Justice Act (as it was under the YOA), it is not mandated for any offence or combination of offences. To the contrary, the new Act would replicate the provisions of the CCRA which contradict the effect of consecutive sentencing insofar as offences committed while on conditional release are concerned. Put it this way, the artificial, secretive, public confidence destroying corrections system in Canada is now proposed as being part of a 'renewed' youth justice system that itself emerges from one of the most reviled and ridiculed public systems in Canadian history. Not exactly the best baggage to load onto a proposed new justice system.

There is currently a Bill before the Senate (c-251) expanding the applicability of consecutive sentencing on multiple murders and serial sexual assaults. It could be made applicable to C-3 in the same fashion as Part XXIII of the Criminal Code is pursuant to section 49 of the Act.

The prohibition against publication of names in the YOA was meant to prevent stigmatization of young people convicted of offences. Implicit in this approach was a recognition that there was a balance between the legitimate right of the public to know of persons convicted of violent and sexual offences and the interests of young persons to not be unduly burdened by a past they were trying to leave behind. Both the YOA and C-3 even more, fail to use this balance and instead extend the cloak of anonymity (and absence of deterrence and public confidence) to wholly inappropriate offences. Until this fundamental defect is remedied, specialized youth justice will always be less than what it needs to be.

THE YOA IMPROVEMENT ACT

ISSUE 1: Age Reduction to 12

Amend the definition of "young person" in section 2 of the Act by adding the words:

> *"...is ten years of age or more where that person is charged with an offence under Schedule 1 of this Act. "* [We need to select the offences for this list.]

ISSUE 2: Automatic transfers for repeat and serious offenders.

Section 16 of the YOA is amended by adding the following after sub section 1. 06:

> *(1. 07) "Notwithstanding any other provision of this Act, or the Criminal Code of Canada a young person who was 16 years of age or older at the time of the commission of an offence listed in Schedule 1 shall be tried in ordinary court and liable to the penalties proscribed for such an offense pursuant to the Criminal Code of Canada.*
>
> *(1. 08) Notwithstanding any other provision of this Act or the Criminal Code of Canada, a young person who was 14 years of age or older at the time of the commission of an offence listed in either Schedule 1 or 2 of this Act and who at the time of the commission of the offence had two or more*

convictions for offences listed in either Schedule 1 or 2 of this Act shall be tried in ordinary court and liable to penalties proscribed for such an offence pursuant to the Criminal Code of Canada.

(1. 09) Where a young person is convicted of an offence following trial in ordinary court pursuant to either sub section (1. 07) or (1. 08) and sentenced to a period of incarceration, the provisions of the Corrections and conditional Release Act and the Penitentiaries Act shall apply respectively thereto. "

ISSUE 3: Publication of names of repeat and serious offenders

Section 38 of the YOA is amended by adding the following after section 38:

(1. 01)"Where a young person is transferred to ordinary court pursuant to section 16 (1. 07) or (1. 08) of this Act or any provision of the act, and subsequently convicted of an offence listed in Schedule 1 or 2 of this Act, any restrictions on publication or identification of the convicted offender pursuant to this Act shall not apply. "

ISSUE 4: Greater Offender Accountability (victim fine surcharge, enforcing restitution orders and fines)

Section 20(8) of the YOA is amended by inserting the numbers "734. 5", "737", and "741" after the word "sections".

Section 20 of the YOA is amended by adding the following after sub section (11) *Parental Responsibility Orders:*

(12) "*Where a youth court makes a disposition under this section, it may, in addition to, or in combination with the disposition made against the young person, make a parental responsibility order by directing that a parent or guardian of the young person that was at the time of the commission of the offence responsible for the supervision of the young person, shall be required to pay an amount to be fixed by the court in compensation for financial loss, excluding general damages, suffered by any person as a result of the commission of the offence for which the young person had been found guilty. "*

(12. 1) In determining whether a compensation order pursuant to subsection (12) ought to be made the court shall consider the following:

a. any relevant information or evidence provided by the Crown, the young person, the parent or guardian of the young person or any person claiming loss as a result of the commission of an offence;
b. the adequacy of the supervision by the parent or guardian at the time of the commission of the offence;
c. any previous criminal history of the young person while under supervision of the same parent or guardian;
d. any violation of a court order by the young person while under the supervision of the parent or guardian and any role the parent or guardian may have played in the granting of such an order;
e. the Personal circumstances of the parent or guardian relevant to their ability to supervise the young person.

(12. 2) In any proceeding under this section the court may hear submissions or receive evidence under oath, as it deems fit.

(12. 3) No order shall be made under this section unless:

a. appropriate notice to the parent or guardian, as determined by the court, has been given;
b. following a hearing pursuant to this section a court is satisfied on a balance of probabilities that the supervision of the young person by the parent or guardian of the young person was inadequate and

that such inadequacy was materially linked to the financial loss suffered by any other person as a result of the commission of the offence;

c. the Crown makes application for a parental responsibility order.

(12. 4) A parental responsibility order shall be restricted to the following:

a. all or part of a financial loss, excluding general damages, incurred by any person as a result of the commission of an offence by the young person;
b. a fixed amount of costs incurred in the prosecution of the young person, including the cost of counsel provided to the young person.

(12. 5) Part XXIII of the Criminal Code applies to an order made pursuant to this section