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JUVENILE DELINQUENCY IN CANADA

THE REPORT OF THE DEPARTMENT OF JUSTICE

COMMITTEE ON JUVENILE DELINQUENCY

JUVENILE DELINQUENCY

IN CANADA

The Report of the Department of Justice
Committee on Juvenile Delinquency

Published by Authority of
The Honourable Lucien Cardin
Minister of Justice and Attorney-General of Canada

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Report of the Department of Justice Committee on

Juvenile Delinquency

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Report of the Department of Justice Committee on Juvenile Delinquency

The Honourable Lucien Cardin, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

As an advisory committee of the Department of Justice appointed to consider the problem of juvenile delinquency in Canada we have the honour to submit, respectfully, the attached report.

PART 1 INTRODUCTORY

CHAPTER 1

PROCEDURAL AND GENERAL

Reasons for the Inquiry

1. In 1960 the Correctional Planning Committee of the Department of Justice set out in a report to the Minister of Justice a long-range plan for the development of federal correctional services, with special reference to the penitentiary system. In that report the following statement appears:

> "The development of a correctional program along the lines that we recommend will not solve the basic problem of crime in Canada but will only serve to prevent the problem from becoming increasingly more acute. The federal system can only operate in relation to persons who have committed at least a first offence. The best way to prevent crime is to eradicate those influences that produce criminals. There should, therefore, be an organized, integrated approach in Canada to the problem of juvenile delinquency in order to discover, at an early stage, those children who are in danger of becoming delinquent and to correct their maladjustments at that time. Unless this is done there is no real hope of stopping the flow of an ever increasing number of young adult offenders through the criminal courts and into Canadian prisons." (1).

2. In 1961 Canadians knew that there was a problem of juvenile delinquency in Canada. What was not known was the nature and extent of the

problem. It was known that on the basis of the 1956 census some thirty-eight per cent of Canada's population were of the age of nineteen years or younger. By 1961 that figure had risen to forty-two per cent. The greatly increased birth rate that occurred during World War II and in the years thereafter was, of course, being reflected in the numbers of persons who were coming into their teens - numbers that annually were beginning to exceed by tens of thousands the numbers that became teen-agers in any previous year in Canada's history.

3. The penitentiary population (persons serving sentences of two years or more) had increased from 4,600 in 1952 to 6,800 in 1961, an increase of fifty per cent in nine years. There was no doubt that the persons who would be problems for the Royal Canadian Mounted Police, the Penitentiary Service and the National Parole Board in 1971 would be those who, in 1961, were attending grade school or were about to attend grade school. The persons who would be the federal government's problem in twenty years would be those who were born in 1961 or in the years immediately following. Obviously if Canada were to be able to do any planning in the 1960's to deal with the problem as it might exist in ten or twenty years it would be necessary first of all to learn what the problem is today and how, today, an attempt might be made to devise a solution for tomorrow.

Terms of Reference

4. Accordingly we were appointed on November 6th, 1961, to:

" (a) inquire into and report upon the nature and extent of the problem of juvenile delinquency in Canada;

(b) hold discussions with appropriate representatives of provincial governments with the object of finding ways and means of ensuring effective co-operation between federal and provincial governments acting within their respective constitutional jurisdiction; and

(c) make recommendations concerning steps that might be taken by the Parliament and Government of Canada to meet the problem of juvenile delinquency in Canada.

Scope of the Inquiry

5. At the outset it was necessary to decide upon the scope of the inquiry to be undertaken, With a narrow approach, only those specific areas within Parliament's jurisdiction would be investigated. Attention would then be

focused on the Juvenile Delinquents Act, R.S.C. 1952, c. 160 (hereinafter referred to as "The Act") and more remotely, on the penitentiary system as it is affected by delinquency on the part of young persons. On the other hand, a broad approach would involve an inquiry into fields largely outside the jurisdiction of Parliament, such as home, school, church, recreational activities and, indeed, the whole field of child welfare. Carried to the extreme, it could take in such questions as urban renewal and social reorganization. We felt that a somewhat broad approach would be required if we were to obtain a reasonable understanding of the total problem as it exists in Canada.

Conduct of the Inquiry

6. We commenced our study in January, 1962.

7. In order to understand the problem of delinquency - including such matters as prevention, treatment and research - we sought out the opinions of persons knowledgeable in a number of fields and activities. We met with officials of provincial government departments, with juvenile and family court judges, training school personnel, probation officers, university professors, private agencies, and with other individuals and organizations throughout Canada having an interest in various aspects of delinquency prevention and control.

8. Our meetings proceeded informally and, although evidence was not recorded as such, we made notes of the relevant points in the discussions. We also visited a number of institutions and facilities for children, and attended juvenile court sittings wherever possible. (See Appendices "A" and "B").

9. We commenced our work with high hopes that we would be able, within a relatively brief time, to marshal an impressive body of facts, experience and opinion concerning our subject. At an early stage, however, we came to realize that these hopes were unrealistic. To begin with, we found that there was no central clearing-house for relevant, accurate statistical and other information concerning the many aspects of the problem. In terms of experience we found a wide variation as between the several provinces, each acting within its own jurisdiction and in pursuance of its own independent policies. We can say that in interviews and briefs we encountered no lack of opinion concerning the many questions we raised. In writing this Report, however, we have kept in mind that opinion alone - not well-supported by evidence based on fact and experience - is not a sound base upon which to erect a legislative program or an administrative policy.

10. For these reasons we regard certain parts of our inquiry as being, of necessity, preliminary in nature. We think that more intensive and detailed studies should follow in a number of specific areas of the problem to which we shall refer. The many excellent briefs submitted by the various groups and the transcribed oral submissions should serve as useful background material for any

such studies. (See Appendix "C").

11. This inquiry has taken much longer to complete than was anticipated at the beginning. Since none of the Committee members had worked in the juvenile field we were not entirely aware of the complexity of the problems that the subject presents, especially under a constitution that divides jurisdiction arbitrarily and sometimes illogically between Parliament and the provincial legislatures. There was much for us to learn and we needed time to learn it. It took time to digest what we had learned and to translate it into proposals on which there was a substantial measure of agreement. We were five members, representing four divisions of the Department of Justice: the Criminal Law Section, the Royal Canadian Mounted Police, Penitentiaries and Parole. Three members were relieved of their ordinary departmental duties for some fifteen months to carry out the work of fact-finding and opinion-gathering. Just as that work was completed, however, it was necessary for them to resume their ordinary departmental duties. Thus the delay in producing this Report.

Acknowledgements

12. We wish to record our gratitude and appreciation for the help we received from the many persons who made oral presentations or were involved in the preparation and submission of briefs. The provincial government departments concerned with the problem of delinquency were, in every case, extremely co-operative. We wish to acknowledge in particular the assistance of the Judicial Section of the Dominion Bureau of Statistics in compiling statistical tables and graphs for our use.

Footnotes

1. Report of the Correctional Planning Committee of the Department of Justice (1961), pp.5-6.

CHAPTER 11

NATURE AND EXTENT OF JUVENILE DELINQUENCY IN CANADA

Problems of Definition and Statistics

13 To determine the nature and extent of juvenile delinquency in Canada we looked to the Judicial Section of the Dominion Bureau of Statistics. We received from the Bureau the statistical tables that are attached as Appendix "D"

14. We should point out immediately the danger of not exercising caution in interpreting the results shown in the various tables. If, for example, we are interested in determining how many juveniles committed acts of delinquency in Canada in 1961, we should expect the answer to be found in the publications of the Dominion Bureau of Statistics. Such is not the case. The publications merely record the number of juveniles found to be delinquent by the courts. Moreover, in this latter respect, the Judicial Section must depend upon the local courts for accurate reporting. Unfortunately, not all courts have been sufficiently diligent in the performance of their statutory duty. (1). The result is that we do not even have accurate statistics of the juveniles found to be delinquent.

15. Even if accurate statistics were available they would not fully answer our basic question of how many juveniles committed acts of delinquency in a particular year. It is well recognized that only a relatively small percentage of youthful delinquent conduct is brought to the attention of the authorities. The nature of the offence and the intensity of law enforcement are the important factors in this respect. Serious crimes such as murder and arson, for example, are usually reported to the police. However, many sex offences, petty thefts, assaults and the like are not reported. The size of the sample of such crimes varies directly with the intensity of law enforcement.

16. There is a further indeterminate factor that results from variations in the practices of law enforcement and welfare agencies. Differences as between provinces in child welfare legislation and in the administration of child welfare services account for part of the difficulty in interpreting available statistical data. (2). In one province, for example, it may be customary to deal with certain classes of cases under provincial child welfare legislation, whereas in another province proceedings are brought under the federal Juvenile Delinquents Act. Probably more significant, however, are variations of an administrative nature at the community level. Many juveniles whose conduct is known to be delinquent are not taken into court at all. Middle class children in particular are much less likely than children from lower socio-economic groups to become delinquency statistics because their behavioural problems are dealt with either in the home or by social agencies, apart altogether from formal legal proceedings. (3). Where a community lacks such social services a court hearing may be required regardless of the administrative disposition of a matter that might

otherwise be made. Whether a behavioural problem is considered to be a juvenile delinquency problem, therefore, often depends upon whether it is dealt with by a social agency or by a court - and, in the latter event, whether proceedings are brought pursuant to child welfare legislation or under the federal Act. (4). This point is notably borne out by the experience of two cities of comparable size in one province. The rate of court findings of delinquency in the one city was approximately four times the rate in the other in the same year, yet there is no reason to suspect that there is substantially more juvenile misconduct in the one city than in the other. (5).

17. The Act defines "juvenile delinquent" to mean

> "any child who violates any provision of the Criminal Code or of any Dominion or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute." (6).

This definition classifies together, both legally and statistically, the child who has contravened the Criminal Code and the one who has breached the provisions of any provincial or municipal by-law. The definition thus fails to differentiate between a violation such as truancy or a breach of a provincial liquor statute, on the one hand, and an act such as assault or theft, on the other. Every child inevitably violates some ordinance or law while growing up. All certainly do not fall within the popular conception of "juvenile delinquent". The juvenile courts would soon be overburdened if all juveniles who committed delinquent acts were brought to their attention. The fact is that most juveniles who commit minor violations are not brought to the attention of the court. In the result it is extremely difficult to get a clear statistical picture of the nature and extent of juvenile delinquency in Canada.

18. We had to decide, for our purposes, what should be counted or measured, that is, what we meant by delinquency. There are two principal choices. One was to count both official and informal cases. The other was to limit our analysis to officially recorded delinquency only. On reviewing the statistical material gathered throughout the country it became apparent that data on informal dispositions was not complete enough to justify its use. Moreover, as we have noted, policy varies widely in determining which children are brought to court. This is so as between provinces and, indeed, often as between cities in a single province. Consequently the ratio between informal and formal dispositions is not constant nor could it be estimated for the country as a whole. We therefore counted only those children who had been officially found

delinquent by the court, even though, as we shall show, many regard such a record of official delinquency as largely a matter of accident. (7).

19. In order to attempt realistic comparisons of trends and changes in juvenile delinquency we chose eight classes of offences that can reasonably be expected usually to be reported to the authorities. These classes are: assault and causing bodily harm; assault on a peace officer and obstructing; murder, attempted murder and manslaughter; breaking and entering; robbery; false pretences; theft; and forgery and uttering. The trends are depicted in Tables 1 and 2 of Appendix "D". (8). The Tables relate to the age group 7 to 15 years, inclusive, and show rates, per hundred thousand population, not only in respect of the selected offences listed above, but also for all offences reported to the Dominion Bureau of Statistics. (9). The Tables show rates for Canada as a whole and also for the individual provinces and territories.

20. We emphasize again that differences in court policy, differences in police policy, failure to report to authorities, and organizational differences all affect the data available. (10). This should be kept in mind when the Tables in Appendix "D" are being considered. We also emphasize that our statistics relate only to persons under sixteen years of age. We found it impracticable to include, for purposes of comparison, statistics relating to persons sixteen and seventeen years of age, over whom the court has jurisdiction in three provinces.

Trends in Juvenile Delinquency

21. In 1957 the overall population of Canada (including juveniles) was 16.6 million. By 1961 it had risen to 18.2 million, an increase of 9 1/2 per cent. During the same period the number of juveniles brought before the court increased from 371 to 435 per hundred thousand, a rise of 17 per cent, or almost double the rate of increase in the general population. The number found delinquent, per hundred thousand, increased from 308 to 392, or 27 per cent, nearly triple the rate of increase in the general population.

22. The number of those brought before the court for the selected offences that we have mentioned in paragraph 19 rose from 190 to 235 per hundred thousand, that is 23 per cent. The number of those found delinquent went from 160 to 220 per hundred thousand, or 37 per cent.

23. In summary, the significance of paragraphs 21 and 22 may be more readily apparent from the following table:

Percentage Increases Between 1957 and 1961

General Population	9.5%
Juvenile Court Appearances - all cases	17%
Adjudged Delinquent - all cases	27%
Juvenile Court Appearances - selected cases	23%
Adjudged Delinquent - selected cases	37%

24. These increases tend to become alarming when we consider what has been happening in respect of the juvenile population alone:

Increase in General Population of Persons Under 15 Years of Age since 1941 (in millions)

1941	1951	1956	1961
2.09	3.11 (increase 47%)	3.79 (increase 21%)	4.33 (increase 14%)

25. If the 1961 rate for selected offences is used in conjunction with a population projection it would seem to be inevitable to expect a marked increase in juvenile delinquency in coming years. The increase will become even more alarming if the 1957-1961 trend in frequency of offences, already noted, should continue.

26. The trends in juvenile delinquency in each of the provinces and territories of Canada between 1957 and 1961 are set out in Appendix "D".

Disposition of Juvenile Cases

27. Table 3 is a summary of the disposition of juvenile cases in Canada for the years 1957 to 1961, inclusive. It is of interest to note that the number of children placed on probation has increased in each of the years being considered. These totals (obtained by totalling the numbers placed on probation to the court and the numbers placed on probation to parents) were 3632 in 1957, 5323 in 1958, 5689 in 1959, 6840 in 1960 and 6944 in 1961. These totals represent 41%, 52%, 54%, 55% and 52%, respectively, of the number of children found delinquent in the successive years. It will also be noted that the number of children committed to training schools increased over the five-year period. In 1957 the total of such children was 1508, in 1958 the total was 1704, in 1959 the total was 1590, in 1960 it was 1696 and in 1961 the total was 1860. These totals represent 17%, 17%, 15%, 14% and 14%, respectively, of the number of children found delinquent for each of the years in question. There has, therefore, been a slight decrease in the proportion of children sent to training schools over the five-year period.

Employment Status of Delinquent Juveniles

28. Table 4 is a summary of the employment status of the juveniles found delinquent in Canada from 1957 to 1961, inclusive. Only a small percentage -

a high of 5.5% in 1957 to a low of 2.4% in 1961 - were employed at the time of being found delinquent. Similarly, only a small percentage were unemployed the high being 4.9% in 1958. The low of 2.9% was recorded in 1961. By far the largest number of children found delinquent were students. The lowest percentage in this category was 88.2 in 1959 and the highest was 92.6 in 1961.

29. Table 5 summarizes the same information according to the ages of the children, including those who appeared before the court and those who were found delinquent. As might be expected the largest proportion of those children having the status of employed or unemployed are found among the age 14 and 15-year-olds with the 15-year-olds contributing the higher number.

Educational Standing of Delinquents

30. Table 6 summarizes the data on the educational status of the children found delinquent in Canada (1957 to 1961 inclusive). It will be noted that children in Grades 6, 7 and 8 made up over 50% of those found delinquent in each of the five years.

31. Table 7 summarizes the information on educational status according to age, both for children appearing before the court and those found delinquent. According to this data children in Grades 6, 7, 8 and 9 contributed between 65 and 70 per cent of those found delinquent. It would appear also that a large proportion of the children were a year or more behind the average grade for their age. In regard to the age groupings of the children found delinquent those 12 to 15 years, inclusive, accounted for the greatest proportion. Indeed, this age group constituted 86 to 88% of the total number found delinquent during the five-year period. Children under 10 years of age were only a very small percentage of those found delinquent.

The Youthful Offender

32. In this Report we describe the 16 to 24-year-old delinquent as the "youthful offender".

33. Table 8 covers both Canada and the provinces and sets out the rates per hundred thousand for the age group 16 to 24 years, inclusive, both for all offences and for the selected offences. The rates for Canada in this group are more than twice as high for all offences than the corresponding rates for juveniles, that is, those under sixteen years. The difference in the rates for selected offences for Canada between the youthful offenders and the juveniles is even more pronounced, being more than three times as high for the older group.

Disposition of Youthful Offender Cases

34. Table 9 indicates the disposition of youthful offender cases by percentages over the five-year period, 1957 - 1961. It will be noted from this graph that the use of suspended sentence coupled with probation has increased for this age group commencing with the year 1959. It also indicates that there has been a decrease in the use of fines as a disposition, whereas the percentage of cases in which a jail term was imposed has increased slightly. Table 10 summarizes the same data.

35. Table 11 sets out the same information on the disposition of youthful offender cases by totals, both for Canada and for the individual provinces. It will be observed that the number of youthful offenders sent to penitentiary has remained relatively constant since 1958.

Educational Status of Youthful Offenders

36. Table 12 indicates the educational status of youthful offenders by percentages. Table 13 summarizes the same information. The youthful offender group, having an educational status ranging from illiterate up to and including Grade 8, contributed from 49% to 54% of those convicted over the five-year period. Table 14 summarizes the same information on educational status according to totals.

Employment Status of Youthful Offenders

37. Tables 15 and 16 summarize the data on the employment status of the youthful offender group, while Table 17 provides the same information according to the age of the offender. It will be observed that the percentage unemployed in this age group ranged from a low of 9.8% in 1957 to a high of 11.8% in 1959. The percentage in the student category increased from 7.9% in 1957 to 11.8% in 1961. Table 17 indicates that the 16 and 17-year-olds contributed the highest totals both to the unemployed group and to the student group when compared with the other age categories over the five-year period.

Nature of Juvenile Delinquency

38. Table 18 depicts the nature of delinquencies committed by juveniles in the period 1957-1961. Offences against property showed a steady increase over the five-year period. The two other large categories of delinquency - incorrigibility and vagrancy, and immorality - fluctuated considerably over the five years under review. No particular trend can be depicted for them. Policy with regard to the referral of these two categories of delinquency to juvenile court varies considerably throughout the country.

39. The number of juveniles found delinquent by the courts in Canada has increased in each of the five years under consideration. This increase was greater, with the exception of all offences for 1959, than the increase in the juvenile population, ages 7-15, inclusive.

40. The largest proportion of delinquent acts in Canada consisted of offences against property. It would appear that offences against the person did not increase, certainly not at the same rate as offences against property. Delinquencies involving acts of violence were relatively infrequent. We were informed that gang delinquency is generally not a problem in the large urban areas of Canada.

41. It would appear that, so far as one can judge from statistical data of such a general nature, the problem of juvenile delinquency is more evident in Ontario and British Columbia. The rates for British Columbia are significantly higher than the rates for Canada and the other provinces, although there was a decrease in that province in 1961. We observe that it is difficult to draw conclusions concerning juvenile delinquency in the Province of Quebec because the Act is not in force throughout the entire province. Moreover, many cases involving delinquency appear to be dealt with in that province under the rather broad provisions of the provincial Youth Protection Act. (11).

42. Although rates are not available for comparison between urban and rural areas there is certainly more reported delinquency in urban areas. When making comparisons, however, between provinces or areas the possibility of rates or percentages being influenced by differences in policies between the areas should always be considered. The fact that services are more highly developed in one area than another may also be significant in producing variations in rates and percentages.

Improvement of Statistics

43. The Dominion Bureau of Statistics should be encouraged to continue its efforts to integrate and improve the accuracy of its various statistical series on crime and delinquency. The eventual aim should be to develop statistics that will make it possible to produce data on the number of juveniles at any or all stages of the administrative process. Emphasis should also be placed upon developing rates for recidivism. This would give the authorities a more complete picture of the success of present treatment and after-care services.

Causation

44. It is unfortunate that in Canada virtually nothing in the way of significant research has been undertaken into the causes or the characteristic features of delinquency that have application in the specific context of

Canadian conditions. Much has been written on the subject, in many countries, but it remains true that nowhere has a complete theory of causation been verified scientifically. In a Report of this nature it is not possible to deal briefly with all - or even fully with a few - of the many theories that have been advanced. We shall, however, set out briefly the theories that are generally regarded as having significance. In doing so our concern is not with facts that cause a child to commit some petty act that might, under the present law, nevertheless result in a finding that he is a delinquent. Instead we are concerned with the factors that cause a child to steal, commit an assault or, in effect, to do an act that, if done by an adult, would be regarded as a criminal offence.

Theories of Causation

45. Whatever may be the private citizen's view concerning the causes of delinquency it is clear that there is no agreement among the professionals, and in many cases not even among the same class of professionals. In his 1951 study for the World Health Organization, Bovet observed: "The inquirer who seeks by reading or discussion to ascertain current opinions on juvenile delinquency must be struck by the following two facts: first, each point of view, whether calmly or forcibly expressed, is based on a deep-rooted conviction; and secondly, it is impossible to demonstrate objectively the validity of any one opinion." (12). Similarly, the authors of a more recent assessment of current mental health and social science knowledge about juvenile delinquency concluded:

> "....A completed theory of the causes of delinquency does not exist. As a 'general' theory, quite possibly it never will, for the term delinquency covers such a multitude of disturbances that we dare not impute any common features to this collection in advance of a study of the data. And when the data are studied it becomes clear that there are many 'kinds' of delinquency, no matter whether the distinctions are made on the basis of kinds of act, seriousness of the act, implications for repetitions or for other acts, importance of the group in delinquency, family background and emotional development of the offender, or any other aspect chosen for study....
>
> Theoretical accounts are usually addressed to a particular subset of delinquencies, even though this may not be made clear by the author of the account....There are differences in theoretical accounts of delinquency which are not now reconciled. This state of affairs is a source of challenge and stimulation to the scientist, since

> systematic knowledge grows only by examination of facts that do not fit current theory. But the same state of affairs is confusing and perhaps discouraging to the layman who seriously wants to understand what the experts think about delinquency....". (13).

46. Attempts to explain crime and delinquency are customarily divided into two principal classifications: theories that emphasize the individual characteristics of the offender and those that focus attention upon the environment. For convenience we quote the following concise statement of these differences of approach from a book by a leading English authority on criminology:

> "....Explanations of the first type envisage the delinquent as an individual who is in some way more prone to delinquency than the non-delinquent, even in the same environment. When explanations account for this proneness they subdivide into two groups, those which attribute it to some inherited or at least congenital feature of the individual's constitution, and those which attribute it to some stage of his upbringing. Environmental explanations, on the other hand, place less emphasis on individual differences of disposition than on differences between the environments of the delinquent and the non-delinquent. Some such theories place the greatest weight on the non-human aspects of the environment, such as the economic climate; others on the human environment, in other words the associates, neighbours, and other acquaintances of the delinquent." (14).

47. The view that juvenile delinquency can be largely attributed to environmental factors finds its most prominent expression in the writings of sociologists. Early sociological studies, notably in the City of Chicago, observed a close relationship between high rates of delinquency and the zones of social deterioration in the inner-city, slum areas of large urban centres. These areas, often devoted to industry or entertainment, are characterized by poor housing and exploiting landlords, and sometimes also by the existence of organized crime. Studies of these "interstitial" or transition areas resulted in a number of findings that have been widely accepted as valid:- (a) that delinquency is heavily concentrated in deteriorated slums located in those portions of a city which were once residential but are changing to commercial and industrial districts; (b) that these areas retain their high delinquency rates in spite of population changes, including successions of various national descent or racial groups; (c) that as residents of these areas

move elsewhere, the delinquency rates of their children decrease; (d) that delinquents from these areas have higher recidivism rates than other delinquents, and that their age at first delinquency is ordinarily lower than the ages of first offenders in low-delinquency areas; and (e) that delinquency in such areas is usually group behaviour from the outset, and becomes group behaviour to an even greater extent, including participation in the activities of gangs, as youth becomes more advanced in delinquency.

48. In consequence of findings of this kind, sociologists came to doubt explanations of delinquency that rested on theories of constitutional defect or psychological malfunction. While the emphasis of individual writers differs, generally speaking the sociologist takes the view that most delinquent behaviour can be accounted for through the ordinary processes of social learning, or, in a broader sense, that it is in part a reflection of certain structural features of contemporary society that are conducive to the development of delinquency. A great deal of delinquent behaviour occurs, it is said, because of the normal tendency of children and young persons to imitate individuals or groups who serve as models for such behaviour. Some theorists have regarded delinquency as primarily a matter of "enculturation", envisaging the youth of the slums as learning criminal behaviour in much the same way as young persons in less disadvantaged areas learn more acceptable attitudes and ambitions. In particular, attention has focused on the so-called "delinquent subculture", a concept which, although variously interpreted, represents an attempt to explain the existence in these inner-city areas of powerful traditions in which delinquent and criminal behaviour is the approved way of life. Other theorists, conscious of the fact that conventional and anti-social values are both to be found in areas of high delinquency, have attempted to formulate an explanation of crime causation in terms of the various intimate personal and group associations to which a young person is exposed. On this view, criminal behaviour is seen as essentially the outcome of associations which in their frequency, duration, priority and intensity, preponderate more in favour of law violation than the reverse and provide the individual with the acquired techniques, attitudes and rationalizations that will support one or another kind of delinquent endeavour. Still other theorists, including those who have concerned themselves with "delinquent subculture" analysis, emphasize the gap that exists between the aspirations of young persons in the less privileged sectors of our society and the means that are realistically available to realize those aspirations. Our society, they point out, places an extremely high premium upon values such as competitiveness and material success, extolling such values through the school system, the communication media and otherwise. Unable for a number of reasons to compete effectively with children from the middle or upper class levels of society, the "lower-class" youth, it is suggested, is driven to obtain these culturally prescribed goals by illegitimate means, or alternatively, to recoup his loss of self-esteem by developing in combination with other status-deprived youth a set of values (e.g., "hanging around" instead of industriousness; aggressiveness instead of self-control) that constitute, in effect, an open rejection of conventional values. So conceived, much delinquent behaviour can be

regarded as socially induced, the result of pressures that are exerted, in the words of one writer, through "the composite emphasis of this uniform cultural value of success.... and the fact of a social organization which entails differentials in the availability of this goal." (15).

49. The principal alternative approach to the explanation of delinquency is to be found in the writings of psychiatrists and psychologists, who regard delinquent behaviour, broadly speaking, as indicative of some failure in the personal development of the individual offender. The psychiatrist and the psychologist, each from his own professional perspective, is concerned with the development of the whole personality of the child from birth to maturity. Delinquent behaviour is thought of generally as reflecting one or another form of personality disorder or social maladjustment, a condition which in turn is attributed, in large part, to disturbed personal relationships between individuals, particularly within the context of the family. Once again there are various interpretations of the way in which disturbances in the psychological development of the personality occur. One theory, proceeding on the assumption that all human behaviour originates in basic impulses that are essentially aggressive and antisocial in nature, holds that in the delinquent such drives are exceptionally strong, or that the customary agencies of control have failed adequately to assume the proper hold over conduct. Delinquent behaviour may thus be explained, for example, by a defect in or an arrest of the ego development of the child's personality which renders the child susceptible to antisocial influences in his environment. Another theory conceives of delinquency, not as a product of inborn impulses, but as a symptom of an underlying problem of adjustment. On this view, delinquency is regarded as an unfortunate outlet or mode adjustment seized upon by a child who has otherwise failed to cope with his own particular feelings of frustration, anxiety, conflict or guilt. A number of writers have placed special emphasis upon the harmful consequences for personality development of emotional disturbance experienced by a child during infancy, and in particular upon the effects of maternal deprivation in early childhood. Others have attempted to determine the relationship between delinquency and such factors as parental rejection, neglect, inconsistent and unpredictable discipline, and overstimulation amounting in some cases to a covert, even though unintended, collusion by the parent in the child's antisocial behaviour. That the understanding of delinquent behaviour provided by this kind of analysis of individual psychology is of considerable importance in the overall development of programs for the prevention and control of juvenile delinquency is not seriously doubted. As a complete explanation for crime and delinquency, however, theories based on conceptions of personality disturbance are commonly criticized on the ground that they do not adequately explain why there are a large number of delinquents who do not show any marked indication of mental illness, and why the great majority of delinquents come from the lower socio-economic sectors of our society.

50. Quite apart from the sociological and psychological factors that may be involved, there are those who hold the view that hereditary factors are of prime importance in the development of delinquency. More than half a century

ago the theory of the "born criminal" was popular among criminologists. The idea of a person being born with criminal tendencies fell into disfavour in later years, although today it seems to be recognized that hereditary factors do play an important part in the development of personality. Hereditary considerations, however, are thought to be only part of a number of factors that must be taken into account when one attempts to arrive at an explanation of delinquent behaviour. Under this view one does not speak of "inherited delinquency". It is said that what can be inherited is temperament and certain tendencies of character which, in a given set of circumstances, favour the later appearance of delinquent behaviour. There are two particular features of a biological or constitutional nature that have received some discussion in the literature. One is the fact that, however the findings are to be interpreted, there is a well-established relationship between certain kinds of juvenile delinquency and more muscular types of physique. A second, as explained in a World Health Organization publication, is the conclusion "that in many countries youths are reaching their maximum height at an earlier age and that lately the average age of puberty has been going down at the rate of about half a year every ten years." (16). The significance of this latter observation lies in the fact that, given the tendency in our society to treat young persons as psychologically immature to an ever increasing age, the effect is to create - with consequences that are not altogether clear - a widening gap between early physical maturity and a delayed psychological maturity.

51. The factor most frequently mentioned to us throughout the country is the importance of the role of the family in preventing delinquent behaviour. (17). The role of the family is under constant change and pressure. For example, the pluralism of value systems inherent in a democracy, the increasing geographic mobility of the population connected with the urbanization of Canada, and the trend towards impersonality resulting from urbanization all contribute to effect the quality of family life of the child. The forces of social change, it has been suggested, "can, through the medium of parents who are themselves intimidated by these changes, have direct effects on the basic security and growing awareness of the very young child." (18). Nevertheless, the precise ways in which poor family life contribute to delinquency has not as yet been determined. Certainly it is clear that not all children who experience an inadequate family life do, in fact, become delinquent. It is probably safe to assume, however, that factors that have harmful consequences for the family also tend to make many children more vulnerable to delinquency. Among the factors frequently cited are the following: - (a) the absence of one or both parents as a result of death, desertion, imprisonment or occupational necessity; (b) the incapacity of one or both parents because of physical illness, mental illness, alcoholism or unemployability; (c) material deprivation in the family because of unemployment, low income or poor management; and (d) emotional deprivation in the family because the child was not wanted, the parents are immature, there is a marital discord between the husband and wife, or the overcrowded conditions in the home result in a lack of privacy.

52. As will have become apparent, there are numerous social factors that

have implications for juvenile delinquency. We have previously noted, for example, the view that children become delinquent because they model their behaviour after delinquent adults. This does not mean, of necessity, that delinquency is the direct result of a child's imitation of a particular person. The growing child draws fragments of his model from various sources, that is, not only from individuals and groups with whom he is closely attached, but also from what he observes taking place in the community at large. Many persons have pointed to the prevalence in our society of values that tend to promote attitudes conducive to delinquency. It is said that as adults we are strongly individualistic and fiercely competitive, that we are childishly emulative and above all materialistic, and that these aspects of our social behaviour all stress, in their achievement, some disregard for the welfare and the rights of other persons.

53. We tend to become more and more a nation of transients and the continual movement of families from place to place can be especially difficult for growing children who must face a series of adjustments and readjustments. We are becoming more and more city dwellers rather than rural dwellers. We become more and more industrialized. The consequences of these broad social changes for childhood and adolescent development are difficult to assess. Illustrative of the kind of speculative comment to which this whole problem has given rise are the following observations contained in a study from which we have had occasion to quote before:

> "The transitional aspects attendant upon mobility and urbanization lead to a number of broad effects. One is the absence of the informal system of social controls usually found in the settled community. The second effect is the growth of a complex system of interpersonal controls such as laws and regulations invoked only after transgressions have occurred but not designed to regulate social conditions so that the transgressions do not occur in the first place. A third effect of mobility and impersonality is a disproportionate emphasis on symbols of status which are highly visible, since they must be seen by (and appropriately interpreted by) communities who do not know the individual or his history personally. At the adult level, material possessions which are highly visible, such as automobiles, begin to serve this function. Similarly, this happens at the level of youth. Delinquencies involving the unauthorized use of automobiles have increased steadily...., and studies have shown correlations between interest in and possession of automobiles on the part of youth and academic retardation and failure....
>
> Many of these alterations in value emphases in our culture, alterations of living patterns, the quality of change itself, seem to be funneling their effects directly into the structure

of.... families with an impact that has so far only been guessed at and not assessed." (19).

54. The mass communication media - television, radio, press and motion pictures - are often seized upon as important agents in promoting juvenile delinquency. Some persons are of the view that television, for example, may have some influence upon the way in which a young person commits an offence, or even upon his particular choice of offence, but that it has no effect in bringing a youth not already so predisposed to the state of mind whereby he decides to enter into a course of antisocial activity. Studies that have been undertaken into this question have found no scientific proof of any major or general influence of crime, violence and horror shows upon delinquent behaviour. At the same time, it is important to note that there is equally no proof that such programs do not have an influence of this kind. It is common knowledge how highly prized the television medium is by the advertiser concerned with the sale of his product, and by many teachers as an aid to the education of children. If television is effective for advertising and teaching purposes in relation to young persons it must seem indeed to be a paradox that the horror, crime and violence content should not have any significant effect upon the mind of the child at all.

55. Some observers think that a prominent cause of delinquency in the young stems from the emancipation of women. The issue of the "working mother" is one that has been much debated over the years. Studies of the negative effects of working mothers on their children are, it seems, far from conclusive. Many persons would argue that a more significant influence on the child occurs by reason of changes in parental functions and family relationships of a much more general nature, reflecting such factors as the increased economic independence of family members and the lack of quite so clear-cut a masculine role for a large number of fathers to assume in present-day society. One view forcibly expressed to the Committee is that to prolong discussion of the "working mother" as an explanation for delinquency only serves to hinder and delay consideration of questions of far greater importance relating to the provision of services to assist family adjustment and to ensure proper standards for the care of children.

56. Finally, in relation to the causes of juvenile delinquency, there are some who take the point of view that since the beginning of organized society the older generation has been critical of the behaviour of the younger generation. It is said that this chasm between the adult world and the youthful world is perennial and persisting and that although today in essence it is no different from what it has been in the past, nevertheless at the present time the chasm is much more sharply defined and much more in evidence than ever before. The authors of one study state the point in this way: "Present differences between youth and adult generations are considerable, for the younger generation must be constantly adapting to a new set of social conditions that the parental generation, in growing up, did not know, did not experience, and could not imagine....

Youth-adult misunderstandings and conflicts are found even in situations where cultural change is slow; but in social situations of rapid change they flourish and multiply, as the twentieth century scene so eloquently testifies." (20).

57. It is evident, then, that there is no simple or readily ascertainable explanation for the cause of juvenile delinquency. Indeed, the very concept of "cause" is one that is hotly debated by criminologists. We are told in the literature that delinquency must be regarded as a "multi-causal", or as a "bio-psycho-social" phenomenon. Or, we are told that the delinquent act must be viewed as "part of the total context in which all the infinity of variables in the particular case are involved", including "the individual with his physiological-constitutional base, his total personality and experience, his particular physiological and emotional-intellectual-temperamental state at the time of the act, and the situation complex to which he is responding...". (21). On this view, causes are seen as operating "not in isolation but in related interplay", so that any given influencing factor "may have very different significance in varied contexts because such influences are associated with diverse other variables that both take meaning from and give meaning to the particular cause involved." (22). Thus it seems to be generally recognized that sociological, psychological, hereditary and other factors all play their part in producing antisocial behaviour, but the importance or the weight that is to be attached to each in the overall assessment of juvenile delinquency is not as yet sufficiently understood.

Implications for Prevention

58. We consider problems of research, control and prevention later in this Report. At this stage we merely note that the inability of social scientists to pinpoint the causes of delinquency does not justify a failure on the part of society to act. In the analogous field of public health effective measures have frequently been taken to reduce the incidence of certain diseases before their causes were discovered.

Footnotes

1. "The clerk of every court or tribunal administering criminal justice, or in case of there being no clerk, the judge or other functionary presiding over such court or tribunal shall, at such times, in such manner and respecting such periods as the Minister may direct, fill in and transmit the schedules he receives relating to the criminal business transacted in such court or tribunal." Statistics Act, Revised Statutes of Canada 1952, c.257, s.28, as amended by Statutes of Canada 1952-53, c.18, s.14.

2. It will be noted, for example, that there is a marked increase in the

rate of recorded delinquency, both for all offences and for selected offences, in the Province of Saskatchewan for the year 1959, as compared with the years 1957 and 1958 (see Table 2(h)). We understand that this increase reflects principally a change of policy that was implemented in Saskatchewan in 1959. There is no reason to believe that these figures indicate a drastic increase in the incidence of juvenile delinquency for 1959 and subsequent years.

3. The Chief of Juvenile Delinquency Statistics of the United States Children's Bureau has observed: "If we think of as delinquent any misbehavior which might be dealt with under the law, whether detected or not, then undoubtedly a great many children escape the attention of law-enforcement or other child-caring agencies. While the exact number of undetected delinquents probably will never be known, several studies reveal that it is substantial .... Not only do such studies show that the number of hidden delinquents is great, but also reveal that the number of undetected delinquents is large among the middle - and higher - income groups - the groups which appear in strikingly small numbers in official statistics. Perlman, "Delinquency Prevention: The Size of the Problem," (1959) The Annals of the American Academy of Political and Social Science 1, at pp.6-7. For examples of such studies, see Porterfield, Youth in Trouble (1946); Nye, Short and Olson, "Socio-Economic Status and Delinquent Behavior," (1958) 63 American Journal of Sociology 381.

4. To some extent these variations in practice are related to the philosophy of the juvenile court movement itself. The authors of one study have commented: "The comparability of official juvenile delinquency statistics from one jurisdiction to another suffers from a weakness inherent in the very concept of juvenile delinquency. This concept embodies a rehabilitative, clinical approach to the child which demands that each child be dealt with in a manner calculated to serve his best interests - regardless of the legal classification of his behavior. This means that the way in which a child enters into the juvenile delinquency statistics, or whether he enters at all, will vary according to his personality, family and neighbourhood relations, etc. - and according to the philosophy, personnel, facilities, and skills available in each court ....". Short and Nye, "Reported Behavior as a Criterion of Deviant Behavior," (1957) 5 Social Problems 207, at p.210.

5. In 1960, 436 boys were adjudged delinquent in Edmonton while only 85 were found delinquent in Calgary. This represented, on a very general calculation, a ratio of approximately 135 per one hundred thousand of population in Edmonton, as compared to 35 per one hundred thousand in Calgary. Even more striking is a comparison with

the City of Windsor, Ontario. In 1960, only 7 boys were adjudged delinquent in Windsor, representing a delinquency rate of only about 3.7 per one hundred thousand of population. To note still another example, the number of juveniles brought before the juvenile court in Toronto increased from 1,374 in 1959 to 2,085 in 1960. The number of children found delinquent for these two years was 856 and 1,520, respectively. The organization of a Youth Bureau within the Metropolitan Toronto Police Department occurred in 1960 and it would seem reasonable to conclude that much of the increase in reported delinquency for that year reflects changes in policies relating to law enforcement and court referral.

6. Juvenile Delinquents Act, Revised Statutes of Canada 1952, c. 160, s.2 (hereinafter cited as Juvenile Delinquents Act).

7. Whether or not court statistics are adequate to show general trends in juvenile delinquency is a matter that has been much debated. Frequently quoted is the statement of Witmer that "so frequent are the misdeeds of youth that even a moderate increase in the amount of attention paid to it by law enforcement authorities could create the semblance of a 'delinquency wave' without there being the slightest change in adolescent behavior. The same considerations throw doubt on the validity of court statistics as an index to change in amount of juvenile misconduct from time to time, for it is doubtful that such figures bear a consistent relationship to the ascertainable total." Witmer, in Murphy, Shirley and Witmer, "The Incidence of Hidden Delinquency," (1946) 16 American Journalof Orthopychiatry 686, at p. 696. On the other hand, some take the view that the close correlation between the series of total offences known, total arrests and total court findings of delinquency are such as to make broad conclusions in regard to trends in juvenile delinquency justified. See, for example, Perlman, "Reporting Juvenile Delinquency," (1957) 3 National Probation and Parole Association Journal 242. Statistics of actual court appearances are, in any event, the only data available that is inclusive enough for general use - although we would add that several of the Briefs submitted to the Committee contained excellent statistical material, including data on informal dispositions, for a number of individual communities.

8. Concentration on offences of high reportability seems to offer the most hopeful basis for assessing changes and trends in juvenile delinquency on the strength of juvenile court statistics. Sellin has stated: "The difficulty with statistics drawn from later stages in the administrative process is that they may show changes or fluctuations which are not due to changes in criminality but to variations in the policies or the efficiency of administrative agencies ... These are the reasons why the records of 'crimes known' afford the best basis

for measurement, because they are closest to the actual offence involved, in terms of procedural time.... One qualification of this statement should be made. The higher up the scale of reportability an offence comes the greater is the possibility that crimes 'cleared' prosecuted or even resulting in convictions may serve for the purpose....". Sellin, "The Significance of Records of Crime," (1951) 67 Law Quarterly Review 489, at pp. 497-498. There is, in addition, another advantage in concentrating upon offences of the kind selected. It takes into account an assumption, which we think to be valid, that essentially "the community is interested, for measuring purposes, in serious delinquent events rather than symptomatic or predelinquent behavior." Sellin and Wolfgang, The Measurement of Delinquency (1964), p. 115.

9. The totals shown on these charts do not correspond to the totals published in the annual Juvenile Delinquents series issued by the Dominion Bureau of Statistics. In the tables prepared for the Committee there are no duplications. These tables deal with persons, and thus indicate the number of children found delinquent in a given year. The totals published by the Dominion Bureau of Statistics are based upon court appearances, so that some children are listed more than once. However, the data prepared on the Youthful Offender (para. 32 et. seq.) is comparable to the data in the annual series Statistics of Criminal and other Offences.

10. One possible avenue for further research is suggested in a study prepared for the United States Congress by the National Institute of Mental Health. The authors observe: "Studies of the incidence of 'hidden delinquency' document the fact that delinquency in the non-apprehended population at large is extensive and variable....Social factors may help to select subgroups at each stage in the progression toward an official statistic: observation of deviant misbehavior, report of the apprehension, police action upon the report, booking versus 'informal' disposition, etc.... It has been argued that variations over time may reflect changes in the tolerance level in the community as well as changes in actual rates.... A full understanding of delinquency will eventually require consideration of the factors making for the variations in reporting.... The very factors which are cited as preventing an accurate estimate of the incidence of delinquency are themselves of interest and are subject to analysis. The inconsistencies with respect to different judges, courts, types of offence, ethnic origin of offender, etc., are in fact the very consistencies of differences in social status, tolerance levels of different communities, differences in visibility, differences in anxiety concerning social sanctions, etc.... Current and future research may give us an eventual account of the determinants in individuals and communities of sensitivity to different types of norm violations."

Cook and Rubenfeld, An Assessment of Current Mental Health and Social Science Knowledge Concerning Juvenile Delinquency (National Institute of Mental Health, 1960), c.11, pp. 3-4.

11. Youth Protection Act, Statutes of Quebec 1950, c.11, ss. 15-18, as amended by Statutes of Quebec 1950-51, c.56 and Statutes of Quebec 1959-60, c.42.

12. Bovet, Psychiatric Aspects of Juvenile Delinquency (World Health Organization, 1951), pp. 10-11.

13. Cook and Rubenfeld, op. cit. supra note 10, c.11, pp.2-3

14. Walker, Crime and Punishment in Britain (1965), p.44.

15. Merton, in New Perspectives for Research on Juvenile Delinquency (Witmer and Kotinsky ed., 1955), p.30.

16. Gibbens, Trends in Juvenile Delinquency (World Health Organization, 1961), p.19.

17. Thus one author observes: "Juvenile delinquency is more than a formal breach of the conventions; it is indicative of an acute breakdown in the normal functions of family life. The loss of parental control represented in the formal breach of the law is usually the culmination of a period of heightened tensions arising from severe conflict over patterns of rearing - disagreement over duties, restrictions and limitations, standards of education, and so forth - culminating in a breakdown of emotional attachment between parent and delinquent child, and leading often to a break in essential communication of attitudes between the generations. Shulman, "The Family and Juvenile Delinquency," in The Problem of Delinquency (Glueck ed., 1959), p. 128.

18. Cook and Rubenfeld, op. cit. supra note 10, c.11, p.27.

19. Id., at c.11, p.7.

20. Kvaraceus and Miller, Delinquent Behavior: Culture and the Individual (National Education Association Juvenile Delinquency Project, vol. 1, 1959), p.25.

21. Tappan, Crime, Justice and Correction (1960), p. 70.

22. Id., at p.71.

CHAPTER III

THE COMMITTEE'S APPROACH TO THE PROBLEM

59. Juvenile delinquency is one of the most distressing - and therefore one of the most important - social problems of our time. It affects gravely the children who are found to be delinquent, their families and the state which in the end bears the cost. (1). A problem of this gravity requires the sincere and active co-operation of all levels of government, whether federal, provincial or municipal. Sincere and active co-operation will inevitably involve the expenditure of money.

60. Our terms of reference require us to respect the federal nature of our constitutional system. We have sought to keep this obligation in mind when making our recommendations. In discussing aspects of the subject that are under provincial jurisdiction we have found it necessary at times to comment adversely upon certain practices and facilities. Our criticisms are certainly not intended to reflect adversely upon the many dedicated persons working in the juvenile delinquency field under provincial or municipal auspices.

61. Perhaps the very first question to be resolved is whether the national government has any role at all to play in relation to juvenile delinquency. For example, if the idea that delinquency is a welfare problem is carried to its logical conclusion, Parliament would lack constitutional power to enter the field. But it seems to us that delinquency, properly understood, is a welfare problem in the sense that adult crime is. The national government would be abdicating its constitutional responsibilities if it permitted delinquency to be defined and dealt with exclusively by the individual provinces under child welfare legislation. Such an abdication might very well be lawful as a matter of constitutional law. (2). For example, Parliament might declare certain conduct criminal only if committed by persons over a defined age, thus allowing the provinces to legislate from a "non-criminal" aspect in relation to persons under that age. (3). However, this would result in the loss of the value of a national approach. It is reasonably to be expected that, in the Canada of today, with its tremendous internal migration, the effect of multifarious delinquency legislation and programs would be to produce a kind of social chaos, at least in the juvenile field, throughout the country. Whatever may be the constitutional position, a fifteen-year-old boy who kills or steals is considered by the community to be a wrongdoer. Seemingly one of the reasons for the allocation of the criminal law power to Parliament was to ensure approximate uniformity of legal sanctions against conduct that was uniformly prohibited. The benefits of this uniformity - evident to anyone who is familiar with other systems - would be lost if delinquency were to be considered a matter for provincial jurisdiction.

62. Our starting point, then, is the view that juvenile delinquency legislation is the counterpart of ordinary criminal legislation modified for a specialized group defined by age. In taking this position we none the less accept the view that criminal legislation not only can have, but must have, a social purpose. From the assumption that juvenile delinquency legislation is the counterpart of ordinary criminal legislation flow two important consequences: (a) there should be uniformity in coverage; and (b) there should be uniformity, that is, equality of services throughout Canada.

63. The purpose in allocating the power to enact criminal law to the exclusive jurisdiction of Parliament under the British North America Act is presumably to ensure that a person may act in the knowledge that if his conduct is legal in one part of Canada it is legal everywhere in Canada; and that if his conduct is illegal the maximum power of the courts to punish him is uniform throughout the country. (4). In this respect no adequate reason has been advanced for treating Canadian children as second-class citizens.

64. In the realm of adult crime the federal government has recognized its obligation to provide equality of services - at least in the case of persons sentenced to penitentiary. Thus an adult sent to a federal prison in one part of Canada receives the same treatment as a similar adult sent to another penitentiary in a different part of the country. In other words, the quantity and quality of accommodation and training received by the inmate is not affected by the wealth or poverty of the province from which he comes. It is true that there is inequality of such services in the case of persons sentenced to provincial prison or reformatory terms. However, this inequality is the result of the constitutional provisions that allocate legislative power in relation to prisons and reformatories to the provinces. (5). At the present time children are treated differently. The treatment and services accorded children adjudged delinquent under the federal statute are provided entirely by provincial authorities. The degree of prosperity and social conscience of the province in which they live usually determines the adequacy of the treatment they receive. We are not aware of any sound reason to support such discrimination.

Footnotes

1. Some indication of the potential cost of juvenile delinquency is provided in a submission presented to the Committee in the City of Hamilton. After a study of an actual case history, a committee of the Social Planning Council in Hamilton concluded that the cost of maintaining the offender in a training school for one year as a juvenile delinquent, and in jails and penitentiaries for thirteen years as an adult, was $17,617. This figure represents a minimum estimate. It does not take into account the court costs incurred in registering some

twenty-two convictions, the expenses of numerous police investigations, the losses suffered by individual witnesses, loss of earning power of the convicted person, and other indirect costs. See Brief submitted by the Juvenile Delinquency Study Committee of the Social Planning Council of Hamilton and District (1962), pp. 8-9. These costs to society are such as to invite obvious questions concerning the effectiveness of our present allocation of resources through existing programs of delinquency prevention and control. In this connection, see infra Chapter XII

2. Cf., O'Grady v. Sparling, (1960) S.C.R. 804.

3. This is, in fact, what Parliament has done in so far as offenders under the age of seven years are concerned. See infra para. 90. See also section 39 of the Act, which provides that in appropriate cases children charged with less serious offences may be dealt with under provincial legislation.

4. In the course of the debates on Confederation, John A. Macdonald, Attorney General for Canada West, stated: "It is of great importance....that what is a crime in one part of the British America should be a crime in every part.... It is one of the defects in the United States system....that what may be a capital offence in one state may be a menial offence, punishable slightly in another. But under our Constitution we shall have one body of criminal law....operating equally throughout British America....I think this is one of the most marked instances in which we take advantage of the experience derived from our observations of the defects in the constitution of the neighbouring Republic". Parliamentary Debates on Confederation of British North American Provinces, 3rd. Sess. Provincial Parliament of Canada, Quebec 1865 (Ottawa, 1951).

5. British North America Act, 1867, 30-31 Vict., c.3, s.92(6).

PART 11 LEGAL CONTROL OF JUVENILE BEHAVIOUR

CHAPTER 1V

THE FRAMEWORK

Constitutional

65. Under the Canadian legal system no level of government - national, provincial or municipal - can lawfully control human behaviour unless it has been given the power to do so by our basic constitutional document, the British North America Act. We are concerned only with the powers of either the federal government or the provincial governments to control delinquency legally.

66. The British North American Act allocates exclusive legislative power in relation to criminal law to the federal Parliament. (1). This means that as a general rule only Parliament can declare that any given form of conduct is criminal. In this respect the Canadian system is unlike that, for example, of either the United States or Australia. The provincial legislatures have exclusive legislative power in relation to the administration of justice within the province, civil rights within the province and all matters of a purely local or private nature. (2). Furthermore, although the criminal law power is allocated to Parliament, the provincial legislatures authorize penalties to enforce legislation in any field in which they have constitutional power. (3). Thus, for example, the provincial legislature can make punishable the failure of a person to carry current licence plates on his automobile.

67. The result of this constitutional allocation of power is a division of responsibility in relation to the problem of delinquency. Parliament has the constitutional power to define delinquency and to declare what the consequences may be where a juvenile is found to be delinquent. However, the administration of justice, including the police and the juvenile courts, is a provincial responsibility. Above all, the preventive agencies of the home, school, church and recreational facilities, as well as the general social services, are subject to the legal control of provincial legislatures. We emphasize the importance of this division of responsibility because the remedy for the defects and the deficiencies outlined in many sections of our Report will require what has been called "co-operative federalism" of the highest order before a solution will be found. For this reason we recommend that one or more conferences be called by the Government of Canada to which should be invited representatives of the major agencies concerned with the administration of justice and with the welfare of children. What we envisage are conferences or meetings of persons responsible for carrying out active programs of a public or quasi-public nature, called for the purpose of discussing specific programs and specific changes in the law.

The Juvenile Delinquents Act

68. In 1893 the Ontario legislature passed the Children's Protection Act. (4). This Act provided specialized measures in relation to children who violated provincial statutes. It was inadequate in that it did not cover the more common cases of children who violated federal laws and, more specifically, the Criminal Code. To remedy the defect, Parliament in 1894 enacted a statute (An Act Respecting Arrest, Trial and Imprisonment of Youthful Offenders, 57-58 Vict. c.58) which declared that trials of offenders under sixteen years of age where to be private and that these offenders, prior to trial, were to be detained separately from adults. The federal legislation was traditional in its approach in the sense that it merely provided a specialized procedure for a specialized age group. The first American delinquency statute of Illinois (1899) and Colorado departed from the traditional pattern. When Canada's statute of 1894 was being re-examined the Illinois and Colorado statutes were important influences in the drafting of the legislation that became the Juvenile Delinquents Act of 1908. (5). The pattern of the Act (which was substantially revised in 1929) shows the American influence. In the American constitutional system - unlike the Canadian - the individual states have power to enact both welfare and criminal legislation. Thus the original Illinois statute was able to treat (and present American delinquency legislation generally continues to treat) acts of delinquency as non-criminal matters. The state purports to act as "parens patriae" (6). In accordance with the chancery characterization of the matter the proceedings are instituted by petition instead of by information or indictment as in criminal actions. Because the state was viewed as acting as a wise and kindly parent, delinquency was defined to encompass not only traditional criminal conduct on the part of the child but also behaviour which indicated the need for society's intervention in order to prevent later criminal acts when he became an adult.

69. The nature of the Canadian constitutional system proved to be too great an obstacle for the draftsman of the Canadian Act to make the Act a complete copy of the Illinois statute. Clearly the "parens patriae" of children in any province is the Crown in right of that province and not the Crown in right of the federal government. Moreover, Parliament lacks the power to enact legislation in relation to welfare matters, and is thereby precluded from taking a non-criminal approach to delinquency.

70. The result, then, is the present pattern of the Act. Conduct that would be criminal under the ordinary law, as well as much that would not, is considered to be an act of delinquency. None the less the Act directs the juvenile court to apply a non-punitive philosophy. Thus, one key section (section 38) declares: "This Act shall be liberally construed to the end that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should

be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance."

71. In paragraph 66 we referred to the consequences of the division of power between the federal government and the provinces over the legal control of delinquency. The Act, although enacted by Parliament, depends upon provincial resources for its effective application. Generally speaking, the Act is only brought into force upon request of the province and applies only in those areas where the provincial government wants it to operate. (7). That is to say, the Act does not have universal application in Canada and, in some cases, not even throughout the province. In this respect it is unlike the usual federal statute such as the Criminal Code. Furthermore, the juvenile court judges who apply the Act are provincial appointees paid by the province or by the province in conjunction with the municipality which the court serves. The facilities upon which the court relies - diagnostic services, child welfare services, probation services and various types of institutions for children (whether operated by private or public agencies) are subject to provincial control and are usually financed, either in whole or in part, by the province. Certainly the federal government, under the present state of the law, has no jurisdiction to interfere in any of these vital matters involved in the administration of the Act.

72. The resources of the juvenile court are discussed in detail later in this Report. At this point it is sufficient to note that there is a wide variation in the availability of services and facilities across the country. It can be stated with confidence, however, that no province has available a sufficient quantity or quality of needed services. The problem appears to be either an inadequate number of skilled personnel or a lack of financial resources in the service agencies because of the policies of various levels of government.

73. If the powers of the court upon making a finding of delinquency were somewhat limited, perhaps the nature and quality of the facilities and services available to it would not be of very great importance. However, the powers of the court are very wide. They include: suspending final disposition, adjourning "sine die", imposing a small fine or conditions of probation, placing the child in a foster home, and committing the child to a children's aid society or an industrial or training school. (8). These powers can be used singly or in combination. Such powers obviously require great resources if they are to be implemented effectively.

Provincial Control of Juvenile Anti-social Behaviour

74. In most provinces there are two statutes that in part are concerned with anti-social conduct on the part of juveniles. For example, one provincial child welfare act defines a neglected child, among other things, as one who

is "found associating with an unfit or improper person .... (or) .... begging .... or loitering in a public place .... in the evening .... (or) .... who, with the consent and connivance of the person in whose charge he is, commits any act that renders him liable to a penalty under any Act of the Parliament of Canada or of the Legislature or under any municipal by-law .... (or) .. .. who is delinquent or incorrigible by reason of the inadequacy of the control exercised by the person in whose charge he is .... (or) .... who without sufficient cause habitually absents himself from his home or school ...."(9). Depending upon the province concerned, the court can order a child who is found to be neglected to be returned to his parent or guardian subject to supervision by a children's aid society or by the provincial officer responsible for child welfare services, or can order the child committed either temporarily or permanently into the care of such a society or of such officer. In most provinces - but not in all - provincial legislation relating to the specific problem of "neglect" does not authorize committal of such children to an industrial or training school. (10).

75. The other provincial statute that is relevant in this context is the statute relating to the administration of industrial or training schools. In some provinces a child can be sent to the industrial or training school for such conduct as begging, truancy, being "accused or found guilty of petty crime", unmanageability, incorrigibility, "being in moral danger", or having been convicted of an offence punishable by imprisonment under any Act or law in force in the province. (11).

76. This power to use one of several statutes, whether federal or provincial, in handling a child raises problems which we examine in due course.

Financing Child Welfare Services

77. The financing of provincial child welfare services is extremely complicated. The basic system in most provinces is one of primary responsibility on the municipality to which the child belongs coupled with a system of provincial government grants. This system is slightly modified in the case of training schools. Public training schools are usually financed by the provincial government. The government usually retains the right to recoup, from the municipality to which a child belongs, part of the expense of maintaining the child in the school. Private societies that operate training schools usually receive a provincial grant covering part of the expense of maintaining children in their institutions.

Footnotes

1. British North America Act, 1867, 30-31 Vict., c.3, s.91(27).

2. British North America Act, 1867, 30-31 Vict., c.3,ss.92(14), (13) and (16) respectively.

3. British North America Act, 1867, 30-31 Vict., c.3, s.92(15).

4. An Act for the Prevention of Cruelty to, and Better Protection of Children 1893 (Ont.), 56 Vict., c.45.

5. For a short account of the legislative history of the Juvenile Delinquents Act, see Scott, The Juvenile Court in Law (4th ed., 1952), pp. 1-3.

6. For a further discussion of the implications of the "parens patriae" concept, see infra paras. 137-141 and 147-148.

7. Juvenile Delinquents Act, ss. 42 and 43. See generally Scott, op. cit. supra note 5, pp. 30-33.

8. Juvenile Delinquents Act, s.20(1).

9. The Child Welfare Act, Revised Statutes of Ontario 1960, c.53, s.11(1)(e).

10. See Protection of Children Act, Revised Statutes of British Columbia 1960, c.303, ss.7 and 8; The Child Welfare Act, Revised Statutes of Alberta 1955, c.39, ss.9(i), 14 and 14a, as amended; The Child Welfare Act, Revised Statutes of Saskatchewan 1953, c.239, ss.2(11a) and (15), 4, 5a, 5b, 13, 19 and 30, as amended; The Child Welfare Act, Revised Statutes of Manitoba 1954, c.35, ss. 19, 24 and 25, as amended; The Child Welfare Act, Revised Statutes of Ontario 1960, c.53, ss.11(1)(e) and 17, as amended; Youth Protection Act, Statutes of Quebec 1950, c.11, ss.15, 15a and 17 as amended by Statutes of Quebec 1950-51, c.56 and Statutes of Quebec 1959-60, c.42; Children's Protection Act, Statutes of New Brunswick 1957, c.6, ss 1(j), 7, 10, 11 and 16, as amended; Child Welfare Act, Revised Statutes of Nova Scotia 1954, c.30, ss. 1(h), 28, 42 and 48, as amended; The Children's Protection Act, Prince Edward Island Revised Statutes 1951, c.24, ss. 1(i) and 10; Child Welfare Act, 1964, Statutes of Newfoundland 1964, c.45, ss. 2(m) and 15.

11. See, for example, Training-schools Act, Statutes of British Columbia 1963, c.50; Industrial and Correctional Homes Act, Revised Statutes of Manitoba 1954, c.124; Training Schools Act, 1965, Statutes of Ontario 1965, c.132; Youth Protection Act, Statutes of Quebec 1950, c.11, as amended by Statutes of Quebec 1950-51, c.56 and Statutes of Quebec 1959-60, c.42; Training School Act, Statutes of New Brunswick 1961-62, c.33. In some provinces the provisions

relating to training school admissions are contained in the child welfare statute. See, for example, The Child Welfare Act, Revised Statutes of Saskatchewan 1953, c.239; The Welfare of Children Act, Revised Statutes of Newfoundland 1952, c.60, and Child Welfare Act, 1964, Statutes of Newfoundland 1964, c.45.

CHAPTER V

THE JUVENILE DELINQUENTS ACT

78. In Chapter IV we sketched briefly the background of the Act, its pattern and the resources of the court in applying it. In this Chapter we examine issues that have arisen in the operation of the Act and recommendations for their solution that have been suggested. At this stage it is important to note that the issues are inextricably interrelated. The consequence is that adoption of an approach to one problem inevitably affects the solution of others. The problems we examine in this Chapter are: (a) geographical scope, (b) nomenclature, (c) jurisdiction of the courts, and (d) powers of disposition. Other issues, for example, the denial of publicity in juvenile court proceedings and the role of counsel, are discussed in Chapter VIII.

Geographical Scope

79. The Act may be put in force throughout the entirety of a province only where the province has enacted legislation establishing a system of juvenile courts and detention homes. (1). This has been done in the majority of provinces. Alternatively, provision exists for bringing the Act into force in an individual city or town, or other portion of a province. (2). In a few provinces, as well as in the Yukon Territory and the Northwest Territories, it is the latter situation that obtains. In any event the Act is now in force in all of the major metropolitan areas of Canada. It is not in force in Newfoundland because of the terms of union between Canada and Newfoundland. (3). The present piecemeal system was adopted in 1908, presumably because there was a shortage of facilities and personnel and it was thought that a gradual introduction of the Act would be more practicable than its immediate universal application. (4). This system was retained when the Act was revised in 1929. In our survey those organizations that considered the matter recommended that the Act should be in force throughout Canada. There is a shortage of facilities and personnel now, as there was in 1929 and, if a pessimistic view is taken, as perhaps there will be in 1999. Nevertheless the Act is now in force in those areas where the great majority of the Canadian population lives. To extend the operation of the Act to all parts of the country would not, it seems to us, impose any undue burden or, at any rate, a burden that should not be gladly borne by those responsible. (5).

80. One of the basic premises upon which the Committee has worked is that the Act, as a federal statute, should operate equally throughout Canada. If the Act is truly beneficial it should be available for the benefit of all Canadian children, and not merely those who live in the wealthier areas of our country. The problem of court services in outlying areas could be met by the introduction generally of a system in use in one Canadian province and in several of the states of the United States - that of the circuit court. This

would not, we think, impose any great financial burden upon the provinces. However, the establishment of proper detention facilities and other ancillary services to the juvenile court in sparsely populated areas might well be expensive. If this were so it would raise the question as to the extent to which Parliament would be prepared to grant subsidies to achieve the desired goal.

Nomenclature

81. The present statute is entitled the "Juvenile Delinquents Act". It establishes the powers of a court in relation to a group of persons whose acts constitute the offence of delinquency. A young person who commits an act of delinquency is characterized as a juvenile delinquent. A recommendation that was urged repeatedly upon the Committee is that the term "juvenile delinquent" should be abandoned for purposes of legal characterization. It is possible, we think, to identify three principal reasons why a change in the law might be considered desirable. The three should by no means be thought of as representing isolated questions. As an analytical matter it is useful to deal with them separately. What we are in fact confronted with, however, is the cumulative effect of difficulties, terminological and other, inherent in the concept of the "juvenile delinquent" as a legal category. We return to this problem again in the context of our discussion of offence jurisdiction later in this Chapter.

82. Most of those who have addressed themselves to the matter of terminology have been concerned with the problem of stigma. What is in issue are the possible effects of what is called "labelling". "To a child and his family," the Ontario Probation Officers' Association suggests, "there is a vast difference between telling him that he has 'committed a delinquency' and telling him that he is a 'juvenile delinquent'." (6). In large part, the difference reflects the overlay of emotion that the term "juvenile delinquent" seems clearly to have acquired in contemporary usage. One private correspondent, for example, told how, in the case of a boy charged with the relatively minor offence of discharging a rifle in violation of a municipal by-law, "the mother nearly went out of her mind and the father was terribly upset by the fact that their son would be classified as a juvenile delinquent." Not infrequently, we have been informed, lesser offences committed by juveniles are not prosecuted at all because there is a reluctance on the part of the police, the courts and other authorities to have to charge and brand a child as a juvenile delinquent in order to enforce the law. Still other implications of "labelling" have been suggested. One has to do with what has been called "position assignment" - the fact, as explained in one submission, "that once assigned to a particular position and given a particular label, the individual tends to conform to the expectations associated with the label and in turn other people respond to him on that basis, re-enforcing the assignment." (7). To call a young person a "juvenile delinquent", in other words, is to generate pressures that push the offender further in the direction of anti-social behaviour.

The John Howard Society of British Columbia draws attention to another aspect of the "labelling" problem:

> " It has been long suspected, and has now been established by a Ford Foundation study, that the term .... ('juvenile delinquent') .... has a positive rather than a negative association for many of those who qualify for it: that they wear it, not as a derogatory label, but as a badge of merit. Most human beings have a need to be significant in the eyes of others. The juvenile delinquent often having failed to achieve such significance in socially acceptable ways finds great consolation in the recognition he achieves as an anti-social category. The category ' juvenile delinquent' has been accorded such wide and prolonged attention in all our communication media, that even healthy, socially-well adjusted youngsters experience degrees of flirtation with it ..... We do not feel we over-estimate the importance of titles by suggesting that this most confused term should be replaced by others which are more clearly associated with their exact meaning. A special effort should be made to find terms which do not lend themselves to such glamorization." (8).

83. That changes in terminology can serve to combat the harmful effects of stigma has been doubted by commentators on juvenile court legislation. (9). Some have emphasized that stigma attaches to a juvenile court appearance primarily because the proceeding represents a formal response to anti-social conduct - conduct of a kind that is usually sufficient to arouse intense feelings in a community - of a member of an age group to which the general population reacts with ambiguity. Any new designation, it has been said, "can become as infamous as 'delinquent', a term that was itself, after all, designed to protect against the stigma of 'criminal'." (10). The fear has been expressed also that, in concerning ourselves with matters of terminology, false cures may be adopted for real problems. These are cogent criticsms. Nevertheless, we find the arguments in favour of abandoning the existing terminology even more compelling. We consider now some of the other difficulties that the term 'juvenile delinquent' presents.

84. A second reason why a change in the law may be regarded as desirable concerns the fact that the term "juvenile delinquent" tends to be given a descriptive meaning in the literature of the medical and behavioural sciences. In consequence of this, an element of confusion is introduced into public discussion of the problem of juvenile delinquency. "There is general

agreement among psychiatrists, "the authors of an American study have observed, "that, diagnostically speaking the youngster who violates norms can fall into any diagnostic category or into none at all and that there is no diagnostic category of 'delinquent' for youngsters who engage in or repeat illegal behavior."(11). To quote from one submission received by the Committee, delinquency as defined in the Juvenile Delinquents Act "is an entity only in the legal sense", and "is not an entity in a medical or behavioral sense." (12). Nevertheless, when behavioural scientists use the term "juvenile delinquent" they ordinarily consider that they are using it descriptively - that is, that they are saying something about the offender, rather than the offence. Generally speaking, the delinquent act is considered to have importance primarily as a symptom of some more basic underlying difficulty. In one of the classic studies of juvenile delinquency, for example, Aichhorn states that we should "regard truancy, vagrancy, stealing, and the like as symptoms of delinquency, just as fever, inflammation, and pain are symptoms of disease." (13). This other way of looking at delinquency is reflected in the assertion - and it is not untypical - made in another submission that "the precise definition of delinquency as seen by the lawyer is not acceptable to the psychiatrist, psychologist, or the social worker." (14). Clearly, the term "juvenile delinquent" has come to have different meanings for different people. That this can contribute to a breakdown in communication was evident to the Committee from its many discussions across Canada.

85. It may be useful to indicate briefly the way in which this confusion in usage is manifested. There is a tendency, when one conceives of the delinquent act essentially as a symptom and seeks to look behind it with a view to understanding or treating the underlying problems that give rise to overt anti-social behaviour, to think of delinquency in terms only of those specific behavioural problems with which one is concerned. Children with serious behavioural problems come to be regarded as "delinquent" regardless of whether or not they have been adjudged so by a court - and sometimes even in the absence of an act for which they could be adjudged delinquent. The word "pre-delinquent" might be noted in this connection, since it seems to represent in part an attempt to bridge the gap between the behavioural scientist's and the lawyer's use of the term "juvenile delinquent". Similarly, when a child engages in prohibited behaviour of a kind that is of little consequence from a treatment point of view he is considered not really to be delinquent at all, even though he may have acted in violation of the law. As one organization relates, "it is not uncommon for youths who are not truly delinquent to be judged as delinquent simply because, in the course of their role experimentation, they have committed delinquent acts." (15). From a legal point of view the focus is necessarily on specific conduct that can support a finding that a youth is delinquent, in accordance with the provisions of the Act defining the basis of juvenile court jurisdiction. Thus the rather different functions and perspectives of the law and of medical and behavioural science have made "juvenile delinquent" a term of ambiguous

reference. Public understanding of the problem of juvenile delinquency, and to some extent the administration of the law itself, have, in our view, suffered from the confusion that has been engendered.

86. There is a third objection to the term "juvenile delinquent". This is the fact that the words carry with them the suggestion of a course of conduct, or a delinquent pattern of behaviour. A brief prepared by the Canadian Corrections Association states the difficulty in this way:

> " Delinquency is defined as far as possible as a state or condition, so that the child is looked upon as having a tendency to anti-social behaviour, rather than as having committed one undesirable act. Perhaps some children may properly be so classified, but many of those declared delinquent, particularly those who have committed only a minor or isolated offence, show no such habit pattern." (16).

87. It is possible to argue that the term "juvenile delinquent" need not be regarded as implying a "habit pattern" at all, and that essentially the words are a kind of legal shorthand designed to direct the attention of the juvenile court judge, at the disposition stage, beyond the specific conduct that has brought the child before the court to the underlying personality factors that may have influenced the child's behaviour. So conceived, the characterization represents no more than the manner in which the basic principle of the Act - that a child should "be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance" (17) - is given legislative expression. Nevertheless, it does seemapparent that a declaration that a child is a "juvenile delinquent" tends to suggest that persistent misconduct or a continuing disturbance has been demonstrated. To this extent the language of the Act is confusing. There is reason to believe that this confusion has led to some uncertainty as to the proper function of the juvenile court. Two potential dangers might be noted. One is that the objective of the juvenile court's intervention may be distorted - that, in the words of a submission by the Ontario Welfare Coundil, the child may be "pre-judged by title." (18). The other is akin to the problem traditionally presented by the concept of vagrancy. This is the danger that the inquiry will focus, at the adjudication stage, upon the kind of person that the alleged offender is, rather than upon the specific act that he is said to have done. (19). The broad manner in which the offence of delinquency is defined under the Act, together with the emphasis on "need" that appears in section 38, lends itself to this approach. We deal with this point again in the context of our discussion of offence jurisdiction in this Chapter. It is sufficient to say here that we regard this danger in particular as a real one.

88. We think that the term "juvenile delinquent" should be abandoned as a form of legal designation. The confusion to which it has given rise would not, in our view, attach inevitably to any alternative language that might be employed. We feel that the confusion results in large part from the peculiar nature of the concept itself. Specifically, we propose that the terms "child offender" and "young offender" be adopted - although for a limited purpose only. These terms are discussed in more detail later in the Report. (20). We recommend also that the name of the statute be changed to the more neutral title, the "Children and Young Persons Act". We would emphasize that it is not our intention to suggest that this change of terminology represents a solution to the problem of stigma. That problem must be attacked on a number of fronts. It can be offset to some extent by an adequate intake procedure designed to adjust or screen out appropriate cases before a hearing. (21). Similarly, the disposition provisions of the statute can be structured so as to avoid the unnecessary attribution of stigma. (22). Controls on publicity and the use of juvenile court records have a bearing as well. (23). Undoubtedly an element of stigma will continue to accompany an appearance in juvenile court, regardless of any change in descriptive language that is made. It is perhaps not unreasonable to hope, however, that terminology less open to confusion, or burdened by acquired meanings, will not attract quite the same degree of stigma as has come to be associated with the words "juvenile delinquent".

Jurisdiction Generally

89. There is not one issue of jurisdiction of the juvenile court but many issues: (a) what should be the minimum age of the child before the juvenile court has power to hear the proceedings?; (b) what should be the maximum age of the child over whom the juvenile court has jurisdiction?; (c) should these age limits be uniform throughout Canada?; (d) in respect of what types of conduct by persons within the statutory age group should the appropriate authorities be authorized or required to intervene under the Act?; and (e) are there situations in which a child should be tried not in the juvenile court but in the ordinary adult court?

Minimum Age Jurisdiction

90. At common law and under the Criminal Code (section 12) a child under the age of seven years is not criminally responsible for his conduct. The Juvenile Delinquents Act does not specifically establish a minimum age limit for juvenile court jurisdiction. In section 2 (1) (a) it defines a child as "any boy or girl apparently or actually under the age of sixteen years ....". Under the Act, however, a "delinquency" is an "offence" (section 3). The Criminal Code provides, in section 12, that "No person shall be convicted of an offence ... while he was under the age of seven years." Moreover, section 7 (2) of the Criminal Code declares that "every rule and principle of the common law that renders any circumstance a justification or excuse

for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of the Parliament of Canada, except in so far as they are altered by or are inconsistent with this Act or any other Act of the Parliament of Canada." We see no inconsistency between this statutory and common law exemption from criminal responsibility and the Juvenile Delinquents Act. It is true that some juvenile courts, purporting to rely upon section 38 of the Act, have found children under the age of seven years to be delinquent. For reasons outlined in subsequent paragraphs we think that their action was socially unsound and that, in any event, it was illegal.

91. Almost all interested organizations have recommended that the minimum age of criminal responsibility - that is, the minimum age for juvenile court jurisdiction under the Act - be raised. However, there is a wide variation in the minimum age suggested. The proposals range from eight at the lowest to thirteen at the highest. In the following paragraphs we examine the more important reasons advanced in favour of raising the minimum age limit.

92. It is said that juvenile court procedure is not appropriate for the very young offender. (24). This argument is really twofold. The first aspect relates to the nature of a proceeding under the Act. Such a proceeding involves, as it must, a modified form of criminal procedure including such matters as a formal charge, an answer by the accused, the calling of evidence, the right to cross-examine witnesses, and the like. The suggestion is that this procedure is both artificial and clumsy and simply does not accomplish, in juvenile proceedings, the objective that it is designed to achieve in an adversary proceeding involving adults. A very young child is unable to participate actively in the proceedings in the juvenile court. He is, in effect, in a position similar to that of the adult who is found unfit to stand trial - with perhaps one significant difference. The difference is that the child's disability might well be considered to have substantive implications. For, on much the same reasoning that the Criminal Code declares that no person shall be convicted of an offence committed while he was under the age of seven years, it is hard to conceive of a child even some years older being regarded as criminally responsible at all. The second aspect relates to the effects of the court proceedings on the child himself. They tend to confuse him. They bear no relation in his mind to the actual offence with which he is charged and have no positive value in terms of his behavioural problem. For very young offenders, some have said, the need for an educational as opposed to a penal approach requires that they be dealt with outside the courts altogether. (25).

93. It is contended that the quasi-criminal nature of juvenile court proceedings has undesirable consequences in terms of the social good. The connotations of crime and responsibility are said to cause an unescapable element of stigma to attach to an appearance in juvenile court.

This, it is argued, militates against preventitive action on behalf of potential delinquents. Children in need of help would, it is said, be brought forward earlier but for the stigma of a court appearance. Similarly, because of the nature of the proceedings and the stigma that is involved, the standard of proof is high. Consequently, children who need the services of the juvenile court do not obtain them because of the prosecution's failure to satisfy the relatively high degree of proof necessary to establish that the particular juvenile committed the act of delinquency charged against him. Furthermore, the added stigma of a finding of delinquency is said to have unduly harsh consequences for a child in later life. More immediately, a child may suffer the effects of "labelling" - a matter that we have had occasion to consider earlier. And again, it has been suggested that because the term "crime" is still linked in many minds with the idea of punishment, the result of dealing with a child even under a quasi-criminal proceeding is that the judge may consider it to be his duty, notwithstanding the stated objective of the law, to punish the child as a way of registering moral disapproval.

94. A further objection to a quasi-criminal type of proceeding - and hence an argument for raising the minimum age - is concisely stated in the Report of the Committee on Children and Young Persons (Ingleby Committee) in England:

> " The weakness of the present system is that a juvenile court often appears to be trying a case on one particular ground and then to be dealing with the child on some quite different ground. This is inherent in combining the requirement for proof of a specified event or condition with a general direction to have regard to the child's welfare. It results, for example, in a child being charged with a petty theft or other wrongful act for which most people would say that no great penalty should be imposed, and the case apparently ending in a disproportionate sentence. For when the court causes enquiries to be made, if those enquiries show seriously disturbed home conditions, or one or more of many other circumstances, the court may determine that the welfare of the child requires some very substantial interference which may amount to taking the child away from his home for a prolonged period.
>
> ..... The treatment ordered, especially if it involves removing the child from home, is almost inevitably regarded by the child and his parents, and often by others who are unaware of the

circumstances, as a punishment for the original offence -- and as an unduly heavy punishment where the offence was not particularly serious. Such a situation increases the difficulty of enlisting the co-operation of parents and child in the measures taken." (26).

95. Under the Act the juvenile court can only extend its jurisdiction to the parents when some demonstrable fault on their part can be shown. A judicial inquiry into parental fault is probably not, in any event, ordinarily the most effective way of coming to grips with family problems. Under an appropriate kind of civil proceeding, it is said, adequate measures can be applied beyond the child who committed the act, to parents - and possibly even others - whose behaviour may be contributing to the difficulty of the child.

96. The distinction between a "neglected" and a "delinquent" child is in some respects an artificial one. Viewed in terms of his behavioural problem, the delinquent child is usually one who has suffered some form of deprivation - a deprivation in many cases of a nature sufficient to justify proceedings for neglect under child welfare legislation. In some provinces a child coming from a certain home environment, will be charged and adjudged as a delinquent in proceedings before the juvenile court. In another province, coming from the same kind of home environment, he will be dealt with as a so-called "protection" or "neglect" case, against whom no charge is laid and no adjudication is made. In the first case, having been labelled a delinquent, the child is likely to be scorned by the public as a young malefactor. In the second case, because he is found to be a neglected child, and needing protection, he is the object of public sympathy and understanding. Yet in both cases the act or error or omission that brings the child to the attention of the authorities is the same. Thus it is often a matter of pure chance whether a child is charged with an offence and labelled "delinquent", on the one hand, or brought before the court as being in need of care and protection and called "neglected", on the other. Raising the minimum age it is said, would remove a source of unfairness. The assumption is that, for the reasons indicated, the distinction between "delinquency" and "neglect" need not be retained for legal purposes, at least in so far as very young offenders are concerned.

97. The main argument that has been made against having the minimum age raised concerns the problem of providing appropriate welfare services for the group that would no longer be dealt with under the federal Act. It seems evident that to exempt younger offenders from proceedings under the Act would, in most provinces at least, have the effect of imposing additional responsibilities upon child welfare authorities. It is true that in proceedings under the federal Act responsibilities may be imposed on

child welfare authorities. The court may, for example, order that a delinquent child be committed to the charge of a children's aid society or, in some cases, to the charge of the director of child welfare. In proceedings under child welfare legislation, however, the child welfare authorities are ordinarily involved as a matter of course. It is their responsibility to investigate allegations of neglect and to supervise, or assume custody of, children who are the subject of an order by the juvenile court. Moreover, in most places an attempt is made to keep delinquent and neglected children separate for the purpose of detention prior to a court hearing, a detention home being used for the former group and a receiving home for the latter. Fear has been expressed whether the receiving homes, which are operated by the welfare authorities, will be able to meet the custodial problem presented by some of this delinquent group. The suggestion is, then, that provincial welfare departments and children's aid societies do not have facilities adequate to deal with some of these difficult children under the age of twelve, or even ten; nor have they the personnel and other resources to cope with the added responsibility of handling an increased number of problem children. For these reasons welfare authorities have argued that a higher minimum age should not be established without making provision for a substantial increase in financial grants for welfare services. They indicate that it should not be necessary to duplicate the services already provided in some communities by the juvenile court, and further, that existing welfare services for dependent and neglected children should not be undermined by imposing upon these services any such additional burden.

98. The object of those who advance the various arguments for raising the minimum age limit is to make the point that Parliament should not concern itself at all with the problem of delinquency in the very young, but should leave the matter to be dealt with by the provincial legislatures under welfare legislation. We now attempt to assess the merits of the arguments that have been outlined above. In doing so we emphasize that there is not any one age that can be said to be the "right" minimum age of criminal responsibility, apart from a balancing of the various considerations that must be taken into account. In other words, different arguments will be more or less persuasive depending upon what alternative minimum age is proposed.

99. The problem previously raised in relation to participation by the young child in the hearing of an allegation of delinquency is a real one. We doubt, however, that changing the hearing from one of determining "delinquency" under the Act to one of finding "incorrigibility" or "moral danger", for example, under a provincial statute would solve the problem. It is true that the successful working of the adversary process (that is, prosecution and defence) requires the active interest of parties of approximately equal resources. In the context of welfare legislation this requirement of the adversary process could be satisfied only if the proceedings were against the parent

for neglect or some other parental failing in relation to the child. A simple case should suffice to illustrate the problem of adversary proceedings under welfare legislation. Assume that a child is alleged to be in need of care and protection inthat he killed one of his parents without just cause. The child replies that his killing was excusable because he acted in self-defence. This issue of contested fact should, in the interests of society, be determined in an adversary hearing. In such a case the need for adversary proceedings in the interests of justice is not obviated by allowing the state power to be exercised against the child by virtue of welfare legislation rather than under the Act. Later in this Report we shall consider some methods whereby the benefits of an adversary proceeding can be obtained in the juvenile court. (27).

100. There has been no adequate research to determine whether juvenile court proceedings have a positive value in terms of a child's behaviour problems. Again the question is whether proceedings under provincial welfare legislation would be any more useful. These same comments are equally applicable to the problem of the child's confusion. Indeed, as more than one student of the American juvenile court system has pointed out, a civil proceeding may often prove to be more confusing to a child than a proceeding based on the principles of criminal procedure. (28). Although no submission was made to us that child welfare tribunals of the Scandinavian type would be preferable, we have considered the matter and doubt that they would constitute an advance over our present system. This is not to suggest that criticisms of the present practices of the juvenile court, to which we shall refer later, are beside the mark. We feel that the difficulties that exist can be resolved with radically altering the present system.

101. Some organizations have recommended that, in the case of the very young child offender, both he and his family should be referred to a child welfare agency and that there should be no occasion for court proceedings. This view, we think, fails to take into account the nature of our legal system. Any person who needs services can apply to a welfare agency and that agency can, if it so desires, provide what is needed. The control of anti-social behaviour presents a somewhat different problem. A disturbing event has occurred and the official representatives of the community feel that they must act, regardless of the wishes of the family concerned. It may appear advisable to remove the child from the home or to subject him to measures of control by the community at large. Even where the assistance of a child welfare agency might be thought sufficient, the fact is that the welfare agencies have themselves no power to impose their services upon an unwilling subject. Anglo-American law has traditionally proceeded on the principle that welfare or other authorities should be required to justify, in a formal court hearing, any such substantial interference with parental rights or the liberty of the child. In keeping with that principle, provision for some form of court proceeding will continue to be necessary - even

though, by one means or another, it may be possible to avoid court proceedings in many cases. The important question, at least initially, is not whether it is desirable that children should appear in court. Rather, it is one of finding an age below which, in the event that a court proceeding is required, it seems preferable to deal with serious anti-social conduct by means other than the criminal law. We say this in full recognition of the fact that techniques have been suggested, such as that proposed by the Committee on Children and Young Persons in Scotland (Kilbrandon Committee) for reducing to a minimum the necessity of a court appearance. (29).

102. The problem of stigma is one that has greatly troubled us as it has troubled many others. "Stigma" is defined as a "mark of disgrace or infamy; a sign of severe censure or condemnation, regarded as impressed on a person." (30). In that sense, persons suffer stigma in a variety of situations as a result of society's action. We are told that the essence of the criminal law is the community condemnation of prohibited conduct. (31). A man who robs or rapes is ordinarily considered to be a bad man. A man who is committed to a mental hospital may also suffer stigma even though society does not consider him blameworthy. This is to suggest that the community tends to regard a person who has been the subject of certain types of official action as "different", as posing risks to the successful working of the social enterprise - whether that enterprise be a classroom in a high school or a platoon in the armed services. We do know that children who have been found to be delinquent do have difficulty, as a result of an official finding of delinquency, in adjusting in school and obtaining employment.

103. Later in this Report we shall suggest some possible ways of reducing the undesirable consequences of a finding of delinquency. (32). At this stage it is sufficient to note that (a) the danger of stigma does not seem to have limited the use of the juvenile court where necessary, at least in Canada; (b) the improper or undesirable use, by individuals and agencies, of a finding of delinquency can be avoided or lessened in ways other than by removing the case from the jurisdiction of the court; and (c) stigma attaches not only because of the form of the proceeding, but also because of the possible consequences than can flow from it. Will a ten-year-old sent to a training school under child welfare legislation for killing without just cause or excuse suffer appreciably less consequences, in terms of stigma, than his identical twin sent to a training school for the same reason but by order of the juvenile court? In any case, as the Lord Chancellor said in debate in the House of Lords: "The Ingleby Committee attached importance to avoiding a criminal stigma, and if, indeed, this could be done, we should all agree with them. But the man in the street goes for the essence of the thing rather than the name, and if Johnny is before the Court for doing something which in an older child would have been larceny ... I suspect that his parents and neighbours will say that he has been taken before the court for stealing and not being in need of care, protection and discipline." (33).

104. Many children who need the services of the juvenile court do not get them. This is not so much because of the difficulty of proving delinquency but rather because of the lack of facilities and personnel in the juvenile court - a deficiency that exists whether the proceeding is under child welfare legislation or under the Act. This complaint fails to consider the real issue: in what circumstances is the state fairly entitled to use its power to force a person to take treatment against that person's will? The kind of services that the juvenile court can offer by way of counselling or informal adjustment - where adequate services are available - are, we think, another matter. We deal with this question later in our Report. (34).

105. We recognize that the fear that judges will be motivated by punitive feelings because of the quasi-criminal nature of the proceedings may be a real danger. The provisions of the Act setting out that the delinquent child is to be dealt with as one requiring help, guidance and proper supervision should be a sufficient safeguard against the danger. To the extent that they are not, the primary inference one can then draw is that persons of the wrong type are appointed as juvenile court judges. In that event the solution would seem to be that properly qualified judges be appointed, a matter with which we deal at a later stage. American experience, we may add, makes it evident that substitution of a civil for a criminal form of proceeding is unlikely to remove the danger. (35).

106. We agree that there is a basic difficulty in combining the requirement "for proof of a specified event or condition" with a general direction "to have regard to the child's welfare". (36). We doubt, however, that a solution to this difficulty is to be found in a change in the type of procedure that is employed. While proceedings might be brought under provincial legislation relating to children who are alleged to be "incorrigible" or "in moral danger" or the like, and while the focus of an inquiry might thus shift to the whole background and way of life of the child, the fact remains that in the minds of the child and his parents it is an act that constitutes a legal offence that is the occasion of the court's intervention. An order by the court that seems to be out of proportion to the gravity of that offence will, in our view, continue to seem unfair. One author has spoken of the "gap which separates the attitudes and purposes of an enlightened juvenile court from the function of courts as such in the minds of young offenders and their parents" as an inherent dilemma of juvenile court systems generally. (37). The following observation of the author seems relevant in this present context: "Children attach guilt to actions rather than situations; .... if we set out to deal with persons and situations rather than with offences .... we are introducing complexities which people themselves do not grasp. In this, to them, confused situation, those who come before the courts may feel lost and powerless against authority, ... and thus may be threatened as persons just because the aim of the courts is to treat them as persons." (38).

107. That it is desirable to involve a child's parents as fully as possible in proceedings affecting the child is a proposition to which few, if any, would take exception. However, we do not consider that this objective is incompatible with the existing juvenile court process. Requiring the co-operation of the parents may necessitate an element of compulsion, regardless of whether the proceedings are civil or criminal in nature. The important issue of principle concerns the basis, if any, upon which the state is entitled to exert its power against a parent because of the anti-social conduct of his child. We deal with the problem of compelling the attendance of parents in juvenile court and with the matter of sanctions against parents later in this Report. (39).

108. In so far as the behaviour problem of the child is concerned, the distinction between "delinquency" and "neglect" is often an artificial one. That is to say, it is often a matter of chance whether a child is charged under the federal Act or is brought before the court under provincial child welfare legislation. However, reliance upon this consideration to justify abandoning the legal distinction between "delinquency" and "neglect" would, we think, be a mistake. The importance of the distinction for legal purposes depends, not upon any characterization of the child in terms of one category or the other, but upon the appropriateness of a particular proceeding to achieve in any given case a desired legal result. (40). There may be a number of reasons why, having regard to what is required in the sound administration of justice, the initial focus of a proceeding should be on the conduct of the child. Nor does this cease to be the case simply because the welfare of the child in both delinquency and neglect proceedings is intended to govern the disposition that the court will ultimately order. One advantage of a criminal type proceeding, for example, is the fact that it addresses itself to the responsibility of the offender. One submission to the Committee states the point in this way:

> " Even though in many cases the court may find that the home is mainly responsible, the initial presumption must be that the child himself is responsible; otherwise, the effect upon the child runs directly counter to sound guidance principles. Regardless of contributing environmental factors, the child must be helped to accept responsibility for his acts and it must not be absolved therefrom merely because his parents also share the responsibility. "(41).

109. Moreover, while the distinction between "delinquency" and "neglect" may often be an artificial one, it is not always so. There are cases of children who engage in anti-social conduct whose activities are not the result of any parental neglect. This must be so unless we are to accept the unresearched and therefore unconfirmed proposition that juvenile anti-social behaviour proves parental neglect. Common sense and common experience are to the contrary. A ten-year-old child who is left to fend for himself can

rationally be considered to be neglected. Presumably no reasonable person will object if the state declares that, as a result, the parents may lose their right to custody of the child. Let us imagine that, a year later, while he is receiving proper care, he viciously assaults another child. Is he neglected or is he delinquent? We think that the basic question is this: when is it fair to impute some degree of moral blame to a child for his anti-social conduct, even if that blame is of a lesser degree than would attach to an adult who engaged in the very same activity? What is required, in our view, is not a kind of proceeding that will minimize the distinction between "delinquency" and "neglect", but rather, a means of ensuring that the decision as to how any case should be dealt with is reached on a rational basis. One way of accomplishing this is through the intake procedures of the juvenile court. Another is to make available to the judge powers of disposition that are flexible enough to enable him, at any stage of a delinquency proceeding, to suspend further action under the federal Act and make an appropriate order under - and to the extent permitted by - provincial legislation relating to the care and protection of children. Both of these matters are discussed in more detail later in our Report. (42).

110. The main argument in the submissions to us against raising the minimum age relates, as we have said, to the problem of facilities and services. We recognize that raising the minimum age will have some effect upon existing arrangements in regard to child welfare services, an effect that will probably vary from province to province depending upon the structure, role and comprehensiveness of child welfare services and upon whatever new minimum age may be established. Nevertheless, we are unable to give to this argument a weight sufficient for it to overbear the contrary view. For the argument is not one of principle. At the present time difficult young children who engage in anti-social conduct are dealt with by the juvenile court under the federal Act. They receive what services they do in institutions (training schools), treatment facilities (mental hospitals; residential treatment centres for disturbed children), in foster homes, or from organizations (children's aid societies) that are all financed by the provinces and municipalities. We do not understand why dire effects would result if the children received these services by virtue of an order of the juvenile court under provincial child welfare legislation rather than under the federal Act.

111. We thus agree that the minimum age for juvenile court jurisdiction under the Act should be raised. Our assumption throughout has been that the Act is the counterpart of ordinary criminal legislation modified for those in a specialized age group who because of their age cannot be held to be fully responsible for their actions. We cannot see how the very young child, now within the Act, can be held responsible at all on any reasonable conception of the purpose and function of the criminal law. It is true that an element of stigma may attach to proceedings even under

provincial welfare statutes. Nevertheless, we do not think it proper for Parliament to impose community condemnation, in however attenuated a form, on a very young child. Furthermore, the inevitable community condemnation inherent in an adjudication of delinquency makes it unfair to allow such a child to be found delinquent in a proceeding in which he is unable to participate effectively. For reasons previously examined we do not find persuasive the argument relating to the problem of services. It is important to note, in this connection, that of the children found to be delinquent in Canada, only some three to four per cent are under the age of ten. Even if the minimum age were raised to twelve, the group affected would still represent only about twelve per cent of the total number of offenders involved. We recognize that raising the minimum age limit under the Act may require the provincial legislatures to amend their child welfare legislation. This is a small price to pay, in our view, if the change in the Act is otherwise desirable. In any case, as we have noted repeatedly, in the field of juvenile delinquency there is a great need for co-operative federalism of the highest order.

112. We have had some difficulty in reaching agreement on a specific minimum age. We are not of the view that any increase in the minimum age, however substantial, is desirable for its own sake, without reference to a specific purpose that the increase is intended to serve. It is important to remember also that, whatever age is selected at the federal level, there will remain considerable scope for dealing with offenders under provincial child welfare legislation to an age higher than that established as the minimum age under the federal Act, as a matter of either administrative or judicial decision. We think it advisable, indeed, that the juvenile court judge should have every opportunity to suspend action under the federal Act in appropriate cases and to direct or authorize that further steps, if any, be taken under the relevant provincial legislation. We deal with this question later in our Report. (43). The problem that the minimum age of criminal responsibility presents is whether access to a court of criminal jurisdiction should be denied altogether in every case below that age - even, for example, where the act would constitute the extreme offence of homicide.

113. Moreover, we emphasize again that there is no one age that can be said to be the "right" minimum age of criminal responsibility. Indeed, as the Kilbrandon Committee has pointed out, the "age of criminal responsibility" is largely a meaningless term. (44). In some countries it is used to signify the age at which a person becomes liable to the full penalties of the criminal law. This is not, of course, the case in Canada, where the juvenile court process itself represents an institutional embodiment, within a framework of criminal law, of the concept of diminished responsibility in relation to juvenile offenders. In the context of our legal system, the age of criminal responsibility is simply a convenient means of indicating, for jurisdictional purposes, a limit below which the criminal law is not regarded as an effective method of social control. As such, it is an artificial concept, in the Kil-

brandon Committee's words, it "is not ... a reflection of any observable fact, but simply an expression of public policy ...". (45). It is true that the principles of criminal liability were developed at common law in terms of a child's capacity to appreciate the difference between right and wrong, so that the language of criminal responsibility carries with it some implication that a child has the requisite degree of knowledge to form a "criminal intent". However, this emphasis on "knowledge" as the basis of criminal responsibility has often been criticized.(46). Commentators have pointed out, quite properly, that the relationship between chronological age and the capacity to form a criminal intent is tenuous at best and that, in any event, the fact that a child does know right from wrong does not necessarily mean that he has acquired sufficient emotional maturity or independence from environmental influences to act on that knowledge. It is in recognition of the fact that a child, even considerably above the "age of criminal responsibility", should not be regarded as having a personal responsibility equivalent to that of an adult, that society has come to employ the method of the criminal law in a special way in dealing with juvenile misconduct - that is, through the juvenile court process. The appropriateness of any minimum age, then, is not really a matter of psychological assessment of the capacity of children of different ages to know the differences between right and wrong, or even to act upon that knowledge. Rather, it is a question of evaluating the effectiveness of the criminal law, in comparison with other methods of social control, as a means of dealing with the problem of anti-social behaviour presented by different age groups.

114. For reasons that we have explained we accept the present juvenile court process, in its essential features, as the preferred approach to the problem of the juvenile offender. We have thus sought to assess the appropriateness of any proposed minimum age, not by reference to possible alternative systems of control, but in terms of the effective operation of the existing system. That is, we have seen the problem as one of selecting an age that meets two basic requirements. First, it should be an age at which more serious offences occur with sufficient frequency to require that a quasi-criminal type of procedure be available. Second, it should be an age at which the adversary features of the system, even modified as they are in a juvenile court hearing, can ordinarily be expected to function with at least a minimum degree of effectiveness. On the strength of these considerations it would seem to us that an increase only to about the age of ten is indicated- although we recognize that these same considerations might well persuade others that an increase to the age of eleven or twelve would be justified. In any event, for one principal reason we hesitate to recommend a minimum age of ten, at least without qualification. The view is held by some that future efforts at dealing with the problem of the juvenile offender should move still further away from a criminal law approach in the direction of welfare or educational measures, administered either through a form of child welfare legislation or through a system almost entirely divorced from the courts. This was the conclusion reached by both the Ingleby and Kilbrandon Committees.

The Child Welfare Act of Saskatchewan already represents a step in this direction. (47). What causes us concern is the fact that, by establishing a fixed minimum age of ten, the effect is to limit, to some extent, the development of such alternative techniques of a welfare or educational nature by any province that should wish to undertake them.

115. One possible solution that we have considered is a flexible minimum age of juvenile court jurisdiction. Under such a scheme it would be open to any province to make whatever arrangements it wishes for children up to the age of fourteen, including the enactment of legislation making the federal Act inapplicable altogether to offenders below that age. One objection that can be made to this approach is that, having regard to the fact that the Act is a form of criminal legislation, the age limits of juvenile court jurisdiction should be uniform across Canada. We think it important to note, however, that this objection probably does not apply with quite the same force to the minimum age as it would to the maximum age. The situations differ in two principal respects. First of all, the consequences of a variable minimum age limit are not the same. Persons of the same age in different provinces would not, as in the case of a variable upper age limit, appear before different courts - that is, the criminal courts in one province, as opposed to the juvenile court in another. All offenders would presumably come before the juvenile court, but pursuant to different legislative authority. The implications are different also from a disposition point of view. The Juvenile Delinquents Act and the children's protection legislation are alike in directing that the welfare of the child is to govern whatever disposition is ordered by the court. Moreover, a variable minimum age would not mean, as would a variable maximum age, that an offender in one province could be sent to a training school, whereas an offender of the same age in another province must, if confinement were required, be sent to a correctional institution for adults. The committal would ordinarily be to a training school in either province. Indeed, training school populations now do not consist entirely of children found delinquent, but include as well children admitted pursuant to provincial legislation. A second difference between the two situations relates to the matter of administrative practice. As we have noted earlier there are considerable variations from community to community in the manner in which offenders are dealt with following apprehension. This is especially true of very young offenders. While in some places it is the practice to deal with these cases informally, or, to the extent possible, under child welfare legislation, in others proceedings are brought under the federal Act. In so far as younger children in particular are concerned, therefore, a uniform minimum age does not mean uniformity of treatment. The fact that the minimum age might be raised in some provinces would probably create little more disparity than now exists. It might, in fact, have the effect of encouraging greater uniformity in approach.

116. These considerations notwithstanding, we are not entirely satisfied that a flexible minimum age represents a satisfactory solution to the

problem of finding an acceptable minimum age of criminal responsibility. While the implications of the fact that a proceeding is designated "criminal" are difficult to assess, the fact remains that a child would be dealt with in one province under legislation that is regarded as "criminal", and in another province under legislation that is considered to be "non-criminal". On balance, therefore, we think it preferable that there be a uniform minimum age. Moreover, it is our view that this age should be set at ten, or at most, twelve. We would emphasize that our proposal is intended not as a measure of cautious reform, but as a choice that seems to us to be reasonable from a functional point of view, having regard to the nature and objectives of the present juvenile court system. In any event, the issues involved are such that we think that the matter should be the subject of discussion between the federal government and the provincial authorities before a final decision is made.

The Doli Incapax Rule

117. In paragraph 89 we referred to the provisions of the Criminal Code that incorporate common law exceptions to criminal liability. At common law not only was there a complete exemption from criminal responsibility for any child under the age of seven but, in addition, there was a rebuttable presumption that a child between the ages of seven and fourteen was incapable of committing a crime. To establish criminal liability the prosecution was required to show that the child had sufficient moral discretion and understanding to appreciate the wrongfulness of his act. (48). The rule - known as the doli incapax rule - is carried over into section 13 of the Criminal Code. (49).

118. We suspect that many juvenile court judges are not familiar with the doli incapax rule. The rule is, in any event, difficult to apply. In England the Ingleby Committee noted that the rule has led to inconsistency in the administration of the law. Many juvenile court judges, it seems, ignore the rule altogether, while others differ in the degree of proof of guilt that is required. (50). Canadian experience seems to have been much the same. There is evidence, moreover, that the rule has been interpreted so as to justify practices that have a dubious standing at law. Background information, which is not properly before the judge until after a finding of delinquency is made, is sometimes reviewed at the adjudication stage for the purpose of making the determination required by the rule. The similarity in wording between section 13 of the Criminal Code and the operative test for insanity has apparently caused some confusion, (51), leading at least one juvenile court judge to order a psychiatric examination in order to determine what position to take in regard to the presumption.

119. While we do not accept the view that the need of a child for "treatment" should of itself be sufficient to sustain an assertion of jurisdiction by the juvenile court we think that the doli incapax rule can be

safely abolished. The rule was formulated at a time when there were no juvenile courts and when the penalties of the criminal law were extremely harsh. Having regard to the difficulty in interpreting and applying the rule, and to the modest sanctions available under the present law, we doubt that there is any real advantage in retaining the rule. It is important to note also that the presumption weakens with the advance of the child's years towards fourteen. Its principal value is in connection with proceedings against offenders who are very young. Our proposal for raising the minimum age of criminal responsibility would further diminish the need for the rule. Finally, we think that the basic objective that the doli incapax rule is designed to serve can be accomplished more effectively through flexible disposition provisions. Our recommendations in that regard are discussed later in the Report. (52).

Maximum Age Limits

120. The Act permits the individual provinces to establish the maximum age limit for young persons in the juvenile court at ages sixteen or eighteen. (53). That is to say, depending upon the province concerned, the court loses original jurisdiction when the juvenile reaches the age of sixteen or eighteen, as the case may be. Consequently,there is variation in the juvenile age across Canada. It is sixteen in Saskatchewan, Ontario, New Brunswick, Nova Scotia and Prince Edward Island. It is eighteen in British Columbia, Manitoba and Quebec. It is eighteen for girls and sixteen for boys in Alberta. In Newfoundland, where the Act is not in force, it is seventeen under provincial legislation. (54).

121. These variations suggest that determination of the appropriate juvenile age is a difficult problem. The difficulty is not peculiar to Canada. A similar diversity exists in the relevant legislation throughout the world. In such countries as Denmark, Finland, France, Italy, and the Netherlands the juvenile age is eighteen; in Belgium it is sixteen, and in Greece and the United Kingdom it is seventeen. The statutes of three of the six Australian states set the maximum age at seventeen; the other three set it at eighteen. Most American states, with some important exceptions such as New York, set the juvenile age at eighteen. (55).

122. There are two introductory observations that should be made in order that the various recommendations made to us on the matter of the juvenile age can be properly appreciated. First, under the Act, not all children within the age jurisdiction of the juvenile court have to be tried in that court. Section 9 empowers the court to waive jurisdiction in favour of the criminal courts over persons fourteen years of age and older charged with indictable offences. In other words, raising the juvenile age does not necessarily mean that all members of the older group will, without exception, be tried in the juvenile courts. The matter of waiver jurisdiction is dealt

with later in this Chapter. Second, the feeling seems to be quite general that some special provisions should be made in the law for offenders above the age of sixteen - at least to the age of eighteen, and possibly to the age of twenty-one. Some would accomplish this by raising the juvenile age. Some would provide special youth courts. Others would make it possible for certain classes of cases to be transferred back to the juvenile court from the criminal courts. Finally, a number would amend the Criminal Code to extend the philosophy of the Juvenile Delinquents Act, so far as seems appropriate, to the treatment of youthful offenders. The point is that any recommendation on the matter of the juvenile age ordinarily implies some judgment on this broader issue, a fact that should be kept in mind when alternative proposals are being considered.

123. Those who favour setting the juvenile age at sixteen emphasize, in support of their position, the different nature of offences committed by young persons above that age, the inherent limitations of the juvenile court approach and the problems that older offenders present from the point of view of treatment resources and programming. We are told that sixteen is the age at which court appearances begin to reflect more serious and persistent forms of criminality. Moreover, behaviour patterns among the group from sixteen to eighteen have become fairly well fixed, and hence more difficult to modify. Often these offenders are quite hostile to society and its official representatives. Because of these characteristics of the over-sixteen group, it is said that they are unsuitable subjects for the juvenile court process. This was the conclusion of the Archambault Commission, which observed: "The methods of dealing with the children .... (those under sixteen) ...., and the characteristics of the court that should be applied to children of this age, are entirely different from those which ought to be applied to young persons between sixteen and eighteen years." (56). The relatively informal procedure of the juvenile court, and its implicit reliance upon a treatment-oriented relationship between the juvenile court judge and the offender, are considered to be inappropriate for older adolescents. Moreover, the nature of the cases coming before the court makes it more necessary to have legally trained judges. Above all, there is the need to instil in future citizens of this country the awareness that at some point in their lives they will be held fully accountable for their conduct. The argument is that whether or not the offender of sixteen can properly be regarded as completely mature, nevertheless the failure to treat him as such may have adverse consequences in terms of his own development. In the words of a Canadian Welfare Council report, "many children in the 16 to 18 group resent being treated like children, and would respond better if they felt they were treated more like adults." (57).

124. The problem of treatment resources and programming has caused particular concern. The matter of resources is, in fact, of central importance. The juvenile court concept, with its predominant emphasis on treatment,

presupposes that the court will have at its disposal a flexible system of educational and rehabilitative measures, as well as ready access to diagnostic facilities and competent expert advice. Those who favour a juvenile age of sixteen point out that, except in a few larger centres - and even this exception must be qualified - these resources either do not exist or are totally inadequate to meet the demands that are placed upon them. Probation officers' caseloads, for example, are usually such that intensive probation supervision is impossible. Having regard to this lamentable deficiency in services, some have taken the position that there should be a concentration of the available staff and resources upon those offenders with whom the prospects for success are the greatest - that is, young offenders below the age of sixteen. It is perhaps the training schools that are affected most by a higher juvenile age. Here the problem is not only that there is a danger of diluting existing services, but also that the schools must develop institutional treatment programs adequate to the needs of a population varying widely in age and maturity. Writing in 1938 the Archambault Commission observed: "The problem of .....training schools would be clearly aggravated, and, in our opinion, has been aggravated, where the age limit has been increased." (58). It is perhaps a sufficient indication of the present situation to note the views of The Canadian National Conference of Training School Superintendents, as expressed in their submission to the Committee:

> " The resources of the majority of training schools are not such as to permit of satisfactory treatment of the 16-18 age group who cannot be treated as children and whose presence in schools which cater to the 10-16 age group can have a deterrent rather than a helpful effect upon the total programme. The dire shortage of clinical personnel and of experienced personnel in training schools is such that we believe there should be a concentration of effort in the years up to the age of sixteen when the possibility of effecting a marked change in attitudes, in work habits and in patterns of behaviour is stronger than it is at the age of eighteen. The more concentration there is on the treatment of the young offender, the more likely it is to be successful - with a consequent reduction in the numbers who eventually come into adult institutions." (59).

125. A further argument in support of a juvenile age of sixteen is based upon the definition of delinquency in the present Act. Under this definition, any person within the age range of juvenile court juridiction can be found delinquent for a variety of types of conduct that are not offences if committed by an adult. As the authors of the Canadian Welfare Council

report observed, "certain activities such as truancy, staying out at night, disobedience, etc. cannot be considered delinquency in a child over 16, although they may be in a child under 16." (60). To this list might well be added that part of the definition of "juvenile delinquent" that reads, "any child who .... is guilty of sexual immorality....". (61). As we shall see, this is not the only problem presented by the definition of delinquency under the Act. Should, for example, a seventeen-year-old charged with careless driving be brought before the juvenile court or the adult court? We leave further consideration of such questions to our discussion of offence jurisdiction.

126. The arguments in favour of an upward revision of the juvenile age are essentially three: the fact that growth into full psychological maturity is delayed for young persons in contemporary society because of the prolonged period of dependency that is required of them; the need for one court to be responsible for teen-agers as an identifiable group; and the desirability of protecting young persons for as long as possible from exposure to the sometimes hopeless conditions in jails and institutions for adults.

127. Although boys and girls of sixteen or seventeen may be physically more mature than were their grandparents at that age, the teenager of today does not become an adult socially and economically as early as did his counterpart of 1908. It is common knowledge that since the Act was drafted the age at which a youngster is permitted to leave school has been raised in every province, and that more teen-agers continue their education beyond the school-leaving age than was true fifty or even ten years ago. Increasing educational requirements for employment in industry or in commerce make it almost inevitable that this trend will continue. Thus the teen-age years have come to be devoted to academic and vocational preparation, with young persons in most cases dependent upon their parents for room and board. There has been much speculation about the consequences of these changes. Some social scientists have suggested that young persons in their late teens today are subject to strains of an entirely different order than were their counterparts of a generation or so ago - strains that alter significantly the process of achieving maturity. The following quotation from a recently published article on psychological theory and juvenile delinquency may serve as an example:

> " ....There are profound discrepancies between adolecence in the 1960's and a century ago. In the nineteenth century there was almost no such thing as an adolescent; adolescence was certainly not the prolonged period that it is currently. Stringent taboos on sexual behaviour were not enforced from age 12 to age 22 (as is often the

> case now) but only from age 12 to 16 or so. As soon as the youth was able to work and function as an adult he became an adult. There were virtually no truancy laws or child labor laws until comparatively recent years. The economy needed the participation of the entire family; the adolescent had an important role, was needed, and belonged. Quite in contrast, the twentieth century has almost no place for the adolescent. He is denied the protection and exemption from responsibility characteristic of childhood, but he is also denied the rewards and privileges of adulthood. He is in a psychosocial 'no man's land'." (62).

128. The conclusion that some would draw from these observations on the position of the contemporary teen-ager is that, because he is "denied the rewards and privileges of adulthood" - because, in fact, he is not fully mature - it is unjust that he should be held responsible for his actions in the same way as an adult. In support of this same conclusion, reference is sometimes made also to other indications in the law that young persons do not have the competence required of an adult. A sixteen-year-old cannot vote, drink liquor, make a valid will, enter into contractual relations that are binding against him, marry or enlist in the armed forces without parental consent, to mention only a few of his disabilities based on age. In so far as freedom from special legal restraints upon particular forms of activity can be considered criteria of adulthood it seems clear that, in the eyes of the law, adulthood is a relative matter. It depends largely upon the purpose for which one claims or denies that status.

129. Another argument that is made for raising the juvenile age is that teen-agers have come to form an identifiable group in our society, having a distinctive and often semi-autonomous way of life of their own. The American Academy of Political and Social Science, for example, saw fit to devote an entire issue of its publication The Annals to the phenomenon of "teen-age culture". (63). During the adolescent years, we are told, young persons place an extremely high premium on acceptance by their fellows - so much so that values that would otherwise be acknowledged and adhered to are often sacrificed for the sake of "peer approval". In the context of the dynamic changes that are taking place in modern society, this reliance upon "peer approval" that characterizes adolescence has, it is said, led teen-agers to think of themselves as a group apart in a new and distinctive way. Such theoretical speculations aside, it is clear that adolescence marks a critical stage in the life of a youngster in establishing

his identity, his sense of responsibility, and his relationship to the society in which he lives. (64). For this reason, much teen-age misbehaviour would appear to be transitory - that is, it represents activity, in response to personality needs, that is not likely to last beyond the teen-age period. (65). Consequently, some suggest that there should be one specialized court responsible for all persons of less than full maturity who violate community standards.

130. Finally, it is argued that the benefits of the juvenile court approach should be extended to as wide a group of offenders as possible. In particular, it is important that adolescents should not be placed in inadequate lock-ups or committed to adult correctional institutions where they will be exposed to older, more experienced criminals. Some persons would extend the upper age limit of juvenile court jurisdiction to accomplish these objectives.

131. We agree that special provision should be made in Canadian criminal law and correctional practice for an older group of offenders than is now dealt with under the juvenile court process. However, we do not think this should be done by raising the juvenile age. On this point we concur with Professor Tappan, in his proposals prepared for the American Law Institute's Model Penal Code, that "the task of handling young adults is unsuited to the specialized competence of such ....(juvenile) .... courts and that these more mature offenders need a treatment differentiated from that provided juveniles." (66). Our own views are perhaps best summarized by quoting briefly the following conclusion from a recent study of juvenile justice in Sweden and California: " ....experience indicates that the periods of childhood, adolescence and young adulthood as a general rule present their special physical, emotional, and social problems, which a progressive and realistic crime-preventive policy cannot disregard. This may imply the necessity of a general differentiation not only between the juvenile and adult offender, but also between the child, adolescent, and young adult who has committed crime...". (67).

132. It is our recommendation that the juvenile age be set at seventeen. The juvenile court, in other words, would have exclusive original jurisdiction over all offenders sixteen years of age and under. (68). For reasons to be discussed we favour uniform age limits. The age of seventeen is in some respects a compromise. We might point out, however, that there is evidence, cited by Professor Tappan, that seventeen is a more appropriate natural dividing line than either sixteen or eighteen. (69). He concludes: "While there is no complete uniformity in this range, characterized as it is by spasmodic and disjointed growth rates in physical, social and emotional maturity, authorities have noted that the spurt to maturity has usually occurred by the age of 17. Youngsters from 13 through 16 are a group apart from those 17 through 20." (70). Seventeen, as we have noted,

is the juvenile age in the United Kingdom.

133. We base our proposal for a juvenile age of seventeen upon two principal considerations. First, for reasons suggested in the discussion in preceding paragraphs, we think that a slight upward revision from the juvenile age that is now in effect in the majority of provinces has much to recommend it. In particular we are impressed by the advantage of keeping as many of the sixteen-year-old group as possible out of adult penal institutions. Second, the age of seventeen will involve less by way of administrative change or adjustment across the country than would an age of sixteen or eighteen. In two of the three most populous provinces - Quebec and British Columbia - the age is now eighteen. To lower the age to sixteen might, so far as these provinces are concerned, have disturbing implications in terms of existing institutional arrangements and services. Raising the age from sixteen to eighteen might create equally difficult problems for some of the other provinces. In any event, for other reasons already noted, we are firmly of the view that the juvenile age should not be set as high as eighteen. It seemed to us that there was something artificial about some of the juvenile court proceedings that we observed where older offenders were involved. Having regard to what we think are the inherent limitations of the juvenile court approach, and also to the problems presented from the point of view of treatment resources and programming, it is our conclusion that seventeen should mark the upper limit for the operation of the juvenile court process.

134. Objections to raising the juvenile age above seventeen could, it has been suggested, be met by using one or more devices designed to secure a measure of flexibility in regard to the maximum age limit. These include: waiver of jurisdiction; providing for concurrent jurisdiction in both the juvenile and adult courts over older adolescent offenders; and permitting the criminal court to refer certain older offenders to the juvenile court, or to deal with them in the criminal court under the provisions of the juvenile court law. We examine these proposals later in this Chapter under the heading of "Waiver of Jurisdiction".

135. In introducing this discussion of the maximum age limits of juvenile court jurisdiction we pointed out that there is implicit in any recommendation on the matter of the juvenile age some judgement concerning the methods that are appropriate for dealing with older adolescent offenders generally - that is, offenders up to at least the age of eighteen, and probably to the age of twenty-one. As we have stated, it is our view that Canadian criminal and correctional policy should take into account the special needs of this older adolescent group. While, strictly speaking, this problem is beyond our terms of reference, we do offer the following comments. First, we think it is important to recognize that, while many of the most hardened offenders are within this age range, there are others for whom even moderately serious misbehaviour is transitory, representing only a stage, albeit a critical one, in the process of

growing up. Accordingly, we suggest that it might well be considered a basic object of criminal law policy to adopt what can be termed a "containment approach" in regard to this age group. That is, the criminal process should be structured, so far as possible, in such a way as to allow the ordinary processes of achieving maturity to take their course and to ensure that nothing is done at any stage of administrative or judicial decision that may tend to strengthen a deviant behavioural pattern that has not yet become fixed. Second, we would emphasize that probably the greatest single need is for the development of diversified and adequate treatment resources for the older adolescent offender. Third, we doubt the advisability of establishing an independently constituted "youth court". In our view, an additional specialized court within the Canadian judicial system would create unnecessary administrative and financial problems and would, in any event, probably lack the prestige and status necessary to accomplish the desired goals. It is our opinion that most of the objectives sought by those who favour a youth court - for example, increased use of pre-sentence reports, expunging of criminal records and the appointment of specially qualified magistrates - can be achieved without establishing such a court. Finally, we would add a specific recommendation that an intensive and detailed study of the problem of the youthful offender be undertaken as part of the development of the criminal law policy of Canada.

136. We adopt the unanimous opinion of the individuals and organizations who made representations to us that the juvenile age should be uniform throughout Canada. We do so essentially for reasons already set out. A federal statute, especially one concerned with matters of criminal law, should not be open to the charge of discrimination. Nor is there, in our view, a true analogy between the Act and the Lord's Day Act, under which provincial variation is also permitted. (71). We might point out as well that a variation in age limits as between provinces can serve to defeat the purpose of section 421(3) of the Criminal Code in relation to juveniles who commit offences in more than one province. (72). Section 421(3) is designed to afford an accused who is in custody in one province the opportunity of disposing of all charges outstanding against him in other provinces. It is thus intended as a rehabilitative measure. Because of the present variation in the juvenile age it may happen that a young person will serve a sentence in one province and then be returned to face charges in another province. In other words, the effect may be to deny him a privilege that could have been made available were he an adult. A simple example will illustrate the problem. A boy, seventeen years of age, steals a car in British Columbia and drives to Saskatchewan. He breaks and enters premises in British Columbia, Alberta and Saskatchewan. In Alberta, where he is apprehended, the juvenile court lacks jurisdiction because of his age. He is tried in the ordinary courts which can take into account his offences in Saskatchewan but apparently not those in British Columbia. After serving the sentence imposed by the Alberta court our offender is theoretically subject to the jurisdiction of the juvenile court in British Columbia. Similarly, if he had been first apprehended in British Columbia, it seems that the juvenile

court there could not take into account the offences committed outside that province so as to preclude the ordinary courts in those provinces from trying him. This result is clearly undesirable.

Jurisdiction Over Offences

137. The jurisdiction of the juvenile court in relation to juvenile misconduct is defined in sections 2 and 3 of the Act. Subsection (1) of section 3 provides: "The commission by a child of any of the acts enumerated in paragraph (h) of subsection (1) of section 2, constitutes an offence to be known as a delinquency, and shall be dealt with as hereinafter provided." The section then goes on to indicate, in subsection (2), that "Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision." Section 2, defining the term "juvenile delinquent", sets out the various things that, if done by a child, may subject him to proceedings under the Act. Section 2 provides as follows:

> " 'juvenile delinquent' means any child who violates any provision of the Criminal Code or of any Dominion or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute."

138. There are four important things to note about these offence provisions. First of all, the Act creates one omnibus offence, embracing all forms of prohibited conduct for children. Whenever a child is charged with an offence, whether it is an alleged violation of a federal statute, a provincial statute, or a municipal by-law, proceedings must be brought under the Act. Thus the Act operates in combination with provincial legislation by means of a form of incorporation by reference. Secondly, the definition is an extremely broad one. The specification of what is prohibited lacks the precision that one ordinarily expects in a criminal statute. The Act speaks of a child "who is guilty of sexual immorality or any similar form of vice" - and further, of a child "who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute." The statutes of some provinces add other categories, such as "incorrigibility" and "unmanageability". Thirdly, the offence provisions have been drafted not simply to define conduct that is prohibited, but also to state something about the offender. In the words of one submission, "delinquency is defined as far as possible as a state or

condition, so that the child is looked upon as having a tendency to anti-social behaviour, rather than as having committed one undesirable act." (73). Finally, the definition includes conduct that is not prohibited in the case of an adult.

139. To those who are familiar with the literature of the juvenile court movement the reason why a "delinquency" was defined in this way is apparent. The Act is an exercise in prevention - an attempt within the framework of the criminal law, to identify the potential criminal at an early age and to provide, through the intervention of the juvenile court, the means of preventing youthful anti-social behaviour from developing into serious and persistent criminality. Basic to this approach is the judgment that, while young persons are still in their formative years, it is more important to have regard to the behavioural problems that an offender may have than to specific forms of conduct because, for a variety of reasons, his conduct may be largely a response to environmental influences for which he himself should not be held responsible. Thus it was considered that the juvenile court would perform a function akin to guardianship, a function quite different from the traditional criminal process. (74). Attention would be focused, not so much on the specific act that brought the child into difficulty with the authorities, but upon his whole mode of life, with a view to giving him "help and guidance and proper supervision". So viewed, it is understandable that the jurisdiction of the juvenile court would be set out in very broad terms. (75). A court proceeding was, in such adverse social or individual circumstances, thought to be in the child's own interest.

140. As we have noted previously, this conception of the role of the juvenile court is an American one. Its rationalization was found in the doctrine of "parens patriae", a right of the Crown, as general overseer of the welfare of all children in the realm, to step in to provide protection when parental protection was lacking. (76). In furtherance of this idea juvenile court statutes in the United States established a civil form of proceeding for dealing with juvenile offenders. An historian of the pioneering Illinois Juvenile Court Law of 1899 explained: "Great care was given to eliminate in every way the idea of a criminal procedure. The law was expressly framed to avoid treating a child as a criminal. To this end the proceedings were divested of all the features which attach to a criminal proceeding." (77). The assumption was that a finding of delinquency would thus carry with it no "taint of criminality". For the same reason, there was not thought to be any objection to giving the juvenile court jurisdiction of an extensive nature.

141. Those concerned with drafting the original Canadian Act regarded the "parens patriae" approach as the preferred legislative model. However, as we have indicated, a constitutional difficulty stood in the way of adopting this approach in Canada. As the regulation of the civil status of persons is within the exclusive jurisdiction of the provincial legislatures,

it was beyond the competence of Parliament to enact legislation creating, as did the American juvenile court statutes, a non-criminal status of delinquency. Moreover, because the field of criminal law was within the exclusive jurisdiction of Parliament, neither could the provincial legislatures enact legislation on the American pattern. Accordingly, a compromise solution was devised. "Delinquency" was treated as conduct and made an offence. Implicit in the creation of a single offence, and the inclusion within its definition of generalized conduct of the kind outlined, was the intention to give a uniform quality to all juvenile misconduct, serious and minor alike. This would serve to minimize any attribution of criminality to the child's conduct and to place the emphasis, not upon the offence as such, but upon the behavioural problem of the child, who would be dealt with "not as an offender, but as one in a condition of delinquency". In this way it was thought that the Act could be made to approximate, in its effect, the juvenile court idea as embodied in the Illinois and Colorado statutes in the United States. (78).

142. The great majority of those making representations to us have recommended a narrowing of the present jurisdiction of the juvenile court, either in relation to the definition of prohibited conduct, or to the scope of the disposition powers conferred upon the juvenile court judge or, in most cases, to both. The criticisms directed at the existing provisions represent a challenge to some of the earlier thinking about the juvenile court concept. We agree with many of these criticisms. In saying this, however, we wish to emphasize that we affirm the basic philosophy of the Act to this extent: that we recognize that juveniles should be given specialized treatment and that the principle of diminished responsibility as applied to juvenile offences should be retained. We now consider some of the objections to the present jurisdictional arrangements.

143. We have referred above to the fact that the definition of "juvenile delinquent" under the Act is an extremely broad one. The prohibitions of the law are not restricted to acts having reasonably precise meanings, but purport to include as well behaviour that is described only in the most general terms. It was not, of course, accidental that the offence of "delinquency" was defined in this way. As we have attempted to show, the present definition reflects the philosophy that the Act was intended to implement. For once the idea was accepted that the intervention of the juvenile court is in a child's own interests, it is perhaps understandable that a court appearance came to be regarded as a good thing for its own sake whenever circumstances suggested that a child might be in moral danger. This justification notwithstanding, it is apparent that there are substantial objections to defining offences in this manner. A concise statement of some of the issues involved appears in a brief submitted to the Committee by the School of Social Work for the University of British Columbia:

" One of the most difficult problems is inherent in the present delineation of what constitutes juvenile delinquency under Canadian law .... The principal difficulty arises out of the fact that this legal concept goes beyond those acts proscribed for adults and includes such generalities as 'being beyond control', ' being incorrigible' 'sexual immorality' and engaging in a 'form of vice'.

These are not forms of behaviour having a specific character which might make it reasonably possible to subject allegations of such behaviour to the usual judicial tests of evidence. On the contrary these terms are purely subjective so that a finding of delinquency, based on any of these allegations, depends upon whether the Judge of the Juvenile Court can be persuaded to perceive certain forms of behaviour as being sexually immoral, or as evidence of incorrigibility or vice.

.....

Frequently charges of incorrigibility are laid either by parents or by child-caring agencies exercising guardianship over the child. Behaviour commonly giving rise to such charges consists of truancy, running away from home, and resistance to the guardian's established norms for conduct. Sexual immorality may consist of acts which are generally regarded as normal evidences of curiosity and immaturity in young persons.

Behaviour such as that cited above may be annoying to some parents, and may cause justifiable concern in some cases. At the very worst, however, this can scarcely be interpreted as a youthful form of criminal activity. Nevertheless, once a child is declared to be delinquent by the Juvenile Court he becomes subject to the full penalizing power of the Court regardless of the specific behaviour giving rise to the conviction." (79).

144. We are in essential agreement with the position as stated in the submission just quoted - although we would add that the "incorrigible" or "unmanageable" child presents special problems that will be the subject of separate comment below. A statute, especially a quasi-criminal one, should not be any more vague or ambiguous than is absolutely necessary. It is generally accepted, for example, that a criminal statute has a "fair-warning" function - that what has been called "the principle of legality" requires that offences be defined with sufficient definiteness to afford an accused fair warning of the conduct that is prohibited. (80). What kinds of conduct are, in fact, prohibited by the language of the present Act? Moreover, how can ordinary rules concerning the relevance of evidence apply? It has been well said that anything that a juvenile may be alleged to have done that would reflect badly on his character can become relevant to some of these charges. The tendency of some juvenile court judges to rely upon considerations of the child's "need" and upon the broad language of section 38 of the Act increases the danger of abuse.

145. There are still other dangers that might be mentioned. One is that a wide definition provides a vehicle for the oppressive substitution of minor offences where more serious fault is suspected but cannot be established. Another concerns police and detention practices. Where children can be charged with offences having no precise definition, the police are given a weapon of considerable proportions. While it is perhaps true that the police will ordinarily act for the protection of the children concerned, it is most doubtful whether this consideration justifies such an extension, albeit indirect, of what has been traditionally regarded as the proper scope of police powers. Misuse of detention presents a similar danger. Often the principal deprivation that a child suffers is not that imposed by the juvenile court judge, but rather the period of detention that he must endure prior to a court appearance. Broadly defined offences lend themselves to abuses of this kind. And again, it has been urged that there is an element of discrimination inherent in the operation of the 'sexual immorality" clause. Studies of the juvenile court show that, for one reason or another, it is usually persons from a lower economic level who are charged with this offence. More important, perhaps, the great majority of children adjudged delinquent because of alleged sexual misconduct are girls. Indeed, some jurisdictions have set the juvenile age for girls higher than for boys in order that teen-age girls can be "protected" for a longer period of time from the consequences of their own waywardness. (81).

146. We recognize that the present definition of "juvenile delinquent" was, in large part, designed to serve a protective purpose. Nevertheless, it is our view that broad offence provisions of the kind that are now contained in the Act are justified only if there is no other reasonable means available to ensure that children are protected from moral or other danger. This is not, in our opinion, the case. Much of the type of

conduct that is brought within the existing definition is not truly anti-social; nor is it even necessarily the antecedent of anti-social conduct in the adult. We do not deny the importance of dealing with behavioural problems early. What we question is the means adopted to achieve this result. For the method of the criminal law, at least when employed in relation to any sensitive area of activity, involves an implied characterization of conduct as anti-social. The effect of this is to stigmatize the person in respect of whom the criminal process is invoked and to subject him to disabilities that are alien to, or subversive of, any protective purpose that might in fact be the object of a proceeding. While the Act provides for a substantial modification of the traditional criminal process, these disadvantages are not, nor can they be, entirely removed. We think it a sound proposition to assert, therefore, that as a matter of public policy quasi-criminal legislation should not be used to achieve welfare purposes if those purposes can be achieved by non-criminal legislation. To this end we recommend that children be charged only with specific offences as is the case in proceedings against adults, and that any provisions in the law that are inconsistent with this principle be repealed.

147. Another serious criticism that is made of the existing law concerns what is perhaps its most characteristic feature: the fact that the Act creates one single offence embracing, with potentially like consequences, all forms of prohibited conduct for children. The concept of the "juvenile delinquent" represents, among other things, the means by which this arrangement is given expression. The objection to this approach is well stated in a brief submitted by the Canadian Corrections Association:

> " The present Act created an inclusive new offence called delinquency which was unknown to the common law. No matter what action brings a child before the juvenile court he is on conviction found guilty of having committed a delinquency. No legal distinction is made between the child involved in a serious offence such as armed robbery and one involved in an infraction of a by-law, such as driving a bicycle without a licence.
>
> .....
>
> ....We believe that the power the court may exercise over the convicted child should bear some relationship to his offence, so that a child who has committed only an infraction of a municipal by-law cannot be taken from his parents or sent to training school." (82).

148. Once again we think it important to recognize the reason why "delinquency" was defined in this way. It seems clearly to have been

intended, through the concept of the "juvenile delinquent", to give a uniform quality to all juvenile misconduct, serious and minor alike, in order to further the general objectives of the Act. Those objectives were to minimize any attribution of criminality to a child's conduct and to focus attention, not upon the offence as such, but upon the underlying behavioural problem that gave rise to it. To put the matter differently, the existing provisions carry to its logical conclusion the principle that treatment must suit the offender, not the offence. It is now apparent that a competing interest of public policy, namely, the protection of the individual against undue interference by the state requires some limitation upon the unrestricted application of this principle, and that a change in the law is indicated.

149. We have discussed earlier the reasons why we consider that the term "juvenile delinquent" should be abandoned for purposes of legal characterization. In its place we propose that the designations "child offender" and "young offender" be adopted. These terms are explained in more detail below. It is sufficient to note here that special terminology is retained as a means of distinguishing between two degrees of offences. Under our proposals, an accused would be subject to a finding that he is a "child offender" or "young offender" only where his offence is serious enough to warrant a major interference in his life, that is, removal from the parental home or committal to a training school. A number of suggestions were made to the Committee concerning an appropriate basis for differentiating between degrees of offences. The matter is difficult and we know of no solution that is not open to some objection. After great deliberation, we have concluded that the most satisfactory arrangement is one that would permit a finding that an accused is a "child offender" or "young offender" only where he has committed an offence that constitutes a violation of the Criminal Code or of such provisions of other federal or provincial statutes as are from time to time designated by the Governor in Council. Any other offence, whether against a federal or provincial statute, a municipal by-law, or a regulation or ordinance, would be considered an offence of lesser degree, to be known as a "violation". We contemplate that young persons charged with lesser offences would, with certain exceptions that we shall mention, continue to be subject to the jurisdiction of the juvenile court - and further, that the provisions of the federal Act would continue to apply. In the case of a lesser offence, however, it would not be open to the juvenile court to commit an offender to a training school or, unless there is parental consent, to remove him from the parental home. If intervention of a more substantial nature is required than is authorized under the federal Act, we think it preferable that proceedings be brought under the appropriate provincial legislation relating to children in need of care or protection or to the group now variously described as incorrigible, unmanageable or beyond the control of a parent or guardian.

150. A further word should be said about our use of the terms "child offender" and "young offender". The distinction has reference, in part, to

a more general recommendation that, within the total age range of juvenile court jurisdiction, there should be a division for certain limited purposes at the age of fourteen. We have suggested elsewhere the possibility that the minimum age of juvenile court jurisdiction could be flexible to this extent: that it might be expressly recognized that any province may make whatever arrangements it wishes for children up to the age of fourteen, including the enactment of legislation making the federal Act inapplicable to children under the designated age. Relevant also in this connection are our proposals that certain provisions of the Act, notably those relating to the power to impose a fine, to make an order of restitution, or to waive jurisdiction in favour of the ordinary courts, should have application only in respect of the "young offender", and not the "child offender". A division at the age of fourteen has the additional advantage that young persons aged fourteen or more usually do not regard themselves as "children", and often resent being referred to as such. The statute should make clear that a finding that a person is a "child offender" or "young offender" is not to be regarded as a conviction for a "criminal offence" for the purpose of determining whether a person has a previous conviction or is otherwise subject to disabilities by reason of conviction for a criminal offence.

151. The matter of lesser offences requires further comment. We have noted earlier that all charges against children must, as the law now stands, be brought under the Act if the Act is in force in the particular jurisdiction. This has created a number of difficulties in regard to lesser offences, particularly those involving routine by-law infractions. One difficulty relates to a question that we have considered earlier, that is, the fact that there is often a reluctance on the part of the authorities to have a child branded a "juvenile delinquent" in order to enforce minor provisions of the law. Another problem is an administrative one. In proceedings under the Act it is necessary, even in the case of a simple parking violation, to comply with the requirement in section 10 that "notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child ... ". It is the juvenile traffic offender who has presented the greatest difficulty, especially in provinces where the juvenile age is eighteen. Some jurisdictions have in fact already made special arrangements to permit juvenile traffic cases to be brought before the ordinary courts, purporting to find the required authority in section 39 of the Juvenile Delinquents Act. (83). We deal first with the problem of the juvenile traffic offender.

152. The manner in which juvenile traffic cases should be processed has been often canvassed in inquiries into the operation of the juvenile courts. (84). It seems to be the consensus among those who have studied the matter that the juvenile court should retain a substantial measure of control over these cases. The Governor's Special Study Commission on Juvenile Justice in California, for example, noted the following objections to transferring such cases to the ordinary courts: (a) the fact that, where juvenile cases are heard

in the regular courts without the knowledge of parents, this tends to undermine parental supervision and to interfere with the ability of parents to assist in controlling juvenile offenders; (b) the fact that many adult traffic courts function solely on an impersonal, payment-of-fine basis, which engenders a lack of respect for the courts; and (c) the fact that a better educational approach is afforded by the juvenile court process. (85). Noting that many have expressed the opinion that these cases should be handled in the regular traffic courts, the Commission observed:

> " Should this expedient ever be adopted, we feel that adequate provision should be made for the transfer to the juvenile court of cases of juveniles involved in serious traffic offenses, cases where there is a history of repeated moving violations, and cases where a jail sentence would otherwise be appropriate. An avenue should also be open whereby a traffic court could transfer to juvenile court any juvenile who exhibits a serious behaviour problem, regardless of the nature of the traffic offense." (86).

153. Recognizing that the juvenile traffic offender does represent a special problem, some jurisdictions have attempted to streamline the juvenile court process in order to deal more effectively with this kind of case. Thus, the California Commission concluded by recommending that jurisdiction over juvenile traffic offenders should be retained in the juvenile court, but that the court should be given the power to appoint traffic hearing officers who might make final judgments on the basis of a summons alone in all juvenile traffic cases, except those considered serious enough to warrant a full hearing in the juvenile court. (87). The draft Standard Juvenile Court Act, representing the majority view of experts in the United States, takes a position very similar to that approved in California. It provides, in part, that the juvenile court is authorized to establish, by rules of court, 'appropriate special provisions for hearings in cases of violation of traffic laws or ordinances". (88). The Minnesota Juvenile Court Code creates the separate category of "juvenile traffic offender" and confers special disposition powers upon the court in respect of this group. The Judge may reprimand the "juvenile traffic offender", restrict his use of an automobile, require him to attend a drivers' school, or enter an order suspending or revoking his licence to drive. In more serious cases "delinquency" proceedings can be brought in the usual manner. (89). Still another approach has been adopted in Oregon, where a special provision has been included in the juvenile court statute, as follows:

> " The juvenile court may enter an order directing that all cases involving violation of law or ordinance relating to the use or operation of a motor vehicle

be remanded to criminal or municipal court, subject to the following conditions:

(a) That the criminal or municipal court prior to hearing a case, other than a case involving a parking violation, in which the defendent is or appears to be under 18 years of age, notify the juvenile court of the fact; and

(b) That the juvenile court may direct that any such case be remanded to the juvenile court for further proceedings." (90).

154. We have stated elsewhere that it is our opinion that the Act should continue to apply, as at present, to all offences committed by children and young persons, regardless of whether the offence is against a federal statute, a provincial statute or a municipal by-law. We think that, having regard to the need to ensure a consistent philosophy in dealing with juvenile offenders and to the advantages in simplicity and uniformity in the interpretation and application of the law, this is preferable to a system that might, among other things, have the effect of subjecting juvenile offenders to the same penalties as adults under the statutes or by-laws contravened. Nevertheless, we think it desirable, in so far as juvenile traffic offences are concerned, that the law be altered with a view to achieving the kind of flexibility suggested by the various approaches outlined in the preceding paragraph. The initial premise should be that, where practicable, juvenile traffic cases, excepting perhaps those that do not involve operation of a vehicle, should be heard in the juvenile court. One difficulty is that juvenile courts serving sparsely populated areas may not be able to deal efficiently with many such offences. For this reason the section in the Oregon statute probably serves as the most useful model for a provision defining generally the basis of juvenile court jurisdiction. In larger communities the juvenile courts should be able to handle most juvenile traffic offenders. Here too, however, special provisions would seem to be in order. Many juvenile traffic offenders do not require the specialized attention of the juvenile court and, as the Canadian Corrections Association has observed, "putting this burden on the children's court might divert it from its primary purpose." (91). We think that the juvenile court judge should be authorized, through rules of court, to make special arrangements (that is, separate hearings by a designated officer, dispensing with written notice to parents, and the like) for dealing with more routine kinds of cases. A specific recommendation relating to the matter of rules of court is set out later. We would suggest also that the disposition provisions of the Act should perhaps be amended to indicate more specifically the powers of the juvenile court judge in juvenile traffic cases. Included would be the power to impose

restrictions on the use of an automobile, to order suspension or revocation of a driving licence and possibly to order attendance at a drivers' school. Care should be taken, in any review of the law, to ensure that adequate provision is made for implementing provincial legislation relating to the assessing of demerit points and to the suspension or revocation of a licence to drive upon conviction of a driving offence or accumulation of a specified number of demerit points.

155. We have mentioned a second difficulty in regard to lesser offences, namely, the reluctance expressed about having a child branded a "juvenile delinquent" in order to enforce a minor provision of the law. Because of this, there have been suggestions that lesser offences should be excluded from the reach of the federal statute. It is important to note that the concern of most of those who have recommended this change is not so much with removing lesser offences from the jurisdiction of the juvenile court as it is with limiting the definition of "delinquency". Under most such proposals, proceedings in respect of minor offences would continue to be brought in the juvenile court, but pursuant to provincial legislation. We think that the objection to the existing law can largely be met by distinguishing between two degrees of offences within the framework of the Act. There is, in our view, a distinct advantage in having all offences involving children and young persons dealt with, as at present, under one statute. Our proposals, as set out above, reflect this basic judgement.

156. There is one further point relating to minor offences that requires comment. The Canadian Corrections Association has recommended that, in order to avoid giving a child a court record, an attempt should be made to find "ways other than the juvenile court to deal with children who have committed such offences as infractions of municipal by-laws..."(92). We note, for example, that in Regina the police conduct what is called a "bicycle court" - an informal hearing at which the child appears voluntarily, although he is advised that the matter could be transferred to the juvenile court. The child is given instruction, warned and sent home. (93). If procedures of this kind are to be employed - and we recognize that they may well serve a useful purpose - they should, in our view, be subject to the approval and direction of the juvenile court judge. We think that the requisite control can be provided through rules of court.

157. One of the most difficult questions that the matter of offence jurisdiction presents concerns the group variously described as incorrigible, unmanageable, beyond the control of a parent or guardian, or in moral danger. The definition of "juvenile delinquent" under the Act does not refer specifically to this category of "offender". However, provisions relating to these children are contained in the statutes of most provinces. In Newfoundland, where the Act is not in force, the Welfare of Children Act defines a "juvenile delinquent" to include any child "who is represented as being

beyond parental control ... or who notwithstanding that he has been enrolled at a school according to law, wilfully refuses to attend ....". (94). In Ontario, under the Training School Act, it has been possible to send a child to a training school if he "proves unmanageable". (95). Of 1,110 children committed to training schools in Ontario in 1961, some 503 were committed pursuant to this provision. (96). Similarly, in British Columbia we were told that approximately one-half of the girls sent to the Willingdon School for Girls were committed as "incorrigible" under what was formerly the Industrial School for Girls Act. (97). Committal to a training school is, so far as the Juvenile Delinquents Act is concerned, the ultimate sanction or treatment measure. Extensive use of provisions of this kind in provincial statutes has, therefore, considerable relevance to any discussion of the offence provisions of the federal Act. Indeed, the situation seems to be an anomalous one. We have noted that a basic criticism of the federal Act is that it permits a child to be sent to a training school in respect of any conduct for which he can be adjudged delinquent, including a simple by-law infraction. And yet, to attempt to remove this objection by limiting the disposition powers of the juvenile court under the federal statute leaves a further aspect of the problem wholly untouched, that is, the fact that children may be subject to committal or admission to training schools on entirely unrelated grounds under provincial legislation.

158. These provisions in provincial statutes are relevant to the definition of offences under the federal Act in still another way. We have pointed out how the present Act operates in combination with provincial legislation by means of a kind of incorporation by reference. The question that has to be asked is whether incorrigibility and such related "offences" come within the definition of "juvenile delinquent" as it is set out in the federal Act. In British Columbia the answer is clear, because the provincial statute states specifically that "upon complaint and due proof made to a Judge of the Family and Children's Court .... that by reason of unmanageable conduct the child is beyond the control of his parents or guardian, the Judge .... may deal with the child in the manner prescribed in the Juvenile Delinquents Act of Canada." (98). Does, however, incorrigible or vicious conduct under the Manitoba statute, (99), or similar conduct under the New Brunswick statute, (100), come within the meaning of the language in section 2 of the Juvenile Delinquents Act that defines "juvenile delinquent" to include any child "who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute"? What is the effect of other words in the definition of "juvenile delinquent" that speak of a child "who violates any provision .... of any .... provincial statute ...."? We suggest that revision of the federal Act should involve deletion of the part of the definition quoted in the first of these questions, and clarification of the part of the definition quoted in the second question. However, the policy issue

still remains. Should incorrigibility, unmanageability, and similar kinds of conduct be brought, as a number of persons have proposed, within the scope of the offence provisions of the federal statute? We think not.

159. The principal reason why it might be considered desirable to bring the problem of the incorrigible or unmanageable child under the Act is that it would then be possible to deal comprehensively, in one statute, with all of the kinds of situations in which committal to a training school may be necessary or desirable. It seems to be inevitable that, in the absence of alternative facilities, the training schools will continue to have to accommodate many of this group for some time to come. While it is clear, of course, that a province may make whatever use that it wishes of its own institutions, the suggestion is that bringing these persons within the offence provisions of the federal statute would tend to promote consistency in the matter of training school committals, for two reasons. First, there would be a standard definition of what constitutes incorrigible or unmanageable behaviour, and also - and this has reference to an alleged defect in the legislation of at least one province (101) - there would be standard provisions concerning the circumstances in which the law can be invoked. Second, it would seem reasonable to hope that, with the policy in regard to this particularly difficult type of case clearly defined, the provinces would be encouraged to restrict training school admissions to cases where children or young persons have been committed pursuant to the federal Act. This, it is thought, would help to bring to an end what many, including those responsible for drafting the Standard Juvenile Court Act in the United States, consider to be an objectionable practice, namely the indiscriminate mingling within one institution of "delinquent", "neglected" and "dependent" children. (102).

160. The objections to dealing with incorrigibility or unmanageability under the federal statute are, however, substantial. Most authorities agree that these children are not so much at war with the community as with their parents or themselves. One study found, for example, that many of the instances of parental referral to the juvenile court involved unfit parents whose children had been reported as "unmanageable" when, in fact, the parents had sought to impose irrational or excessive discipline. (103). Often, therefore, it may not be at all clear whether a child is "unmanageable", or simply not properly managed. In such circumstances, asking him to answer before a court to a formal charge would seem to be a questionable method of dealing with the kind of problem that is presented for solution, a problem that is more in the nature of a welfare matter than one involving anti-social behaviour in the usual sense. Moreover, in this kind of case it would seem to be desirable to have the parent or guardian brought into a more central position in the inquiry than is possible where a formal charge forms the basis of the court's jurisdiction. We call attention again to our conclusion, previously expressed, that quasi-criminal legislation should not be used to achieve welfare purposes if those purposes can be achieved by non-criminal

legislation. These comments, we would add, do not exhaust the objections that can be made to incorrigibility, and such similar concepts, as offence categories. (104). In sum, it is our view that the method of the criminal law, even as modified in proceedings under the federal Act, is not an appropriate means for dealing with the special problem of the incorrigible or unmanageable child.

161. The Committee has given consideration to each of several approaches that have been suggested for dealing with incorrigibility. (105). It seems to be clear that, as a constitutional matter, a procedure that would make adequate provision for this kind of case can be enacted only by the provincial legislatures. However, it is possible to structure the federal Act in a way that will permit Dominion and provincial legislation to be employed jointly towards a common purpose. We consider this aspect of the question in the context of our discussion of the disposition process. (106). Having regard to the interrelationship between "delinquency" and "incorrigibility" and to the desirability of establishing a uniform and consistent philosophy in relation to this entire problem, we venture to outline an approach that might be considered a suitable legislative response to the kinds of situations to which the concept of incorrigibility is addressed. In doing so we emphasize again that, in the last analysis, it is for the provincial authorities to decide what, if any, course of action is called for. We think that an appropriate procedure might embody the following general principles:

(1) The proceeding should not be commenced by a charge against the child, as is now the case. In our view a procedure along the lines suggested by the Ingleby Committee in England seems most appropriate (107) - more so, in fact, than the American practice of commencing proceedings by way of petition. Under the procedure proposed a summons would go to the parents (or the guardian) requiring them to attend at the court and bring the child with them. This has the further advantage that the parents would be joined as parties to the proceeding.

(2) The terms "incorrigible" and "unmanageable" should be abandoned. To some extent they are subject to the same objection as the term "juvenile delinquent", in that they tend to "label" a child unnecessarily. In any event, the terms are often misnomers. A child may not be "incorrigible" or "unmanageable" at all, but rather, uncorrected or unmanaged by reason of ineffective controls. Some new

designation should be adopted for children of this kind. Either a child or young person "in need of protection or discipline", as proposed by the Ingleby Committee, (108) or a "person in need of supervision", (109), the designation employed in the new Family Court Act of New York, would appear to be acceptable.

(3) As far as possible a standard should be adopted that indicates, without undue ambiguity, the considerations that are relevant to support court action and that gives fair indication of the conduct to which legal consequences do, in fact, attach. The statute should make it clear that a child may be found to be "in need of protection or discipline", or a "person in need of supervision", only where there is a clear indication that his behaviour is persistent in nature. (110).

(4) The legislation should provide that committal to a training school may be ordered only as a last resort. Moreover, an attempt should be made to develop facilities other than training schools for this group. (111). Of particular importance in this regard are group foster homes, because the "unmanageable" child is often one who, although unsuitable for placement in a foster home, could nevertheless function quite adequately in the less demanding atmosphere of a group foster home.

(5) It should be part of any such scheme that admission or committal to a training school should be possible only in the case of a child or young person committed pursuant to the federal Act, or found, under the appropriate provincial legislation, to be "in need of protection or discipline" or "in need of supervision". Neglected and dependent children should not, in other words, be placed in institutions intended primarily for the care and treatment of these other groups.

162. Relevant also to the discussion of offence jurisdiction are our recommendations in regard to the relationship between the federal Act

and child welfare legislation of the provinces, the disposition process, rules of court and jurisdiction over adults. We deal with these matters elsewhere. (112).

Waiver of Jurisdiction

163. Notwithstanding a general acceptance of the juvenile court approach to the problem of the juvenile offender, legislators have been unwilling, as any review of juvenile court statutes makes plain, to exempt all offenders under the juvenile age from criminal prosecution in the ordinary courts. Various techniques have been employed for sorting out those who are thought to be inappropriate subjects for the juvenile court process. With few exceptions, these techniques have applied only to older juveniles. In some places jurisdiction is withheld from the juvenile court in respect of certain kinds of offences, notably those punishable by death, life imprisonment or other serious penalty. In others the juvenile court and the criminal courts are given concurrent jurisdiction over certain of the more serious offences, with a discretion left to the prosecutor to make the initial determination as to the manner in which any individual case will proceed. Some jurisdictions permit the child himself to waive the benefit of a juvenile court hearing and to insist upon trial in the ordinary criminal courts. Under still another system the criminal court has the power to refer certain offenders to the juvenile court or to deal with them in the criminal court under some or all of the provisions of the juvenile court law. However, the most usual arrangement - and the one that has been preferred by most students of the juvenile court movement - is to give to the juvenile court exclusive original jurisdiction over all offences committed by persons under the juvenile age, but to add a provision making it possible for the juvenile court to waive jurisdiction in favour of the ordinary criminal courts in any appropriate case. It is this last mentioned technique that is employed in the Juvenile Delinquents Act. Section 9 provides, in part, as follows:

> "Where the act complained of is....an indictable offence, and the accused child is apparently or actually over the age of fourteen years, the Court may, in its discretion, order the child to be proceeded against by indictment in the ordinary courts in accordance with the provisions of the Criminal Code in that behalf; but such course shall in no case be followed unless the Court is of the opinion that the good of the child and the interest of the Community demand it."

164. A number of suggestions have been made for changes in the law relating to waiver of jurisdiction, most notably the following:

that the practice of waiver should be eliminated; that certain classes of case should go initially to the ordinary criminal court which could refer any such case to the juvenile court; that the decision on whether a matter is brought before the juvenile court or the criminal court should rest with the crown attorney rather than the juvenile court judge. In the paragraphs that follow we consider the operation of the waiver provisions and outline a number of proposed changes in the law. We leave the second and third of the suggestions listed to the appropriate point in that discussion. A word should be said initially, however, about the first. We are unable to accept the suggestion that there are no cases within the age range of juvenile court jurisdiction that should not be brought, by one means or another, before the ordinary criminal courts. There are situations in which it is clear that the juvenile court and its powers of disposition are inadequate. (113). It is not sufficient to say, as some have done, that the juvenile court approach can always succeed where adequate resources are provided, and that there are no "untreatable" offenders as such. (114). We think it important to recognize, as even enthusiastic proponents of the juvenile court idea have done, that a not inconsiderable percentage of young offenders will continue to prove unresponsive to the rehabilitative efforts of the juvenile court, however extensive may be the resources placed at its disposal. (115). For there are, in fact, problems associated with some juvenile misconduct that are beyond the power of any court to solve. Nor, as we shall suggest, is "treatment" the only value in issue in this jurisdictional "sorting out" process. With any raising of the juvenile age the need for some such procedure becomes even more evident, because of the greater number of persons appearing in juvenile court who have been involved in serious offences. Doubt has been expressed whether the emphasis on individual rehabilitation that characterizes the juvenile court approach could be retained in the face of the challenge that a large number of dangerous offenders would pose to the juvenile court and its attendant services. Our recommendation for a juvenile age of seventeen, which is based in part upon this very consideration, does represent, nevertheless, an increase in the juvenile age limit for six of the provinces.

165. Under the Act the decision whether or not to waive jurisdiction is one that is largely within the discretion of the juvenile court judge. The most basic problem presented by the waiver process - as with any of the "sorting out" techniques listed - concerns the criteria that should govern the discretion that is exercised. Section 9 is explicit in denying to the juvenile court judge the power to waive jurisdiction unless two objective criteria are both satisfied: that the accused child is apparently or actually over the age of fourteen years and that the act complained of is an indictable offence. In addition the section requires that the judge make a "finding" in terms of two subjective criteria: that "the good of the child" and "the interest of the community" demand waiver. The difficulty is that these subjective tests are not explicit enough to indicate the kinds of situations that the designated "finding" are intended to include. How, in fact, are the "good of the child" and "the interest of the community" to be assessed? Indeed, to what extent

are these separate criteria even compatible? It is clear that, for a guide to decision based on principle, the judge must look beyond section 9 to extrinsic considerations of policy. The danger is that, without the direction and assurance that reasonably firm legislative guides provide, waiver of jurisdiction will tend to become an expression, not of any consistent policy, but of the predilections of individual juvenile court judges or of local pressures upon them. Since the decisions of juvenile court judges are rarely published, and since appeals are few, our information concerning the circumstances in which waiver is invoked are fragmentary at best. Nevertheless, it was evident to the Committee from its discussions, and from a review of the literature(116), that there is much uncertainty in regard to the purpose of waiver - an uncertainty that is probably reflected in the variations in juvenile court practice that appear to exist across the country. In the interest of consistency in the administration of the waiver provisions, therefore, it would seem desirable that the Act be amended to give more adequate guidance than the present wording of section 9 provides.

166. Of the cases in which jurisdiction has been waived by the juvenile court, those that have attracted most public attention have involved offences of some substantial degree of seriousness. The criterion of "seriousness", therefore, has figured prominently in discussions of policy concerning waiver. The assumption on which this criterion rests is that the nature of an offence, as defined by law, itself indicates that the accused child is particularly vicious or hardened, and hence an unsuitable subject for the juvenile court process. The problem with any test for waiver that focuses on the character of the offence, without more, is that it is especially difficult to reconcile this test with the stated objectives of the juvenile court concept. For the idea of "individualized justice", which lies at the heart of the juvenile court approach, carries with it, as possibly its most essential element, the implication that a child should be dealt with according to his needs, rather than be subjected to punitive measures proportionate to the nature of the offence. Certainly it does not follow from the fact alone that an offence is one that the law regards as particularly heinous, including on occasion even murder or rape, than an offender is not amenable to the treatment approach of the juvenile court, however much public sentiment may be aroused. Indeed, the preferable inference may sometimes be quite the opposite. As the Superior Court of Pennsylvania has observed: "There is as much, if not more, reason for applying the (juvenile court) law to such a child ...., (one charged with homicide)...as to one whose delinquency arises from less serious violations." (117). This is not to say, of course, that the seriousness of the offence is not a matter to be given great weight in considering whether waiver is indicated.

167. There may be very good reason, on the other hand, why the hearing of a charge against a juvenile should sometimes take place before the ordinary courts, regardless of the disposition that might be considered appropriate after the charge has been proved. Appellate courts in Canada have tended to view waiver from this trial perspective, questioning the adequacy

of the juvenile court as a forum for the trial of cases that have attracted wide public attention or thatinvolve difficult, contested issues of fact. In such circumstances both the interest of the community and the good of the child have been held to justify trial in the regular criminal courts. Thus in one leading case, which involved a charge of murder, the Manitoba Court of King's Bench concluded: "the interests of the community demand .... that the juvenile be given a fair trial. To that end the community have a right to know how that trial is conducted; they do know that such a trial is ensured in the ordinary courts (King's Bench, with the right of appeal), but they cannot know that it will be in the Juvenile Court, where procedure is undefined or not settled, where the trial is in camera, where the Judge interrogates the accused, and where there is no benefit of jury or anything corresponding to that ancient safeguard." (118). Similarly, in another case, where again the charge was murder, a Justice of the Ontario High Court observed that "notwithstanding the publicity and strain of a trial it is my opinion that it would be for the good of a child to have his position in respect to such a serious charge established by a jury which would remove any possible criticism of having such a serious matter determined by a single Judge in camera proceedings." (119). The difficulty with this approach to waiver, however, is that it secures the advantage of trial in the regular courts at the expense of subjecting the child, upon conviction, to the full penalties of the criminal law. Once again, it does not follow from the fact that the public interest requires trial in the ordinary courts that the child is not a suitable subject to be dealt with, for disposition purposes, under the juvenile court law. The problem is that the inflexibility of the existing waiver provisions forces a choice between what is desirable as a forum for the trial and what is desirable by way of treatment for the child.

168. In order to make the waiver process sufficiently flexible to give scope to these competing policy interests we propose that the Act be amended to provide two alternative techniques for bringing cases before the ordinary courts. The first would be essentially the procedure that now exists under section 9. The juvenile would be subject to prosecution in the ordinary criminal courts in the same manner, and with the same consequences, as if he were an adult. Because the objectives of the juvenile court process are conceived in what can broadly be called "treatment" terms, we think that the determination concerning who is and who is not an appropriate subject to be dealt with in the juvenile court should focus on the question of "treatment" potential. The juvenile court judge is the person pre-eminently suited to make this decision. We thus endorse the basic principle of section 9 - that the decision on the matter of waiver of jurisdiction should rest exclusively with the juvenile court judge. To indicate more clearly the purpose of waiver, in the sense contemplated by section 9, we recommend that there be incorporated in the Act a statutory test for waiver that addresses itself to the "treatment" issue. A formulation prepared by the United States Children's Bureau seems to us to be the most satisfactory test that has been suggested. Essentially, it permits waiver only where there is a specific finding that the

young person is not subject to committal to an institution for the mentally deficient or mentally ill, that he is not suitable for treatment in any available institution or facility designed for the care and treatment of young persons, or that the safety of the community requires that the offender continue under restraint for a period longer than the juvenile court is authorized to order. (120). We recommend that a test along these lines be adopted. In addition we propose that provision be made in the Act for a new procedure modelled after the waiver section in the newly revised juvenile court legislation of the State of Kansas. The Kansas law provides that a case can be referred to the ordinary courts for trial and, upon proof of the allegations against the young person, the case is then remanded to the juvenile court for disposition. (121). A supplemental procedure of this kind offers, we think, a means of accommodating the various objectives that the waiver process might reasonably be expected to serve.

169. Such a procedure would have a number of advantages. One relates to suggestions, noted earlier, that the decision as to whether a matter is to be dealt with in the juvenile court or the criminal court should rest, not with the juvenile court judge, but with the crown attorney (122) or, in some cases, with a judge of the criminal court. The present philosophy of the Act is to prefer the juvenile court process to that of the adult court. The juvenile court judge, by reason of his qualifications and experience, should be better able than the crown attorney or a judge of the criminal court to assess whether a young offender is suitable for treatment in a juvenile institution or is otherwise amenable to the treatment approach of the juvenile court. He may not, however, be as qualified as the representatives of the Crown to know whether the interest of the community requires a public hearing in the ordinary criminal courts. While we recognize that there may be "treatment" implications to the type of hearing that is held we think that, where the Attorney General is of the opinion that the public interest does require a public trial, this interest, as so determined, should be given priority. The new procedure would provide a means of striking a balance in relation to these sometimes conflicting policy issues. Under the proposed procedure it would be open to the Attorney General, either directly or after a refusal by the juvenile court judge to waive jurisdiction, to order that the trial of any charge take place in the ordinary courts. The matter would then be referred to the adult court for hearing. Upon proof of the offence the case would be returned to the juvenile court for the purposes of disposition - that is, for what in the adult court would be sentence.

170. Another advantage to a supplemental procedure of this kind concerns the position of the juvenile court judge. For any one of several reasons a juvenile court judge may himself wish to have a particular case dealt with, for adjudication purposes, in the ordinary courts. It may be that the matter is one that has received a great deal of public attention. Law enforcement authorities may have exerted pressure upon him to waive jurisdiction. Possibly the case is a contested one involving difficult questions of law or fact.

Presumably juvenile court judges would be guided, in part, by the advice of higher courts, which might be expected to indicate the kinds of cases that should be sent to the adult courts under the proposed provision.

171. Whether or not a young person should himself be entitled to insist upon trial in the ordinary courts is a question that, to some extent, has been controversial. Most American jurisdictions have taken the position that he should not. The assumption has been that no such right is necessary because the juvenile court exists for the protection of the young person and, in any event, knows better than the juvenile himself where his best interests lie. In England, on the other hand, a young person over the age of fourteen has the right to be tried by a jury for any indictable offence and for certain summary offences. (124). We think that a young person should have the right to insist upon trial in the ordinary courts and, further, that he should not have to incur the risk of subjecting himself to the full penalties of the criminal law in order to exercise that right. This would be possible for him under the procedure that we have proposed.

172. One further advantage under this new procedure might be noted. This concerns the matter of joint trials. Waiver is sometimes sought because there are a number of offenders, of whom several are adults, and the Crown wishes to proceed against all in one trial. This, of itself, is not a sufficient justification for waiver. It would not be inappropriate, however, to transfer such a case to the ordinary courts if the disposition provisions of the juvenile court statute continued to apply.

173. In our earlier discussion of section 9 we pointed out that two objective criteria must be satisfied before a juvenile court judge may waive jurisdiction. The accused child must be apparently or actually over the age of fourteen years and the act complained of must be an indictable offence. Some jurisdictions have raised this minimum age for waiver to sixteen. We think, however, that the present age of fourteen should be retained. The requirement that the act complained of be an indictable offence, on the other hand, has given rise to some difficulty. It sometimes happens that the juvenile court has before it a young person who is charged in respect of an act that does not constitute an indictable offence, but who has been sent to a training school before, possibly on more than one occasion, or who has been the subject of a waiver order on a previous appearance in juvenile court. In either of these situations it may be inappropriate to deal with the offender further in the juvenile court. Moreover, there is evidence that law enforcement authorities sometimes bring a serious charge, where otherwise they would have regarded a lesser charge as sufficient, in order to lay a basis for an application to have the offender transferred to the ordinary criminal courts. (125). We recognize - indeed, we emphasize - that it is important that there be restrictions on the use of waiver. We doubt, however, that this particular restriction is necessary. Accordingly, we recommend that the Act be amended to remove the requirement that the offence be indictable

and suggest that waiver of jurisdiction be permitted in any case where the allegation is one that would, if proved, support a finding that the accused is a young offender. We recommend also that this more limited restriction, together with the other objective requirement that the accused be of the age of fourteen, apply to the two alternative procedures that we have outlined for bringing cases before the ordinary courts.

174. It is not possible for us to comment here in any detail on the waiver hearing as such. There are, however, several observations that we wish to make. First, we suggest that the Act should be amended to provide that the juvenile court judge, when satisfied on the evidence taken at the waiver hearing that there is a reasonably strong case against the young person, be authorized to order any social investigation, or medical, psychological or psychiatric examinations that he feels are necessary or desirable. A provision of this kind is contained in the juvenile court statutes of a number of jurisdictions. (126). It is our opinion that this authorization is necessary if the judge is to make an adequate determination in terms of the "treatment" criteria that we have proposed for the waiver procedure. If the judge decides not to waive jurisdiction and the young person contests the charge, the fact that there has been an inquiry into background information would require the judge to relinquish jurisdiction in favour of another juvenile court judge. This is already the case, however, under existing law. (127).

175. We think also that more adequate controls should be written into the waiver provision to guide and limit juvenile court judges in the exercise of their discretion concerning waiver. Waiver of jurisdiction is intended to be an exceptional measure. It is important, therefore, that there should be means for ensuring its proper use. We recommend that the Act be amended to provide specifically that waiver may be ordered only after a full investigation into the background of the accused and the circumstances of the offence. We propose that the juvenile court judge be required to give written reasons for his decision and to forward them to the criminal court with the order transferring jurisdiction. Finally, we suggest that there should be a requirement that notice of a waiver hearing be served on the parent or guardian of the young person. We deal further with the matter of notice to parents later in our Report. (128).

176. One further problem that has arisen in connection with waiver of jurisdiction should be noted. The Act contains a provision that permits a juvenile court judge to find a child delinquent, deal with him in any of the ways provided for by the disposition provisions of the Act, and subsequently, in the exercise of a supervisory jurisdiction continuing until the age of twenty-one, cause him to be brought back before the court for further disposition. (129). This further disposition may include a waiver order pursuant to section 9. In other words, a juvenile court judge may direct that a young person be referred to the ordinary criminal courts for

prosecution in respect of the very matter for which he has been found delinquent and subjected to treatment or corrective measures by the juvenile court. (130). One would expect that a provision such as this would have been considered objectionable on the ground that no person should be placed in jeopardy more than once for the same offence. Here again the Act reflects its American origins. It was assumed by those drafting American juvenile court statutes that, because a juvenile court proceeding was civil rather than criminal in nature - and because its purpose was to protect a child and not to punish him - no problem of "double jeopardy" was really involved. The fallacy of this reasoning has been recognized by a number of commentators in the United States. (131). In our opinion there can be no justification for such a procedure under our law. We recommend, therefore, that this provision in the Act be deleted.

177. Before leaving the matter of waiver of jurisdiction we wish to comment on its relation to the problem of selecting an appropriate upper age limit for juvenile court jurisdiction. A number of persons have suggested that waiver can serve as a means of securing the advantage of a flexible juvenile age. Their reasoning is along the following lines. The juvenile court concept recognizes that younger offenders should not be held accountable for their conduct in the same way as adults. At what age, then, can young persons properly be regarded as responsible in the full sense? Much of the discussion of this matter has focused on the question of maturity. One difficulty is, however, that children mature at different rates, so that from this point of view no fixed age is entirely satisfactory. Accordingly, it is argued that the juvenile age should be set reasonably high, leaving it to the juvenile court to sort out through the waiver process those offenders who, by reason of their relative maturity, should not be dealt with as juveniles. Waiver is thus seen as a device to be used actively to control the kinds of cases coming before the juvenile court. Its object, on this view, becomes one of preserving the court as a forum specialized to the problems of children and of ensuring that those who are not children are not treated as such.

178. It was evident to the Committee from its discussions that juvenile court judges in Canada do not conceive this to be the function of waiver. We think - and California experience seems to demonstrate - that any attempt to legislate a principle of self-restraint in this way has little chance of success. (132). Waiver is, and is likely to remain, an exceptional procedure. We doubt its value, therefore, as a means of effecting a compromise, over any substantial age range, in regard to the selection of an appropriate upper age limit of juvenile court jurisdiction. This judgment has been one among a number of considerations that has led us to propose that the juvenile age be established at seventeen.

179. Other "sorting out" techniques that might be employed are not open to this same objection. We note that the Archambault Commission,

while indicating a strong preference for a juvenile age of sixteen, recommended "that legal provision should be made to permit the judge or magistrate who is trying an offender between the ages of sixteen and eighteen, if he considers the accused to be a young person who might to his advantage be dealt with in the juvenile court, to deal with him according to the powers conferred under the provisions of the Juvenile Delinquents Act." (133). There have been suggestions also that the crown attorney might be allowed to bring proceedings in the juvenile court against some offenders above the juvenile age. The danger of a wide divergence in practice - subverting, in effect, the principle of a uniform juvenile age - would seem to make this latter approach objectionable. This objection is perhaps met, however, by still another suggestion that has been made. A legislation committee of the Ontario Magistrates' Association has proposed that a magistrate be given the power to remit a case to the juvenile court where the offence falls within a class consisting of certain less serious offences and where the accused has no previous convictions, and further, that the magistrate "be empowered, in his discretion, to remit the case only on application by the Crown which application must be made after arraignment and before plea." (134). While we would note that the technique of referral back from the adult court to the juvenile court seems to have led to some procedural confusion in at least one jurisdiction in which it has been used (District of Columbia), (135), we make no attempt to choose between alternative techniques here. We content ourselves with recommending that the proposals of the Archambault Commission and of the Ontario Magistrates' Association committee be studied with a view to adopting one, or perhaps even both, as a means of securing more flexibility in dealing with offenders of the age of seventeen - that is, those who are the one year older than our proposed juvenile age.

Disposition

180. Upon making a finding of delinquency the juvenile court judge is given a wide choice of disposition alternatives. Section 20 of the Act declares, in subsection (1), that

> "In the case of a child adjudged to be a juvenile delinquent the court may, in its discretion, take either one or more of the several courses of action hereinafter in this section set out, as it may in its judgment deem proper in the circumstances of the case:
>
> (a) suspend final disposition;
>
> (b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;

(c) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;

(d) commit the child to the care or custody of a probation officer or of any other suitable person;

(e) allow the child to remain in its home subject to the visitation of a probation officer, such child to report to the court or to the probation officer as often as may be required;

(f) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court;

(g) impose upon the delinquent such further or other conditions as may be deemed advisable;

(h) commit the child to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor in Council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if one there be; or

(i) commit the child to an industrial school duly approved by the Lieutenant-Governor in Council."

181. We examine the powers of disposition of the juvenile court in some detail later in our Report. At this stage we are concerned with the problems of institutional commitment and allocation of responsibility for decision making in regard to committal, release and after-care. The initial question for consideration can be formulated in this manner. Should a child who has been adjudged delinquent in respect of the theft of a carton of cigarettes, for example - conduct which could subject a child to a training school committal under the present Act, as well as under our proposed revision of the law - be committed to an institution for potentially the same period of time

as a child who has been brought before the court for the offence of rape, robbery or murder? The question, in other words, is whether the Act should be amended to conform to the model of the Criminal Code. In favour of such a change is a basic assumption of our criminal law - that the extent of the sanctions that can be imposed upon an individual because of his anti-social conduct should be proportioned in some manner to the nature and gravity of that conduct. Parliament, in enacting the Criminal Code, differentiated between offences of greater and lesser seriousness by providing for differences in the maximum penalties that a court may impose. Thus an adult convicted of robbery may be imprisoned for life, whereas conviction for theft of property valued at fifty dollars or less carries a maximum penalty of imprisonment for two years. (136). Moreover, the criminal courts, in dealing with an adult offender, have the power to order a period of imprisonment less than the maximum authorized by the Code. In proceedings under the Juvenile Delinquents Act, on the other hand, any committal to a training school, regardless of the nature of the offence or the wishes of the judge, is for an indefinite period of time - that is, a period that may extend until the young person reaches the age at which release is required by law. This age is eighteen in some provinces and twenty-one in others. Theoretically, therefore, it would be possible in some provinces for an offender to remain in a training school from the age of seven to the age of twenty-one.

182. To the extent that this situation can be regarded as an objection to the existing provisions of the Act, the force of the objection is lessened considerably if our recommendations relating to offence jurisdiction are adopted. With the changes proposed it will no longer be possible, even theoretically, for a juvenile to be committed to a training school for such a minor offence as an infraction of a municipal by-law. Subject to that qualification, we are unable to accept the view that the Act should be modelled after the Criminal Code. For the adult offender who has committed a particularly heinous crime, Parliament may decide that the death penalty or life imprisonment is not too great a punishment to impose. However, it is because society takes the view that the juvenile offender should not be considered fully responsible for his conduct that penalties of such severity are not employed in relation to young persons. Moreover, it is expressly recognized that the public interest is better served if the juvenile offender is helped rather than punished in a retributive sense. Thus, as we have stated before, the Act directs that "as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance." (137). Consequently, the range of sanctions that may be applied in the case of the juvenile offender is greatly narrowed. Within this narrow range it becomes difficult to proportion the penalty on the basis of the nature of the particular anti-social conduct in question. Perhaps still more important, given a change in emphasis from traditional punishment to modern reformative treatment, no tariff of punishments is really satisfactory. It does not follow,

of course, that acceptance of what has been called the "rehabilitative ideal" means that the question of civil liberties can be safely ignored. (138). So beguiling, in fact, is the language of therapy that all the more care must be taken to ensure protection of those liberties.

183. With this consideration in mind we propose that where a juvenile is subject to a finding that he is a child offender or young offender the maximum period of institutional commitment should not exceed three years. At the present time offenders are rarely kept in training schools for the full term of commitment. Our recommendation is merely designed to ensure that no youngster can be kept in an institution for the many years that are theoretically possible under the existing law. Long-term imprisonment has marked and detrimental effects on adults. Long-term confinement of youngsters may often be even more dangerous. We think that any rehabilitation of the juvenile that is likely to result from institutional committal can be completed within the three-year period that we suggest. If a juvenile is not reformed within three years by institutional experience, society should accept that risk unless it is prepared to allow youngsters to be held in what amounts to indefinite detention.

184. As a further protection of the rights of the juvenile and in keeping with the need, as we see it, to ensure responsible action on the part of authorities whose decisions are not now subject to independent review, we recommend that the person in charge of any facility to which a juvenile has been committed be required to submit annual reports to the committing judge on the youngster's progress and the plans being made for his release into the community. We further recommend that the juvenile court judge be given the statutory authority, in the case of any child who has been confined to an institution for a period of more than one year, not only to cause the child to be brought before the court - and this the judge may do at present under section 20 - but also, after considering the views of those responsible for the child's treatment and custody in an institution, to order the release of the child from the institution. (139). The judge should have the power to act on his own motion and, in appropriate cases, upon the application of the child or his parents. In order that this last recommendation will not be misunderstood we would add that we are not of the view that the approval of the juvenile court judge should be required before a young person can be released from a training school. We share the opinion of a number of persons who raised this question with us that the training school authorities will ordinarily be in a better position to make a decision concerning release than will the juvenile court judge. Our recommendation is intended as a safeguard against unnecessarily prolonged periods of confinement. We do think, however, that the training school authorities should consult with the juvenile court judge before a young person is released. If our proposals relating to after-care are adopted the need for such consultation will become even more apparent.

185. Section 20 of the Act confers upon a juvenile court judge extensive jurisdiction of a supervisory nature over any child adjudged delinquent. We have had occasion previously to refer to this power in considering the problem of "double jeopardy" that is presented by the existing provisions of the Act relating to waiver of jurisdiction. (140). Subsection (3) of section 20 provides, in part, as follows: "Where a child has been adjudged to be a juvenile delinquent and whether or not such child has been dealt with in any of the ways provided for in subsection (1), ... (quoted above) .... the court may at any time, before such juvenile delinquent has reached the age of twenty-one years .... cause .... the delinquent to be brought before the court, and the court may then take any action provided for in subsection (1) .. ..". This provision serves two principal purposes. First, it allows the juvenile court to continue supervision over young persons who attain the juvenile age at a time when they are still subject to the jurisdiction of the juvenile court. Thus, for example, a probation order made when an offender is close to the juvenile age does not become ineffective simply because the offender reaches the juvenile age. Second, a means is established by law - to the best of our knowledge seldom used - for providing after-care supervision for an offender who has been released from a training school. It should be noted, however, that the provision is unrestricted as to the circumstances in which it can be invoked. Strictly speaking, therefore, a young person can be brought back before the juvenile court at any time before his twenty-first birthday for a reason quite unrelated to the original offence that led to action on the part of the juvenile court or to the supervision imposed in consequence of that offence. Originally section 20 was intended to implement a broad concept of wardship. (141). The explanation for the unrestricted language of the section lies in the protective, guardianship type of function that was envisaged for the juvenile court. Concern has now been expressed that a power as broad as that which is conferred by section 20 is potentially subject to abuse and, further, that it is undesirable that juvenile mistakes should be kept alive to disturb young persons years later.

186. We agree that the existing provision, as quoted above, is unduly wide. Indeed, in its present form we think that it is fundamentally misconceived. There is the necessity, of course, of ensuring that probation or other supervision can continue for a sufficient period of time. Moreover, we would emphasize the importance of after-care in the total correctional process and the need for adequate provision in the law to allow for a period of compulsory, after-care supervision as a normal consequence of committal to an institution. Specifically we recommend that, following release from an institution, every young person should, as a matter of course, be subject to the jurisdiction of the juvenile court for a period of up to two years, during which time he may be required by the court to observe certain conditions and to report to a probation officer or other designated person. (142). In other words, on being adjudged to be a child offender or young offender, a youngster would be potentially subject to the control of the authorities for a maximum period of five years. A child whose situation does not warrant committal to an

institution should, we think, be subject to control for a period not exceeding two years. This would mean that he could be required to observe conditions of probation and to report to a probation officer for that period of time. In no case, however, should the juvenile court have the power to make an order affecting a young person beyond his twenty-first birthday. The time periods that we propose are not based upon objective criteria. So far as we are aware, none are available. What we have sought is a time period of sufficient duration so that treatment resources, if available and used, might be expected to have their effect. Anyone who has reached the age of twenty-one is, in our opinion, beyond any reasonable conception of the scope of the Act. To the above recommendations we would add one other. We endorse a proposal contained in a submission made by the Canadian Corrections Association that the Act should provide that when the juvenile court judge considers that a particular offender no longer requires the supervision of the court he may discharge the young person and thereafter no further action may be taken in respect of the matter that has brought the young person within the jurisdiction of the court. (143).

187. It will be evident that practical difficulties will remain in some cases where the juvenile court has the responsibility for supervising older offenders. As we indicated in discussing the matter of the upper age limit of juvenile court jurisdiction, it is our view that the juvenile court approach is really not appropriate for dealing with most offenders above the age of seventeen. For this reason, it seems to us almost inevitable that attempts by the juvenile court to exercise control over older adolescents, even if only for the purpose of after-care supervision, will sometimes prove to be unproductive. Perhaps more important is the problem of compelling compliance with orders of the juvenile court. It is not clear how effective the supervision of the juvenile court can be without the threat of a training school committal or some equivalent sanction in the event that a young person refuses to co-operate with the court. The training schools are not able to accommodate offenders in this older age group. These same problems arise, of course, under the existing provisions of the Act. We doubt that such difficulties can be entirely removed. However, we do propose a partial solution to the problem. In the case of any young person seventeen years of age or over who is subject to the supervision of the juvenile court and who is in violation of a condition that he is required to observe, the court should have power either to deal with the matter itself or to cause an appropriate charge to be laid against the offender in the ordinary criminal courts for violation of the condition. In this way we think that it will be possible to cope with the intractable offender whose failure to co-operate with the juvenile court makes him no longer a suitable subject for this extension of the juvenile court process.

Footnotes

1. Juvenile Delinquents Act, s. 42.

2. Juvenile Delinquents Act, s. 43.

3. See British North American Act, 1959, 12-13 Geo.6, c.22, s.1.

4. See Scott, The Juvenile Court in Law (4th ed., 1952), pp.30-31.

5. There is an additional advantage to proclaiming the Act in force throughout Canada. In some parts of the country it sometimes happens that there is difficulty establishing that the Act has been brought into force in a particular locality. See, for example, Regina v. Mahaffey (1961) 36 C.R. 262. This has led to recommendations that the method of proving that the Act is in force be simplified. If the Act were made applicable throughout Canada, this problem would no longer arise.

6. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p.1.

7. Brief submitted by the Department of Psychiatry of the University of British Columbia (1962), p.7.

8. Brief submitted by The John Howard Society of British Columbia (1962), pp.1-2.

9. See, for example, Herman "Scope and Purposes of Juvenile Court Jurisdiction" (1958) 48 Journal of Criminal Law, Criminology and Police Science 596, at p. 593 n.23; Paulsen, "The Delinquency, Neglect and Dependency Jurisdiction of the Juvenile Court", in Justice for the Child (Rosenheim ed., 1962),pp.45-46; Rubin, "Legal Definition of Offenses by Children and Youths", (1960) University of Illinois Law Forum 512, at p.514.

10. Paulsen, supra note 9, at p.46.

11. Kvaraceus and Miller, Delinquent Behavior: Culture and the Individual (National Education Association Juvenile Delinquency Project, vol. 1, 1959), p.91.

12. Brief submitted by the Department of Psychiatry of the University of British Columbia (1962), p.2.

13. Aichhorn, Wayward Youth (Meridian repr., 1955), p.29.

14. Brief submitted by the Community Fund and Welfare Council of Greater Windsor (1962), p.2.

15. Brief submitted by the British Columbia Corrections Association (1962), p.5.

16. Canadian Corrections Association, The Child Offender and the Law (1962), pp. 5-6.

17. Juvenile Delinquents Act, s. 38.

18. Submission of the Ontario Welfare Council (1962), p.2.

19. See generally Martin's Criminal Code (1955), pp.272 et. seq. See also Lacey, "Vagrancy and other Crimes of Personal Condition," (1953) 66 Harvard Law Review 1203; Sherry, "Vagrants, Rogues and Vagabonds - Old Concepts in Need of Revision", (1960) 48 California Law Review 557. For an interesting comment on the related question of juvenile status offences, see Matza, Delinquency and Drift (1962), pp. 165-169.

20. See infra paras. 149-150

21. See infra paras. 266-269.

22. See infra paras. 286-292.

23. See infra paras. 240-244 and 340-343.

24. See generally Parliamentary Debates (U.K.), House of Lords, 10th December 1962, cols. 397-410 and 419-444, and 24th January, 1963, cols. 204-236; Wootton, "The Juvenile Courts," (1961) Criminal Law Review 669.

25. See, for example, Wootton, supra note 24, at pp. 675-677.

26. Report of the Committee on Children and Young Persons (Cmnd. 1191, 1960), paras. 66 and 72, pp. 26 and 28-29 (hereinafter cited as Ingleby Committee).

27. See infra paras. 246-256.

28. See, for example, Dunham, "The Juvenile Court: Contradictory Orientations in Processing Offenders," (1958) 23 Law and Contemporary Problems 508, at p. 520; Studt, "The Client's Image of the Juvenile Court," in Justice for the Child, op. cit. supra note 9, at pp. 203-207. See also the interesting discussion of the possible effect of juvenile court principles and practices upon the juvenile offender in Matza, op. cit. supra note 19, pp. 111-136.

29. Report of the Committee on Children and Young Persons, Scotland (Cmnd. 2306, 1964), paras. 72-76, pp. 36-38 (hereinafter cited as Kilbrandon Committee). See also the subsequent White Paper issued

by the Home Office, entitled, The Child, The Family and the Young Offender (Cmnd. 2742, 1965).

30. The Shorter Oxford English Dictionary (3rd ed., 1944), p. 2019.

31. See Hart "The Aims of the Criminal Law," (1958) 23 Law and Contemporary Problems 401.

32. See infra paras. 149, 154-156, 161, 240-244, 286-292 and 340-343.

33. Parliamentary Debates (U.K.), House of Lords, 24th January, 1963, col. 208.

34. See infra paras. 266-269.

35. See generally Paulsen, "Fairness to the Juvenile Offender," (1957) 41 Minnesota Law Review 401; Antieau, "Constitutional Rights in Juvenile Courts," (1961) 46 Cornell Law Quarterly 387. See also the celebrated dissenting opinion of Musmanno, J., in the case of In Re Holmes, 379 Pa. 599, 109 A2d. 523 (1955).

36. Ingleby Committee, para 66, p.26.

37. Younghusband, "The Dilemma of the Juvenile Court," (1959) Social Service Review 10, at p. 15.

38. Id., at pp. 15-17.

39. See infra paras. 255-256 and Chapter X.

40. For a general discussion of the relationship between delinquency and neglect in defining the basis of juvenile court jurisdiction, see Paulsen, supra note 9; Herman, supra note 9, at pp. 590-592. See also Report of the Governor's Special Study Commission on Juvenile Justice (California, Part I, 1960), pp. 18-20; Dunham, supra note 28.

41. Report on Juvenile Delinquency of the 1962 Legislation Committee, Probation Officers Association - Ontario (1962), p.3.

42. See infra paras. 266-269 and 286-292

43. See infra paras. 286-287.

44. Kilbrandon Committee, para. 65, p.33.

45. Id., at para. 65, p. 32.

46. See, for example, Williams, Criminal Law: The General Part (2nd ed., 1961), pp.814-821; Ingleby Committee, para.81, p.31; Kilbrandon Committee, paras.60-65, pp.31-33.

47. The Child Welfare Act, Revised Statutes of Saskatchewan, 1953, c.239, as amended.

48. See generally Russell on Crime (11th ed., by J.W.C. Turner, 1958); Williams, supra note 46, at pp.814-821.

49. "No person shall be convicted of an offence in respect of an act or omission on his part while he was seven years of age or more, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong." Criminal Code, Statutes of Canada 1953-54, c.51, s.13 (hereinafter cited as Criminal Code).

50. Ingleby Committee, para.94, p.36.

51. Criminal Code, s.16.

52. See infra paras. 286-288.

53. Juvenile Delinquents Act, ss.2(1)(a) and 2(2).

54. The Welfare of Children Act, Revised Statutes of Newfoundland 1952, c.160, ss.2(b) and 39. Quaere the effect of The Child Welfare Act, Statutes of Newfoundland 1964, c.45, s.55.

55. International Review of Criminal Policy (Nos.7-8, 1955), pp.13-15; Tappan, Comparative Survey of Juvenile Delinquency (Part 1. North America, 1958), pp.7-8.

56. Report of the Royal Commission to Investigate the Penal System of Canada (Ottawa, 1938), pp.188-189 (hereinafter cited as Archambault Commission).

57. Report of the Committee on the Revision of the Juvenile Delinquents Act (Canadian Welfare Council, 1956), p.6.

58. Archambault Commission, p.189.

59. Brief submitted by the Canadian National Conference of Training School Superintendents (1962), p.3.

60. Report of the Committee on the Revision of the Juvenile Delinquents Act (Canadian Welfare Council, 1956), p.6.

61. Juvenile Delinquents Act, s. 2(1) (h).

62. McDavid and McCandless "Psychological Theory, Research and Juvenile Delinquency," (1962) Journal of Criminal Law, Criminology and Police Science 1, at p.5.

63. The Annals of the American Academy of Political and Social Science (November, 1961).

64. For an interesting analysis of some of the problems of a psychological nature associated with adolescence see Erikson, "Ego Identity and the Psychosocial Moratorium," in New Perspectives for Research on Juvenile Delinquency (Witmer and Kotinsky ed., 1955), pp.1-17.

65. The authors of a study prepared for the United States Congress by the National Institute of Mental Health have observed: "A great deal of data show delinquency to be a phenomenon of adolescence. This familiar fact has important implications from the point of view of individual development. It means that there is an area of crisis between the ages of 14 and 19 which the delinquency-age curve, peaked at 15-17, represents .... Wirt and Briggs show that a group of boys delinquent at age 14, 82 per cent show delinquency again by age 16, 60 per cent have further delinquencies through age 19, and only 20 per cent repeat again during ages 20 to 23. If many adult criminals were once delinquents, most delinquents do not become adult criminals.... It is very difficult - apart from a few small subgroups - to predict, from the occurrence of a delinquent offence, that there will be others, or what their nature will be....". Cook and Rubenfeld, An Assessment of Current Mental Health and Social Science Knowledge Concerning Juvenile Delinquency (National Institute of Mental Health, 1960), c.111. pp.38-39. Some of the research studies on this question are reviewed in Wootton, Social Science and Social Pathology (1959), c.V.

66. Tappan, "Proposals for the Sentencing and Treatment of the Young Adult Offender under the Model Penal Code," in Model Penal Code (American Law Institute, Tent. Draft No.3, 1955), p. 10.

67. Nyquist, Juvenile Justice: A Comparative Study with Special Reference to the Swedish Child Welfare Board and the California Juvenile Court System (Cambridge Studies in Criminology, 1960), p.163.

68. More precisely, the juvenile court would have exclusive original jurisdiction in every case where an offence is committed by a

person sixteen years of age and under, even though the offender is over that age at the time that he is apprehended. This is the basis upon which juvenile court jurisdiction is established under the present Act. See Juvenile Delinquents Act, s. 4. It would seem to be more consistent with the philosophy of the Act as a whole to establish the jurisdiction of the juvenile court by reference to the time when the offence was committed, rather than, as under the English statute, to limit jurisdiction to cases where the offender is actually under the juvenile age at the time of his appearance in juvenile court. See infra paras. 137-142 and 147-148. It has been suggested that this is an anomalous position, since it means that occasionally older offenders must be brought before the juvenile court. However, the juvenile court has available to it the waiver provisions, so that it is doubtful whether this basis of jurisdiction creates any substantial difficulty. Nevertheless, there may be special situations in which juvenile court jurisdiction should not attach - as, for example, where a juvenile who has been transferred to the ordinary courts and who has been committed to an adult institution escapes from custody and is to be charged with an offence in respect of the escape.

69. Tappan, supra note 66, at p. 10 n.4.

70. Ibid.

71. Lord's Day Act, Revised Statutes of Canada, 1952, c. 171.

72. "Where an accused is in custody and signifies in writing before a magistrate his intention to plead guilty to an offence with which he is charged that is alleged to have been committed in Canada outside the province in which he is in custody, he may .... be brought before a court .... that would have jurisdiction to try that offence if it had been committed in the province where the accused is in custody, and where he pleads guilty to that offence, the court .... shall convict the accused and impose the punishment warranted by law ....". Criminal Code, s. 421(3). It is the Committee's experience that there is some difference of opinion concerning the interpretation of this provision as applied to juvenile offenders. See also para. 293 infra.

73. Canadian Corrections Association, The Child Offender and the Law, p. 5.

74. See generally Bloch and Flynn, Delinquency: the Juvenile Offender in America Today (1956), c. 12; Hurley, Origin of the Illinois Juvenile Court Law (1909); Lindsey, "The Juvenile Court of Denver," in Children's Courts in the United States (Int'l. Prison Comm'n, 1904), p. 63; Lou, Juvenile Courts in the United States (1927); Mack, "The Juvenile Court," (1909) 23 Harvard Law Review 104 (1909).

75. It is interesting, in this connection, to note the wording of the original draft of what is now section 2(1) (f) of the Act. It defined a "juvenile delinquent" as: "Any child who violates any provision of the Criminal Code, chapter 146 of the Revised Statutes, 1906, or of any Dominion or Provincial statute, or of any by-law or ordinance of any municipality, for which violation punishment by fine or imprisonment may be awarded; or, who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under the provisions of any Dominion or Provincial statute; or who is incorrigible;or, who without just cause and without the consent of its parent or guardian, absents itself from its home or place of abode; or who knowingly associates with thieves, or vicious or immoral persons; or who is growing up in idleness or crime; or who knowingly frequents, visits, or enters a disorderly house within the meaning of section 228 of the Criminal Code; or who patronises or visits any bar-room or saloon where intoxicating liquor is sold, or any public billiard or pool room, or who not being in charge of any grown up person, attends any theatrical performance, or who wanders about the streets in the nighttime without being on any lawful business or occupation or who habitually wanders about any railway yard or tracks, or who enters any railway car or engine without lawful authority, or who habitually uses vile obscene, vulgar, profane, or indecent language; or who is guilty of immoral conduct in any public place, within the meaning of section 197 of the Criminal Code, or in any school premises, or who smokes or has in its possession cigarettes, cigars or tobacco in any form." See Scott, The Canadian Juvenile Delinquents Act (reprint of address delivered to the American Prison Association in October, 1914), p.4.

76. The appliability of the "parens patriae" concept to the delinquency jurisdiction exercised by American juvenile courts is, in fact, controversial. See Pound, Interpretations of Legal History 134 (1923); S. and E. Glueck, "Historical and Legislative Background of the Juvenile Court," in The Problem of Delinquency (S. Glueck ed., 1959), p. 256, at pp.258-259; Lou, supra note 74, at p.4; Note, "Misapplication of the Parens Patriae Power in Delinquency Proceedings," (1954) 29 Indiana Law Journal 475, at pp.481-482.

77. Hurley, op. cit. supra note 74, at pp.23-24.

78. See Scott, op. cit. supra note 4, at pp.1-3.

79. Brief submitted by the School of Social Work of the University of British Columbia (1962), pp.1-2.

80. See, for example, Hall, General Principles of Criminal Law (2nd. ed,, 1960), c. 11.

81. E.g., Province of Alberta; State of New York.

82. Canadian Corrections Association, The Child Offender and the Law, pp.5-6.

83. "Nothing in this Act shall be construed as having the effect of repealing or over-riding any provision of any provincial statute intended for the protection or benefit of children; and when a juvenile delinquent who has not been guilty of an act which is, under the provisions of the Criminal Code an indictable offence, comes within the provisions of a provincial statute, it may be dealt with either under such Act or under this Act as may be deemed to be in the best interests of such child." Juvenile Delinquents Act, s.39.

84. For a general discussion of the problem of the juvenile traffic offender see Sheridan, "Youth and the Traffic Problem," (1958) 25 The Police Chief 27.

85. Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 1. 1960), p.22.

86. Id., at pp.22-23.

87. Id., at p.21. It might be noted also that the Commission proposed that there should be set forth in the law specific dispositions that might be made by the traffic hearing officer. He would be limited to the following dispositions: (a) dismissal; (b) reprimand; (c) informal probation up to six months; (d) fine to a maximum of $25.; (e) license suspension or restriction to a maximum of thirty days; or (f) referral for a delinquency hearing to the juvenile court. Id., at p.22.

88. National Council on Crime and Delinquency, Standard Juvenile Court Act (6th ed., 1959), s.19 (hereinafter cited as Standard Juvenile Court Act).

89. Minnesota Juvenile Court Code, Minnesota Laws 1959, c.685, s.30. See Pirsig, "Juvenile Delinquency and Crime: Legislative Achievements in Minnesota in 1959," (1960) 44 Minnesota Law Review 363, at pp. 379-383.

90. Oregon Revised Statutes 1953, s.419.533, as amended by Laws of Oregon 1959, c.432, s.59.

91. Canadian Corrections Association, The Child Offender and the Law, p.8.

92. Id., at p.6.

93. See Rohac, "Regina's Juvenile Bicycle Safety Court," (1964) 6 Canadian Journal of Corrections 374.

94. The Welfare of Children Act, Revised Statutes of Newfoundland 1952, c.60, s.39.

95. The Training Schools Act, Revised Statutes of Ontario 1960, c.404, s.7. This provision has been removed in new legislation enacted in 1965. See The Training Schools Act, 1965, Statutes of Ontario 1965, c.132, ss.8 and 29.

96. Province of Ontario, Annual Report of the Department of Reform Institutions (Part 2, Training Schools, 1961), pp.33-34.

97. Industrial School for Girls Act, Revised Statutes of British Columbia 1960, c. 191. This statute has now been repealed by Training-schools Act, Statutes of British Columbia 1963, c. 50, s. 11.

98. Training-schools Act, Statutes of British Columbia 1963, c.50, s.11.

99. The Industrial and Correctional Homes Act, Revised Statutes of Manitoba 1954, c.124, s.9.

100. Training School Act, Statutes of New Brunswick 1961-62, c.33, s.11.

101. "....We are of the opinion that another definition of a delinquent should be added, namely, that where a child is incorrigible he should be deemed to be a juvenile delinquent and the definition of incorrigibility should be spelled out in the Act. At the present time in order to charge a child with incorrigibility the information must read that he is a juvenile delinquent by reason of an infraction of the Industrial and Correctional Homes Act of Manitoba, Chapter 124, R.S.M. 1954, Section 9 .... The trouble with this procedure is that a parent or guardian of the youth .... must lay the complaint and in some cases it is very difficult to have a parent or guardian lay the information." Brief submitted by the Judges of the Winnipeg Juvenile Court and Family Court (1962), pp.4-5.

102. Standard Juvenile Court Act. ss. 8 and 24. A commentary on these sections appears in Rubin, supra note 9, at pp. 512-516.

103. See Porterfield, Youth in Trouble (1946), pp. 15-22.

104. "In this class of cases there is no need for judicial power, as in the case of crimes, in order to protect the community from a child who is harming others or to deter violations of law by other children. The goal is only to help the child and prevent his further departure from social norms (and incidentally to give surcease to the parents or other embattled authorities). Arguing against this jurisdiction, is the lack of knowledge of whether self-injuring 'delinquent' behavior is an index of adult criminality to the same extent as is a child's commission of a crime." Dembitz, "Ferment and Experiment in New York: Juvenile Cases in the New Family Court," (1963) 48 Cornell Law Quarterly 499, at p.506. See also Fornataro, "It's Time to Abolish the Notion of Pre-Delinquency," (1965) 7 Canadian Journal of Corrections 189; Rubin, supra note 9, at pp. 513-516; paras. 143-146 supra.

105. See, for example, Ingleby Committee, paras. 83-94, pp. 31-36; Standard Juvenile Court Act, ss. 8 and 24 and commentary at p.25; Minnesota Juvenile Court Code, Minnesota Laws 1959, ch. 685, art.2; New York Family Court Act, N.Y. Sess. Laws 1962, ch. 686 as amended, arts. 712 and 753-758; Oughterson, "Family Court Jurisdiction," (1963) 12 Buffalo Law Review 467; Paulsen, supra note 9, at pp. 49-56; Pirsig, supra note 89, at pp. 379-380; Rubin, supra note 9, at pp. 512-516.

106. See infra paras. 286-287.

107. Ingleby Committee, para. 84, pp. 31-32.

108. Ibid.

109. New York Family Court Act, art. 712(b).

110. See, for example, Minnesota Juvenile Court Code, art.2.

111. Of interest in this connection is the scheme adopted under the New York Family Court Act. See Oughterson, supra note 105, at p.477.

112. See infra paras. 286-292 and 270-272, and Chapter X.

113. One situation in particular should be mentioned. The jurisdiction of the juvenile court is defined by reference to the age of the child at the time that the offence was committed, rather than at the time of his appearance before the juvenile court. While we think that this is the proper basis for determining juvenile court jurisdiction, nevertheless this does give a special importance to the availability of the waiver procedure in individual cases. See supra note 68.

114. See, for example, Sargent and Gordon, "Waiver of Jurisdiction - An Evaluation of the Process in the Juvenile Court," (1963) 9 Crime and Delinquency 121, at p. 124.

115. See, for example, Pound, "The Juvenile Court in the Service State," in Current Approaches to Delinquency (National Probation Association Yearbook, 1949), p.23, at pp.31-32; Ludwig, Youth and the Law (1955), p.25.

116. See generally Advisory Council of Judges to the National Council on Crime and Delinquency, "Transfer of Cases Between Juvenile and Criminal Courts - A Policy Statement," (1962) 8 Crime and Delinquency 3; Sargent and Gordon, supra note 114; Schreiber, "Comments Upon Indictable Offences in the Juvenile Delinquents Act," (1957) 35 Canadian Bar Review 1073; Hobbs "Juvenile Murderers," (1944) 22 Canadian Bar Review 377; Note, "District of Columbia Juvenile Delinquency Proceedings: Apprehension to Disposition," (1960) 49 Georgetown Law Journal 322, at pp.341-345.

117. In Re Mont, (1954) 175 Pa. Super. 150, at pp. 154-155, 103 A.2d. 460, at p.462.

118. Re L. Y. (No.1), (1944) 88 C.C.C. 105, at p.106, approved in Regina v. Paquin and De Tonnancourt, (1955) 21 C.R.612 (Man. C.A.). But cf. Re Liefso, (1964) 46 C.R. 103.

119. Regina v. Truscott, (1959) 125 C.C.C. 100, at p.102.

120. The Children's Bureau formulation appears as an alternative to that adopted in the Standard Juvenile Court Act. See Standard Juvenile Court Act, at p.34.

121. General Statutes of Kansas, 1949, art. 38-312, as amended by Laws of Kansas 1957, c. 256, s.12.

122. We have been told that in cases involving serious offences the local crown attorney - at the instigation of his Attorney General - has often applied strong and effective pressure on the juvenile court judge to waive jurisdiction.

123. This is an aspect of the philosophy of the juvenile court movement that is not always kept in mind in assessing questions of jurisdictional competence. On the question of the treatment implications of the juvenile court hearing, see Schramm, "The Court Hearing as Part of the Treatment Process," in Current Approaches to Delinquency (National Probation Association Yearbook, 1949), p.44; Sachar,

"A Judge's View of Juvenile Probation and Parole, in Crime Prevention through Treatment (National Probation Association Yearbook, 1952), p. 117, at pp. 118-119. On the other hand, some would question whether a juvenile court appearance has any beneficial effect on the child. See, for example, the remarks of Lady Wootton in Parliamentary Debates (U.K.), House of Lords, 10th December, 1962, cols. 399-401.

124. See Ingleby Committee, paras. 237-239, pp. 75-76.

125. See, for example, Pepler, "The Juvenile Delinquents Act, 1927," (1952) 30 Canadian Bar Review 819, at p. 823.

126. An excellent example is the juvenile court statute of Ohio, which permits waiver of jurisdiction by the juvenile court only "after full investigation, and after a mental and physical examination of such child has been made by the bureau of juvenile research, or by some other public or private agency, or by a person qualified to make such examination....". Ohio Revised Code 1953, art. 2151.26.

127. In the same way it would be necessary for another magistrate to conduct any proceedings subsequent to waiver in cases where a juvenile court judge also acts as magistrate. See, for example, Regina v. Pagee, (1962) 41 W.W.R. (N.S.) 189, at p. 190. We are told that it sometimes happens that a juvenile court judge will waive jurisdiction and then proceed to hear the case in his capacity as magistrate. An example of this practice is noted in Re Miller, (1962) 132 C.C.C. 349. For a short discussion of some of the other procedural problems connected with the waiver procedure, see Pepler, supra note 125, at pp. 823-824; Pool, "Letter to the Editor", (1950) 36 Canadian Bar Review 142; Teed, "Letter to the Editor", (1958) 36 Canadian Bar Review 600; Reg. v. P.M.W., (1955) 16 W.W.R. (N.S.) 650.

128 See infra paras. 253-254

129. Juvenile Delinquents Act, s. 20(3).

130. An order of this kind was upheld on appeal in Regina v. Lalich, (1963) 40 C.R. 133 (B.C. C.A.).

131. See, for example, Sheridan, "Double Jeopardy and Waiver in Juvenile Delinquency Proceedings," (1959) Federal Probation 43.

132. Of more than 26,000 cases dealt with by the juvenile courts in California in 1958, only 269 were transferred to the ordinary criminal courts - notwithstanding the requirement in the California

law that whenever a minor over the age of sixteen is before the juvenile court in connection with a criminal law violation, the court must make a finding regarding his fitness for consideration in the juvenile court as a basis for retaining jurisdiction. Moreover, most of the cases transferred involved misdemeanours. Only 34 of the transfers were cases of persons charged with felony offences. See Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 11, 1960), p.23.

133. Archambault Commission, p. 189.

134. Report of the 1962 Legislation Committee of the Ontario Magistrates Association (1962), p.37.

135. See Note, "District of Columbia Juvenile Delinquency Proceedings: Apprehension to Disposition," supra note 116, at p.343.

136. Criminal Code, ss.289 and 280(1).

137. Juvenile Delinquents Act, s.38.

138. Allen "Criminal Justice, Legal Values and the Rehabilitative Ideal," (1959) 50 Journal of Criminal Law, Criminology and Police Science 226, also reprinted in Allen, The Borderland of Criminal Justice (1964), at p.25. A useful discussion of this question appears in Morris and Howard, Studies in Criminal Law (1964), c.V.

139. There is one point of a technical nature that might usefully be noted. It has been recommended that section 20(3) of the Act should be amended to provide that if the juvenile court judge dies or ceases to hold office, then his successor may exercise the powers of the judge who dies or ceases to hold office in order to effect the discharge of a child on parole or the release of a child from detention. See Proceedings of the 35th Annual Meeting of the Canadian Bar Association (1953), p.70. As one court has had occasion to observe, "The Act is not a lawyer's Act, not a model of perfection in the matter of draftsmanship....". Rex v. H. and H., (1947) 1 W.W.R. 49, per Manson, J., at p.51, 88 C.C.C.8, at p.11. The importance of giving due consideration to this and other similar kinds of technical problems in any review of the Act is worth emphasizing.

140. See supra para. 176.

141. Prior to the revision of the Act in 1929, the provision that now appears as section 20(3) specified that every child adjudged delinquent "shall continue to be a ward of the court until it has been discharged as such ward by order of the court or has reached the age of twenty-one years;

and the court may at any time during the period of wardship cause such child to be returned to the court for further or other proceedings....". The Juvenile Delinquents Act, 1908, Statutes of Canada 1908, c.40, s.16(3). It was evident at the 1928 Conference called to consider changes in the Act that there existed much uncertainty concerning the implications of referring to a child as a "ward of the court", having regard in particular to the fact that the concept of wardship has different meanings in other contexts. See Proceedings of the Round Table Conference on Juvenile Delinquency (1928) pp. 40-49 and 117. Accordingly, all reference to the words "ward of the court" was removed in the 1929 Act. See also Scott, The Juvenile Court in Law (3rd ed., 1941), pp. 21-22.

142. It will be necessary, of course, to establish an adequate procedure for the transfer of jurisdiction over the child or young person from the training school authorities to the juvenile court. This may necessitate a greater measure of consultation between the training school and the juvenile court than has hitherto been the practice in some areas. Cooperative effort on the part of all agencies concerned with the treatment and control of the juvenile offender is, in any case, a matter of considerable importance. In this connection see also infra paras. 333-336.

143. Canadian Corrections Association, The Child Offender and the Law, pp. 12-13.

PART 111 TREATMENT OF THE JUVENILE OFFENDER

CHAPTER V1

PHILOSOPHY AND MEANING OF TREATMENT

188. In representations made to the Committee there has been a repeated emphasis upon one essential principle; that a juvenile who has engaged in anti-social conduct should receive treatment, not punishment. We have been referred time after time to section 38 of the Act which directs, as we have noted previously, "that as far as practicable every juvenile delinquent should be treated, not as ciminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance." It thus becomes necessary to distinguish between punishment and treatment.

189. Among the purposes attributed to the criminal law are those of deterrence, rehabilitation, incapacitation and retribution. We have been told by many persons that in the twentieth century the courts should not allow their actions to be influenced by retributive motives. For the adult an incapacitative sentence is one that prevents the offender from posing any further danger to society. A person serving a life sentence in a maximum security institution without possibility of parole can be considered as incapacitated. However, even for the adult offender incapacitation by itself is thought to be harsh and inadequate. In the case of the juvenile offender it is accepted that incapacitation should not be a primary objective in itself. The goal instead is to ensure, as the pre-eminent consideration, that the juvenile offender is assisted to become a law-abiding citizen. The way in which the juvenile court concept seeks to implement this objective can be stated in the form of two related propositions: that treatment, institutional or otherwise, should be exclusively designed to further the juvenile's education and readjustment; and that whether a particular measure is to be applied depends not on what the juvenile has done but on what is necessary and useful forhim. (1). Judicial action intended to achieve this overriding goal, and guided by these implementing principles, can be considered as rehabilitative. The difficulty is, however, as the author of one influential essay on the criminal law has pointed out, that "social purposes can never be single or simple, or held unqualifiedly to the exclusion of all other social purposes ....". (2). To concentrate upon one objective alone is to prejudice other values that are also important. "The problem," it is said, "is one of the priority and relationship of purposes as well as of their legitimacy ....". (3). The Ingleby Committee was clearly aware of this fact when it observed: "Although it may be right for the court's action to be determined primarily by the needs of the particular child before it, the court cannot entirely disregard other considerations such as the need to deter potential offenders. An element of general deterrence must enter into many of the court's decisions and this must make the distinction between treatment and punishment even more difficult to draw."(4).

190. We have suggested that judicial action predominantly intended to ensure that the juvenile offender becomes a law-abiding citizen can be considered as rehabilitative. In this view the test of whether action is treatment or punishment depends upon the intention of the juvenile court judge. Two difficulties are immediately evident. The intention of the juvenile court judge cannot necessarily be determined from his objective conduct. Is commitment of a juvenile to training school to be characterized as treatment and thus deserving of the approval of all "right-thinking members" of the community? Is the imposition of a fine to be characterized as punishment and therefore to be abhorred? Nor is this the end of the problem. Even if the judge's intentions are clear, should they be the sole test of whether the action is treatment or punishment? Are the feelings of the child relevant? In this connection, too, the comments of the Ingleny Committee are helpful:

> " This difficulty of distinguishing between treatment and punishment often leads to a feeling on the part of the child .... that he has been unfairly treated (for example, if one child is sent to an approved school for a comparatively minor offence because of unsuitable home circumstances, while another with a good home is placed on probation for a similar offence) .... Again, the ultimate good of both child and public may be for the child to undergo long-term training away from home. Neither the gravity of the immediate misbehaviour nor the child's .... degree of responsibility may in 'fairness' warrant this if it is to be regarded as a punishment. Even if it is regarded as treatment, it may still be felt as punishment. In the sense that it follows as a result of misbehaviour ....it will in fact be punishment. It is clear that, in practice at any rate, it is impossible to distinguish between treatment and punishment, The same thing may be either punishment or treatment, or both at the same time." (5).

91. We agree with the philosophy expressed in section 38 of the Act. he difficulty has been not in the basic philosophy of the Act but in the failure f society to give to the juvenile court adequate resources with which to fulfil ıe aims of that philosophy. For the purposes of our discussion in this Part we onsider any action which affects a juvenile's chances of rehabilitating himself, ıken by a person legally authorized to act in relation to that juvenile, to be eatment. In this light we now examine treatment resources and other methods ı the order in which a juvenile is likely to meet them.

Footnotes

1. See Grunhut, "The Juvenile Court: Its Competence and Constitution," in Lawless Youth: A Challenge to the New Europe (Howard League for Penal Reform, Fry ed., 1947), p. 21, at p. 22.

2. Hart, "The Aims of the Criminal Law," (1958) 23 Law and Contemporary Problems 401.

3. Ibid.

4. Ingleby Committee, para. 110, p. 41.

5. Id., at paras. 111-112, p. 42.

CHAPTER V11

TREATMENT PRIOR TO JUDICIAL DETERMINATION OF DELINQUENCY

The Police

192. Traditionally, the role of the police in law enforcement has been the protection of life and property and the prevention and detection of crimes and offences. Prevention in this context has usually stressed the more normal police activities, such as patrolling and observation, designed to limit the opportunities available to potential law-breakers. These activities are not particularly concerned with the social aspects of crime and do not involve any organized attempt to deal with factors thought to be conducive to the development of criminals. The detection of offenders and the court process that follows may be said to be a form of prevention. Most law enforcement officers hold the belief - shared by many criminologists - that sure detection, swift prosecution, and a rational disposition by the court are still the best deterrents to unlawful behaviour.

193. The preservation of the "Queen's Peace" remains the most basic and important of all law enforcement functions. Nevertheless, in recent years much greater emphasis has been placed upon the idea of crime prevention in the broader sense. In particular, there is an increasing recognition on the part of law enforcement officers that the prevention of juvenile crimes is one of their most important functions. However, the manner in which this objective should be achieved is a matter of considerable controversy. In the following paragraphs we examine the role of the police in the prevention of juvenile crime as well as such problems as police discretion, police liaison with other community agencies, police questioning of juveniles and organization and training of police officers who work with juveniles.

194. Should police officers as part of their official functions engage in informal probation or family case work? (1). Should they be responsible for community recreation programs? We are most doubtful. Good juvenile law enforcement requires good police work. Enforcement is vital for the control of anti-social behaviour and the development of corrective measures. Extension of the police role in juvenile law enforcement toward a social work function hinders the effectiveness of a police department in law enforcement activities. There is also the danger of confusing the public's mind concerning the police role, and a resulting loss of respect for the peace officer. Such activity may not only undermine the position of the police itself. It may also affect adversely the position of other persons seeking to do preventive work. Social work, we think, can only be done within a framework of solid ground rules, and the police officer is the authoritarian figure who is always in the background to serve as an indication of those ground rules. Senior police administrators interviewed by the Committee were unanimous in the view that the primary

role of the police is the enforcement of the law, and that police officers should not become involved in probation work or family case work. We agree with their view in this matter. We share also their opinion that recreational programs should not be organized as an official part of the police operation. More good is ultimately accomplished by encouraging the police to point out gaps in community services, and by promoting action to remedy the situation, than by using the limited number of police officers available for activities other than law enforcement. There is, however, one additional point that we would emphasize, a point well stated in a California study: "Juvenile law enforcement responsibilities of detection, apprehension, and deterrence .... can and should be accomplished without compromising effective rehabilitation principles or neglecting preventive functions." (2).

195. Police discretion in juvenile law enforcement has three aspects. First, there is the question whether a child should be charged or, alternatively, dealt with on an informal basis. Second, if it is decided to deal with the case informally the question then is whether the child should be referred to an agency other than the court or should be dealt with on the spot by police action alone. Third, if it is decided to charge the child the police must determine whether or not to place him in detention pending a hearing. The extent to which police discretion is exercised varies considerably throughout the country. In a large number of communities the police have the authority to determine whether a charge should be proceeded with, while in other communities this decision is made solely by the probation staff or by some other agency working with the juvenile court.

196. The question to be decided is whether the exercise of discretion by the police is proper and, if so, whether principles can be formulated for the sound exercise of that discretion. It has been suggested that the police must have discretion to prevent probation departments, detention centres and juvenile courts from becoming overloaded with unnecessary referrals that could be dealt with in other ways. There are several objections to this suggestion. In the first place it assumes that the police are the proper persons to lighten the burden on the other official agencies in the administration of juvenile justice. It assumes, moreover, that the police officer is competent to decide that his caution to a child whom he has found committing an offence is sufficient to make it unlikely that the child will commit it again, and, moreover, that the child is not one whose delinquency results from deeply rooted causes that require the type of treatment available only by action on the part of the juvenile court. (3). If our recommendations for changes in the Act are adopted, many children now dealt with informally because of very young age or the minor nature of their misconduct will no longer be subject to the designation "juvenile delinquent", with its attendant consequences. This should reduce, to some extent, the need for informal dispositions by police officers.

197. Where the police are authorized to exercise discretion in relation to juveniles we suggest that certain principles should be accepted to avoid the

dangers that are apt to be present, most particularly those of arbitrariness and lack of harmony between the goals sought by the legislator and the practices followed in administering the law. (4). These principles are as follows:

(1) The police should bring to the attention of the juvenile court every child who they have reasonable grounds to believe has committed an offence to which the Act applies;

(2) The juvenile court should assign an officer of the court to be responsible for instituting proceedings in the court. In deciding whether proceedings should be commenced this officer should be guided by considerations such as the following:

(a) children whose conduct involved a risk of serious bodily harm to another person should be charged;

(b) other children should be charged if

(i) they have previously engaged in anti-social conduct, or

(ii) after a conference called by this officer with representatives of the police and agencies that know the child and his family the officer feels that a court appearance is necessary or desirable;

(3) Records should be maintained of all cases of informal disposition so that if a child is brought before the court the judge will be in a position to know about the child's prior anti-social conduct.

(4) In deciding whether it is necessary to take physical custody of the juvenile the police officer should recognize that the removal of a juvenile from his home and his physical delivery to a court is an emergency measure only. Any doubts should be resolved in favour of leaving the juvenile in his home pending court appearance;

(5) Discretion should never be exercised with the idea of punishment in mind. It is because of a punitive attitude on the part of a small minority of officers that the police are most often criticized for misuse of their discretionary powers. This is particularly so in regard to detention practices.

198. The law governing the questioning of juveniles and the obtaining of admissions from them has traditionally been stated as being the same as that which applies in the case of adults. The most important test of legality is the admissibility of a statement in evidence, the criterion of admissibility being one of "voluntariness". Thus a police officer must carry out his questioning in a way that will ultimately satisfy the court that any statement obtained was made voluntarily. Important questions have been raised concerning the adequacy of this approach to admissions by juveniles. (5). To begin with, what is meant by a "voluntary" statement by a young person to the police? Does not the very authority of a police officer bring a strong element of coercion to any situation in which the person questioned is a child? Perhaps an even more basic question is this: Should the law require more than a mere indication that a statement was made voluntarily and require also proof that the statement was made with full knowledge and understanding of the consequences of making it? Consider, for example, a case where the juvenile court waives its jurisdiction in favour of the ordinary criminal courts. In responding to police questioning a young person may reasonably expect that he will be dealt with in the juvenile court. When he finds himself before an adult court is it altogether fair that his statement should be admitted in evidence on proof of its "voluntariness" alone? Traditionally it has been said that the criterion of "voluntariness" is addressed, not primarily to any question of fairness as such, but to the probable trustworthiness of the statement. But is there not implicit even in this explanation of the law an assumption - made explicit in what are known as the Judges' Rules - that the person questioned is at least capable of making a mature judgment as to where his best interests lie? Questions such as these have been asked in a number of recent judicial decisions, notably by the Ontario High Court of Justice (6) and, in the United States, by the Court of Appeals for the District of Columbia (7) and by the United States Supreme Court. (8).

199. Having regard to the peculiar vulnerability of juveniles in the matter of police questioning, there have been suggestions that juveniles should be questioned by the police only in the presence of a relative or other suitable adult adviser and, further, that statements taken without this protection should not be admissible in evidence. (9). We think that, as a general rule, if a child is to be questioned by the police - and particularly if he is to be invited to make a statement that may be used against him - an adult who is concerned with protecting the child's interests should be present. This point has been stated forcibly in one decision, as follows: "We deal with a person who is not

equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests .... He would have no way of knowing what the consequences .... were without advice as to his rights - from someone concerned with securing him those rights - and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself." (10). In so far as proceedings in the juvenile court are concerned we think that the matter of the admissibility of any statement taken in the absence of adult advice can be left to the discretion of the juvenile court judge. However, we do suggest that the law should provide specifically that no such statement should be admissible in the ordinary criminal courts.

200. It will be readily appreciated that the police, in carrying out their basic functions in relation to juveniles, must co-operate with a number of community agencies if the efforts of all concerned are to be effective. Police policies will often be determined to a considerable extent by the attitude of the juvenile court. In any event the police must have a clear understanding of juvenile court policies and procedures. From meetings held with police officers and juvenile court judges we obtained the impression that the relationship between the two in Canada is on a very good footing. The only areas of criticism noted - a failure of some police officers to appreciate the philosophy of the juvenile court, and a lack of understanding by some judges of the special difficulties and problems of police work - could be met by educational programs for both groups. Apart from the administrative difficulties involved in police relationships with other social agencies, a further problem may arise because the persons with whom the police are frequently in contact are often trained social workers. We are told that the problem results in part from an occasional tendency by social workers to downgrade the police officer because he is likely to have less formal education or because he is considered to have an overly punitive attitude. On the other hand the police officer often criticizes social workers for their failure to understand the legal implications of police work. Here also educational programs for both groups would be most beneficial.

201. It is generally accepted that juvenile offenders - a group with special problems and governed by special laws - should be dealt with by police specialists in the field. None the less Canada is somewhat behind some jurisdictions in this aspect of law enforcement. (11). For the most part the larger cities do have special units. The police administrators in a number of cities that do not have such units stated that they would welcome the addition of a juvenile bureau to their departments but gave budgetary problems and manpower shortages as reasons for not being able to provide this service. In rural areas major difficulties would confront the police forces if special juvenile details were to be included in their establishments. Members of the Royal Canadian Mounted Police, the Ontario Provincial Police and the Quebec Provincial Police are deployed over extensive areas, quite often

at posts staffed by only one or two officers. It would be impractical and unnecessary to assign special juvenile details to individual detachments or posts under such circumstances.

202. Although there is no standard method of organizing a police department for specialized work with juveniles, three more or less distinctive patterns emerge:

(1) The juvenile detail is quite specialized and may be somewhat autonomous. It assumes responsibility for every investigation where it is known that a juvenile is involved. It is also responsible for much preventive work as well as the preparation and presentation of cases before the juvenile court.

(2) The juvenile detail shares responsibility for the investigation of cases involving juveniles with the operational sections of the department such as the patrol, traffic or detective divisions. Under this system the juvenile unit may be called into an investigation at any time to assist other divisions, or it may undertake difficult cases from the outset.

(3) The juvenile detail exercises a supervisory function. It does not undertake field investigations. Case files are studied and the decision on further action - warning, referral to an agency or to the court - is made by this unit.

203. Even in those cities where the police force has a juvenile detail a child's first experience with the police is likely to be with an ordinary officer rather than with a member of the detail. This points out the importance of the training of the police to handle juvenile work. The police department cannot be satisfied merely because it has a specialized unit. Such a unit can be useful in assisting the chief police administrator in formulating and applying the overall departmental policy for dealing with juveniles; in investigating some "non-action" complaints and following up "action" situations after the line officer has taken initial steps; in reviewing all reports dealing with police contact with juveniles; and in performing liaison functions with other agencies in the community dealing with children involved with the police. The problem is to ensure harmonious relations between the juvenile unit and

other branches of the department. There should be one philosophy throughout the entire department for dealing with juvenile offenders - not one philosophy in the juvenile unit and a different one in other divisions. (12).

204. Above all we see the need for the increased training of every police officer in juvenile work. (13). The police trainee should be taught how to question children. He should be taught the essential features of the Act and the philosophy and function of the court and its ancillary services. In a democratic society the police officer should be a firm but courteous representative of constituted authority. These characteristics are desirable where the police are dealing with adults. In dealing with children they are essential.

Detention Facilities and Practices

205. The custody of children has been a matter of public concern for many years. A significant event in the development of specialized treatment of juveniles was the enactment of the Children's Protection Act of Ontario in 1893 which provided that no child under sixteen years of age could be held for trial or undergo sentence in any place of confinement in company with adult prisoners. The effect of this legislation was quite limited because it was confined in its operation to offences against provincial statutes. To remedy this defect Parliament enacted legislation in 1894. The forerunner of the present Act, enacted in 1908, contained provisions identical to the present relevant sections. These provide, in part, as follows:

> " 13. (1) No child, pending a hearing under the provisions of this Act, shall be held in confinement in any .... place in which adults are or may be imprisoned, but shall be detained at a detention home or shelter used exclusively for children ....
> .....
>
> (3) This section does not apply to a child as to whom an order has been made pursuant to section 9.
>
> (4) This section does not apply to a child apparently over the age of fourteen years who .... cannot safely be confined in any place other than a gaol or lock-up.
>
> " 14. (1) Where .... there is no detention home used exclusively for children, no incarceration of the child shall be made or had unless .... such course is necessary in order to insure the attendance of such child in court.

(2) In order to avoid, if possible, such incarceration, the .... promise .... of any .... proper person, to be responsible for the presence of such child when required, may be accepted ....

" 15. Pending the hearing of a charge of delinquency the court may accept bail for the appearance of the child .... as in the case of other accused persons. "

206. The most striking feature of the situation in Canada is the almost complete lack of detention homes to serve rural areas, smaller towns and cities and areas that are sparsely populated. We were told of cases where police officers in rural areas were forced to hold a juvenile in a hotel room or keep him in living quarters attached to the police office. In many instances use is made of local prison cells or lock-ups, although every effort is made to keep the child away from adult prisoners. A few of the larger urban centres do have well-designed detention facilities. These range from old-style converted residences to a wing of an adult jail. In the latter case the juveniles, although separated physically from adult prisoners, are usually attended by the same uniformed guards. Occasionally a nearby training school is the only resource available and is used for detention.

207. In many parts of Canada there appears to be a lack of awareness of the true purpose of detention. For example, only in some of the larger urban areas are detention screening policies employed. All too often, contrary to the original aim of the Act, detention has been used for the convenience of the police or an agency conducting a social investigation for the court, rather than for the good of the child. In some areas detention is used as a primitive punitive device by the police and occasionally by juvenile court judges. That is, juveniles are placed in detention and then released without a charge being brought. Although precise figures on the average length of a juvenile's stay in detention in Canada are not available, it was noted that its duration varied from a few hours (until the next sitting of the court) to as much as three months (pending a clinical assessment). We also observed that in many places detention facilities are used for different types of children - including care and protection cases in some areas - without means of or attempt at segregating them. To complete the picture it should be noted that, apart from a few of the larger centres, the professional staff necessary to plan and supervise the activities that would be desirable are not available. The situation with regard to clinical staff for diagnosis and assessment is the same.

208. Our recommendations are based upon what we conceive to be the proper purposes of detention. We recognize that different approaches have been taken on this question in the United States and in the United Kingdom. Under the English system a variety of uses for the remand home - the basic facility - are authorized by statute. (14). These include custody of children who are

charged with offences, pending their appearance in court; who are alleged to be in need of care or protection, or beyond control, and who require to be lodged "in a place of safety" pending consideration of their cases by a court; who are detained after committal to an approved school and are awaiting a vacancy; or who have been committed for a period of detention not exceeding one month. In addition, there is statutory authority for the use of remand homes to accommodate children committed to the care of local authorities. The present remand home system was endorsed by the Ingleby Committee. (15). On the other hand, in the United States a more limited use for detention is recognized, extending only to "the temporary care of children who require secure custody in physically restricted facilities pending juvenile court disposition or transfer to another jurisdiction or to an agency to which they have been committed by a court." (16). This conception of detention does not comprise "shelter care" for children not requiring secure custody or the use of detention facilities as a short term treatment device. (17). The United States Children's Bureau has declared:

> " The primary purpose should be the holding of children needing secure custody rather than that of providing study and treatment. This should be the case even though the detention experience can contribute greatly to the study and treatment process. This does not mean that the wealth of diagnostic information available during the period of detention should not be used as much as possible. Nor does it imply that staff capable of making diagnostic observations and evaluations are not necessary or that the detention program should not be operated in such a way as to facilitate the diagnostic process. Nor should it be assumed that 'treatment' does not occur while the child is in detention or that the facility should not concern itself about a 'treatment-oriented' program. To the contrary - all of these are necessary if detention is to serve a constructive purpose." (18).

209. There are two stages in the juvenile court process that seem to us to require different treatment: that of proceedings prior to an adjudication of delinquency and proceedings subsequent to the adjudication. In the first stage we can see no need to differentiate between the juvenile and adult offender to the detriment of the juvenile. Detention should only be used to ensure that the child will appear in court to answer the allegations against him. Neither the court nor the police are given - nor should they be given - the legal power to use detention as a sanction prior to an adjudication of delinquency. It is unfortunately true that there has been misuse of detention facilities by some police officers and juvenile court judges. In our opinion the proper criteria

for the use of detention in connection with the first stage are those formulated by the National Probation and Parole Association (now the National Council on Crime and Delinquency) in the United States. (19). Detention should be reserved for:

(a) children who are almost certain to run away during the period when the court is studying the case or between disposition and transfer to an institution or another jurisdiction;

(b) children who are almost certain to commit an offence dangerous to themselves or to the community before the court disposition or between disposition and transfer to an institution or another jurisdiction; and

(c) children who must be held for another jurisdiction, for example, parole violators, runaways from institutions to which they were committed by a court, or certain material witnesses.

210. The first official to apply these criteria to the particular case is the police officer. However, his opinion should not be binding on those responsible for the operation of detention facilities. It is most important that the criteria be understood and applied by all who come into contact with the juvenile. The person ultimately responsible for this understanding is the juvenile court judge.

211. There is another respect in which we see no need to differentiate between the treatment given to juvenile and adult offenders at the stage prior to an adjudication. The Criminal Code provides that when a peace officer arrests a person he "shall .... take or cause that person to be taken before a justice to be dealt with according to law .... within a period of twenty-four hours after the person .... has been arrested by the peace officer" or, where a justice is not available within that period of time, "the person shall be taken before a justice as soon as possible." (20). No similar provision is contained in the Juvenile Delinquents Act. Nor does it appear that the Act can be readily interpreted as incorporating this requirement of the Criminal Code in so far as the arrest of juveniles is concerned. It seemed evident to the Committee, from incidents brought to our attention, that there are many persons who are not aware that there is an obligation to bring young persons promptly before the court. The juvenile court legislation of at least one province makes express provision for "prompt production" of the child. (21). We think that such a provision should appear in the federal Act and recommend accordingly. (22).

212. Later in this Report we deal with the proper use of detention facilities after a finding of delinquency. At this stage we are concerned with

methods for obtaining adequate facilities for the purposes suggested in the preceding paragraphs. A number of communities have attempted to meet the problem by the use of foster homes. However, these are inadequate for the particularly difficult child who requires secure custody. Other alternatives suggested to us were the purchase of detention care by smaller communities from adjoining larger localities, or the joint construction and operation of detention homes by groups of communities, or the construction of detention facilities on a regional basis. Inherent in all of these suggestions is the basic problem of what the role of the federal government should be. It is clearly impossible for municipal governments or even some provincial governments to provide proper facilities in large, sparsely populated areas. Historically, detention facilities have been regulated by the provincial governments. The federal government can help by setting standards to be observed and by providing financial assistance to provinces and municipalities whose facilities satisfy the minimum federal standards.

Protection of the Child Witness

213. Considerations of treatment prior to a judicial determination of delinquency brings us to a related problem that we think it appropriate to discuss under this heading. This concerns the position of a child who is a victim of, or a witness to, a criminal offence.

214. Through the juvenile court process the child who is an offender is afforded many safeguards under the law. It is somewhat ironic, therefore, that when the child is not the offender, but the victim, or but a mere observer, the principal concern of the law has been with matters relating only to the child's competence as a witness. Attention has focused on such questions as the child's capacity to understand the nature of an oath, his ability to recollect and narrate intelligently, to appreciate his moral duty to tell the truth, the weight that is to be given to his evidence, and the like. It is true that a judge has authority under the Criminal Code to exclude the public from the court-room in some circumstances. (23). Also, as we shall indicate later, there is provision for dealing with some charges against adults in the juvenile court. (24). But beyond this very little ingenuity has been employed in devising ways to protect children from the very real dangers of this situation. These include the damage to personality that an unskilled police examiner may inflict, the effects of repeated questioning and of keeping an incident alive for the purpose of a long-delayed trial, the hazards of cross-examination and, on occasion, even the harm that a child may do to himself through the unanticipated consequences of his own fabrication.

215. In meetings with the Committee a number of persons made reference to an arrangement adopted by Israel in 1955. (25). Having regard to the importance of this entire question we think that the Israeli plan merits careful study. The aim of the scheme is twofold: to keep children under fourteen out of court where this seems to be desirable for their welfare, and to place the investigation of

certain kinds of cases completely in the hands of persons who are suitably trained in the elements of mental hygiene. A report on the new law lists its principal features as being the following: (26).

(1) No child under fourteen years can be investigated, examined or heard as a witness in the matter of an offence against morality except with the permission of a youth examiner.

(2) A statement by a child as to an offence against morality committed upon his person, or in his presence, or of which he is suspected, many not be admitted in evidence except with the permission of a youth examiner.

(3) Youth examiners can be appointed only after consultation with an appointment committee consisting of a judge of the juvenile court, an expert in mental hygiene, an educator and an expert in child care.

(4) Evidence as to an offence against morality taken and recorded by a youth examiner and any minutes or report of such an examination concerning such an offence prepared by a youth examiner are admissible as evidence in court.

(5) Where such evidence has been submitted to the court the youth examiner may be required to re-examine the child and to ask him a particular question, but he may refuse to do so if he is of the opinion that further questioning is likely to cause psychic harm to the child.

(6) A person may not be convicted on evidence given by a youth examiner unless it is supported by other evidence.

216. The scheme as outlined above offers a number of advantages. To begin with, provision for "in camera" proceedings at trial clearly does not go far enough, because much of the harm may be done at the investigation stage. While many larger police departments now have on staff persons who have received some special training to equip them for dealing with children, it remains the primary function of the police to secure evidence whenever it appears that an offence has been committed, and only secondarily to consider the interests of the child involved. Experts in child psychology seem to be of

the opinion that the manner in which questioning is conducted can prove to be quite harmful to some children. Moreover, the very fact of an encounter with the police may sometimes add to the feeling of anxiety that the disturbing event has already produced. It happens, not infrequently we are told, that parents react irrationally to such an occurrence, even punishing the child or acting in a way that the child interprets as punishment. In a highly charged emotional situation of this kind the intervention of a youth examiner would probably be more acceptable than that of a police officer, if for no other reason than the fact that, in the eyes of the family, the youth examiner presents a less punitive "image" than the police officer. The youth examiner system has the effect of taking the questioning of children, in certain specified situations, out of the hands of the police altogether. The change could well bring with it a number of incidental benefits. The professional experience of the youth examiner, for example, may enable him to be of some assistance to the family, in particular, to advise when referral to a mental health service may be desirable. This same experience may, in fact, enable him to get a full account of the incident where it could not be obtained by police questioning.

217. Another advantage of the youth examiner system relates to the decision-making function in so far as commencing a prosecution or calling a child as a witness are concerned. The police, and sometimes the crown attorney, tend to take the view that, if there is evidence that an offence has been committed, proceedings must be instituted regardless of any possible effect on a child who may be involved. There are times, however, when the danger to the mental health of the child is out of all proportion to any benefit that is likely to result from proceedings against an adult. This is particularly the case where, as not infrequently happens, the child's testimony is the only evidence against an accused, so that the chances of the adult being convicted are problematical. Again, there is the question of a child being required to testify against a parent. Subject to certain exceptions the law has long granted a husband or wife a privilege not to be compelled to give evidence, the one against the other. No equivalent privilege is extended to a child in respect of his parents. And yet it is certainly arguable that the very policies that underlie the husband-wife privilege apply, in large measure, to a child of the family - with, indeed, even greater potential harm to the child's welfare than that of a spouse.(27). Still another problem concerns the danger of unfounded accusations of sex offences. As long ago as 1938 a committee of the American Bar Association reported: "Today it is unanimously held (and we say 'unanimously' advisedly) by experienced psychiatrists that the complainant woman in a sex offence should always be examined by competent experts to ascertain whether she suffers from some mental or moral delusion or tendency, frequently found especially in young girls, causing distortion of the imagination in sex cases." (28). In addition to the substantial danger that exists for the accused in these cases there is, of course, the danger of personality damage to the child who has made the complaint. For these various reasons we think that there may very well be a value in having an officer whose responsibility it is to assess considerations of this kind, to make any inquiries of a social or psychological

nature that seem to him to be necessary, and to make a judgment independent of that of the prosecuting authorities concerning the course of action that seems to be desirable in the interest of the child. Nor would the value of such a system depend necessarily, in our view, upon that judgment being a final or conclusive one.

218. We find unacceptable the part of the Israeli procedure that permits, as a substitute for the attendance of a child witness at trial, the introduction of evidence against an accused of a statement given by the child to a youth examiner. In this respect we agree with the Ingleby Committee, which rejected the Israeli plan, that the adversary system requires that "the bench, or where the trial is before a jury, the jury, should see and hear the witnesses, and the accused should have the opportunity of cross-examining any witness before the court that is trying him." (29). It is important to note, however, that the English legislation, even before the Ingleby Committee, has already made provision for reducing to a minimum the dangers to a child of a court appearance, notably: by authorizing a justice to take the deposition of a child in respect of whom certain offences are alleged to have been committed where a duly qualified medical practitioner gives evidence that attendance at court would involve serious danger to the life or health of the child; by providing for the admission in evidence at trial of such a deposition, subject to certain safeguards; and by permitting the court to dispense with the attendance of the child at trial if satisfied that his attendance is not essential to the just hearing of the case. (30). It was the Ingleby Committee's proposal that this statutory protection be extended by allowing a deposition to be taken wherever the "mental health" of a child is endangered, and by imposing on the prosecutor in each relevant case a duty to consider whether application should be made to a justice or the court to invoke the appropriate section. (31). The protection afforded by English law was, in fact, extended by amendments enacted in 1963. (32). The new legislation provides that, subject to certain exceptions, the prosecution may not call any child under the age of fourteen as a witness at the preliminary hearing of any charge involving a sexual offence. His testimony instead is to take the form of a written statement which is made admissible in evidence. The exceptions, however, are important. They include a defence objection to the statement being admitted and a prosecution requirement for the attendance of the child to establish the identity of any person.

219. The arrangement under the English statute does serve to achieve a kind of balance between two competing policy considerations that are relevant at the trial stage. On the one hand, it is undesirable that a disturbing incident should be kept alive in a child's mind through repeated questioning over an extended period of time. On the other, it is basic to the adversary system that evidence should be subject to cross-examination and that the judge or jury should be able to observe the demeanour of every witness whose testimony is material. We recommend, therefore, that provisions along the lines of these that have been accepted in England be adopted as part of Canadian law.

220. Notwithstanding the value of the English legislation, it nevertheless fails to come to terms with the important issue that is met by the Israeli plan, namely, the need to protect children at the pre-trial, investigation and decision-making stages. It has often been said that setting in motion the machinery of juvenile court proceedings should be regarded as a matter of special public concern, and should not be left to the sometimes random operation of the ordinary criminal process. As the Kilbrandon Committee has observed, the decision whether or not to institute proceedings against a child may often involve "a difficult and delicate exercise of discretion in assessing where the public interest truly lies." (33). We agree with this view, as will be evident from at least one previous recommendation in this Report. (34). The point that we would emphasize here is that, just as any decision to commence proceedings against a child presents an issue of public policy, decisions concerning any proceeding in which a child may be substantially affected can also involve a policy issue of some importance. We recommend, therefore, that the youth examiner system be studied with a view to determining whether some variant of it - excluding features relating to evidence at trial - might profitably be adopted in Canada. We recognize that the responsibility for establishing such an office would rest with any province that wished to introduce the scheme. The principal question that would have to be resolved concerns the extent to which a youth examiner should be permitted to deny to the Crown or an aggrieved party an effective remedy in the criminal courts. On this point some compromise arrangement may be in order, such as a hearing at which the competing policy considerations could be weighed and a decision made, either at a senior administrative or a judicial level, as to whether a prosecution that would necessitate calling a child as a witness should be allowed to proceed. It would be possible to provide under federal legislation that, where a province has appointed a youth examiner, a child under the age of fourteen years could be called as a witness in the matter of an offence against morality only in accordance with the procedure established for reviewing such prosecutions.

Footnotes

1. Reference should be made in this connection to the much discussed program introduced some years ago in Liverpool, England. The Liverpool plan is explained in one account as follows: "With the aim of preventing the development of offenders, a scheme was inaugurated in Liverpool in 1949, the basis of which was the appointment of selected officers known as juvenile liaison officers to deal specifically with the prevention of juvenile crime. These officers seek the cooperation and work in association with education authorities, clergy, probation officers and youth organizations. But the specially interesting point about the scheme is that a direct approach is made to the parents of young offenders or of young people who appear to be falling into bad habits or forming associations.

By these means, and with the cooperation of parents, it is reasonable to assume that conditions and circumstances which are conducive to crime may be altered and a very real contribution made to the prevention of crime. The role of the police officer as an adviser to parents is a new one. When certain initial resentment by parents is overcome, it may well prove to be a vital one. Not only may it result in reducing juvenile crime, but, by reason of the opportunity it affords of intimate contacts with families, it may completely alter the attitude of certain sections of youth towards the police....". Adams, "The Police and Youth," (1956) 29 The Police Journal 273, at p.280. The Liverpool plan has proved to be controversial. The same author continues: "But great care must be taken. Unorthodox attempts to deal with youthful offenders may often prove disastrous. "Adams, supra at p.280. The Ingleby Committee, after considering the arguments for and against the scheme, concluded: "It seems clear....that the process of 'following up' the caution by a period of supervision, help and guidance for the child and his family involves the juvenile liaison officer in work that nowadays is recognized as a skill to be acquired by special training in case-work which the juvenile liaison officer has no opportunity to receive. It is work that should be done by other social agencies. " Ingleby Committee, para. 147, p.51. For a further comment on the juvenile liaison officer concept, see Cavenagh, The Child and the Court (1959), pp.137-145. Schemes for voluntary police supervision have also received a mixed reaction in the United States. See, for example, U.S. Dept. of Health, Education and Welfare, Police Services for Juveniles (Children's Bureau, 1954), pp.24-27.

2. Report of the Governor's Special Study Commission on Juvenile Justice (California, Part 11, 1960), pp.84-85. We take note, for example, of the following observations contained in one submission to the Committee: "The police are of particular importance. They are important not only because of the opportunity they have to identify the problem, but also because their management of the individual has an extraordinarily important impact upon the subsequent history of delinquency in a particular individual....The whole legal process starting with the apprehension of the juvenile in the community through his detention to his final disposal, is a process requiring the greatest understanding of individual personality and social dynamics, and provides a first-class opportunity for trained personnel to engage in a preventive programme." Brief submitted by the Department of Psychiatry of the University of British Columbia (1962), pp.6-7. The training of police officers to deal with the special problems presented by children and young persons is, for this reason, a matter of considerable importance. Still another aspect of prevention in relation to the police function that merits attention is outlined in a recent submission to the Ontario Select Committee on Youth: "Consideration should be given to the recommendation....that

children .... be given a basic knowledge of the country's legal system and of the possible sanctions which can be employed to those who disregard the regulations concerning conduct and behaviour and the rights of others. This recommendation could be made doubly effective, if wherever possible, police officers contributed to the teaching involved. There is little doubt that there are many young people who are contemptuous of, and hostile towards, police authority and this situation is not likely to change unless every opportunity is provided for young people and police to meet and be encouraged to better understand each other's feelings and attitudes and the reasons underlying them." Canadian Mental Health Association, Ontario Division, Brief to the Ontario Legislative Assembly Select Committee on Youth (1964), p.7.

3. The question is one that has caused concern among some juvenile court judges in Ontario. One committee has observed: "Your Committee is .... concerned abouth the trend which indicates police officers sometimes specially selected are increasingly dealing with juvenile delinquency and exercising their own discretion whether to bring a charge or warn the juvenile ....The present activities of police officers are preventing the Probation Officers maintaining proper statistics on delinquencies, and in many cases allows the child's delinquent tendencies to develop too long before the matter comes to the attention of the Court....". Report of the Standing Committee on Probation, Association of Juvenile and Family Court Judges of Ontario (Sept.28, 1962, as revised March 28, 1963), pp.10-11.

4. A useful discussion of the problem, relatively little explored, of bringing the practices followed in the administration of the law into harmony with the goals sought by the legislator can be found in Goldstein, "Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice," (1960) 69 Yale Law Journal 543. See also La Fave, Arrest: The Decision to Take a Suspect into Custody (The Report of the American Bar Foundation's Survey of the Administration of Criminal Justice in the United States. Remington ed., 1965), Part II on The Decision Not to Invoke the Criminal Process.

5. See generally Note, "Due Process Reasons for Excluding Juvenile Court Confessions from Criminal Trials," (1962) 50 California Law Review 902; Note, (1962) 46 Minnesota Law Review 967.

6. Regina v. Yensen, (1961) O.R. 703, 130 C.C.C. 353. But see Fox, "Confessions by Juveniles," (1963) 5 Criminal Law Quarterly 459.

7. Harling v. United States, (1961) 295 F. 2d. 161 (D.C. Cir.).

8. Gallegos v. Colorado, (1962) 370 U.S. 49.

9. In this connection, see the rules for the questioning of juveniles suggested by the court in Regina v. Jacques (1958) 29 C.R. 249, at p.268 (Quebec Social Welfare Court). See also Myren and Swanson, Police Work with Children (U.S. Dept. of Health, Education and Welfare, Children's Bureau, 1962), pp.34-35. A related question of some importance concerns the matter of police questioning of children at school. There are obvious dangers for the child in this situation and care should be taken to minimize the possibility of harm. For a useful comment on police relations with the schools, see Report of the Governor's Special Study Commission on Juvenile Justice, Part 11, pp.111-113.

10. Gallegos v. Colorado, 370 U.S. 49, at p.54.

11. In a survey conducted in the United States in 1959, a specialized officer or unit was reported in 89 per cent of cities over 10,000 responding to a questionnaire, in 72 per cent of cities between 50,000 and 100,000, and in 52 per cent of cities between 25,000 and 50,000. Greenblatt, Staff and Training for Juvenile Law Enforcement in Urban Police Departments (U.S. Dept. of Health, Education and Welfare, Children's Bureau, 1960), p.4.

12. For a discussion of the development of specialized police services for juveniles and the role of the juvenile unit within the police organization, see Myren and Swanson, op. cit. supra note 9, pp. 1-17.

13. It is important that as many police officers as possible obtain some training for work with juveniles. In addition, there would appear to be a need for the development of specialized courses for the training of specialists in juvenile work. The selection of juvenile specialists in Canada has been made almost solely on the basis of job interest and aptitude for work with children. Training for the most part consists of on the job training under the supervision of an experienced juvenile officer. In-service training material on this phase of youth work is quite limited. In the United States, short-term institutes and workshops, some offering certificates or university credits, have been in operation for several years. Probably the best known of these are the 12-week Delinquency Control Institute at the University of Southern California and the 10-week Juvenile Officers' Institute at the University of Minnesota. See generally Kenny and Pursuit, Police Work with Juveniles (1954), pp.60-66; Juvenile Delinquency: A Report on State Action and Responsibilities (Prepared for the Governor's Conference Committee on Juvenile Delinquency by The Council of State Governments, The President's Committee on Juvenile Delinquency and Youth Crime, and The National Council on Crime and Delinquency, 1962), pp.15-17. A recent survey undertaken in British Columbia concluded: "In view of the special training needs of the many juvenile officers in our various police departments, and in view of the key role which police play in the prevention, treatment and

control of juvenile delinquency in the community - It is recommended that in consultation with municipal administrations and police chiefs, special advanced training courses for police officers in juvenile work be established in our universities." Gorby, A Report and Recommendations on Co-ordination of Youth Services in Greater Vancouver and Greater Victoria (1964), p. 10. We lend our support to that recommendation. A basis for a possible federal contribution in this area is suggested in the Conclusion of our Report.

14. See Ingleby Committee, paras. 385-386, pp. 113-114.

15. Ingleby Committee, para. 403, p. 118. See also para. 317 at p. 97, para. 390 at p. 115, and paras. 398-401 at pp. 116-117.

16. This is a formulation of the National Probation and Parole Association, quoted in Governor's Special Study Commission on Juvenile Justice, Part 11, p. 70.

17. See National Probation and Parole Association, Standards and Guides for the Detention of Children and Youth (1958), pp. 1-2; U.S. Dept. of Health, Education and Welfare, Standards for Specialized Courts Dealing with Children (Children's Bureau, 1954), pp. 20-21 and 45-47. The Children's Bureau have observed: "The need for security measures in detention care, and a more relaxed atmosphere in shelter care, and the difference in the age groups served (generally it will be an older child who needs detention care) require different physical settings and programs. Because of these requirements, it is extremely difficult if not impossible to provide detention care and shelter care in the same physical setting and still meet acceptable standards for each type of care." Standards for Specialized Courts Dealing with Children, p. 21. The general desirability of segregating delinquent and non-delinquent children was also recognized by the Ingleby Committee. See Ingleby Committee, paras. 405-409, pp. 118-119.

18. U.S. Dept. of Health,Education and Welfare, Detention Planning (Children's Bureau, 1960), p. 4.

19. Standards and Guides for the Detention of Children and Youth, p. 15. Also defined are the situations that do not justify detention. These include: (a) children who are not almost certain to run away or commit other offences before court disposition or between disposition and transfer to an institution or another jurisdiction; (b) neglected, dependent, and nondelinquent emotionally disturbed children, and delinquent children who do not require secure custody but must be removed from their homes because of physical or moral danger or because the relationship between child and parents is strained to the point of damage to the child; (c) children held as a means of court referral; (d) children held

for police investigation or social investigation who do not otherwise require secure custody; (e) children placed or left in detention as a corrective or punitive measure; (f) psychotic children, and children who need clinical study and treatment and do not otherwise need detention; (g) children placed in detention because of school truancy; (h) children who are material witnesses, unless secure custody is the only way to protect them or keep them from being tampered with as witnesses. Standards and Guides for the Detention of Children and Youth, pp. 16-17. In some of these situations, of course, it may be necessary that a child be removed from his home and placed in shelter care or in some other appropriate facility.

20. Criminal Code, s.438.

21. The Juvenile Court Act, Revised Statutes of Alberta 1955, c.166, ss.21 and 22.

22. See, for example, the Standard Juvenile Court Act, which provides, in part, as follows: "The officer or other person who brings a child to a detention or shelter facility shall at once give notice to the court, stating the legal basis therefor and the reason why the child was not released to his parents. The person in charge of the facility in which the child is placed shall promptly give notice to the court that the child is in his custody. After immediate investigation by a duly authorized officer of the court, the judge or such officer shall order the child to be released, if possible, to the care of his parent, guardian or custodian, or he may order the child held in the facility subject to further order or placed in some other appropriate facility. As soon as a child is detained, his parents shall be informed, by notice in writing on forms prescribed by the court, that they may have a prompt hearing regarding release or detention....". The Act further provides: "No child shall be held in detention or shelter longer than twenty-four hours, excluding Sundays and holidays, unless a petition has been filed. No child may be held longer than twenty-four hours after the filing of a petition unless an order for such continued detention or shelter has been signed by the judge or referee." National Council on Crime and Delinquency, Standard Juvenile Court Act (6th ed., 1959), s.17 and comment at pp.40-42.

23. Criminal Code, s.428.

24. See infra Chapter X.

25. Law of Evidence Revision (Protection of Children) 5715-1955.

26. Reifen, "Protection of Children Involved in Sexual Offences: A New

Method of Investigation in Israel," (1958) 49 Journal of Criminal Law, Criminology and Police Science 222, at p.224.

27. One eminent student of the law of evidence has observed: "The present system of compulsory attendance and disclosure is unbearably inflexible....There are very few rules which permit nondisclosure on grounds that compulsory disclosure would invade an interest of the witness - that is, on grounds that disclosure would cause undue harm to the witness or to something or someone dear to him....The law takes the position that the relationship between the degree of materiality of the evidence and the degree of anguish caused the witness by its disclosure is irrelevant....A useful purpose would be served by a thorough analysis of the whole concept of compulsory testimony. Among the questions to be asked are: (1) What are the 'hard-core' areas in which the need for information or the harm to the witness is always so great or so small as to require that disclosure be compelled or privileged, as the case may be? ....". McNaughton, "The Privilege Against Self-Incrimination," (1960) 51 Journal of Criminal Law, Criminology and Police Science 138, at pp.149-150 and n.52.

28. Quoted in 3 Wigmore, Evidence (3rd.ed., 1940), art. 924a, p.466. See generally 3 Wigmore, art. 924a, pp.459-466; Machtinger, "Psychiatric Testimony for the Impeachment of Witnesses in Sex Cases," (1949) 39 Journal of Criminal Law, Criminology and Police Science 750.

29. Ingleby Committee, para.262, p.82.

30. Children and Young Persons Act, 1933, 23 Geo.5, c.12, ss.41-43.

31. Ingleby Committee, para.262, p.82.

32. Children and Young Persons Act 1963, 11 & 12 Eliz.2, c.37, s.27.

33. Kilbrandon Committee, para.97, p.47.

34. See supra para. 197.