

And Justice for Youth...?

By JANET BAGNALL, *The Gazette*
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A demonstration against the omnibus crime bill, C-10, took place on Parliament Hill in November. The placard in the centre reads: "Texas thinks this crime bill is too harsh." Many of those who work with young offenders in Quebec would agree.

**Photograph by: PAT MCGRATH
OTTAWA CITIZEN FILE**

During the last federal election campaign, the Conservative Party promised once more it would get tough on crime, even though Canada's crime rate is at a historic low. It promised again it would crack down on young offenders - naming them publicly, imposing longer sentences and sending more of them to adult prison - even though youth crime, too, is down.

"Twice before these crime bills died on the order paper when an election was called," said Judith Laurier, communications officer with the Quebec Association of Youth Centres. "We thought, 'Another narrow escape.'"

But it wasn't to last. In May 2011, the Conservatives won a majority and their omnibus crime bill, C-10, passed the third reading at the end of the year and is now before the Conservative-dominated Senate. It will become law.

"Not since 1908 will Canada have a law where punishment for the sake of punishment is the goal," said Pierre Hamel, head of legal affairs with the youth centres association.

"This is a major change. It will affect the vast majority of young people in Canada. It is the interpretive framework of the law, which tells judges how to rule. It will affect all judicial decisions, not just the four to five per cent of young offenders Conservative defenders like Senator Pierre-Hugues Boisvenu claim. It is an attack against one of the foundations of youth justice in Canada, rehabilitation."

Quebec is beside itself. Justice Minister Jean-Marc Fournier went to Ottawa in November to beg the federal government to drop this new punitive approach to young offenders. Fournier came home furious, saying, "I don't recognize myself in this Canada. This is not a government of Canada. It is a government of the Reform Party."

When it comes to dealing with young offenders, Quebec does not do things the same way the rest of the country does. It is proud of the results achieved by its distinct approach to errant youngsters. In 2010, Quebec scored lowest in the country on what Statistics Canada calls the "youth crime severity index." This index measures both the volume and severity of crime.

Since as far back as the 1970s, Quebec's main goals for young people in trouble with the law have been their rehabilitation and reintegration into the community. Successive Quebec governments have taken the position that public safety cannot

be achieved by locking youngsters up in prison, especially adult prison. They believed that if the underlying causes of delinquency are not addressed, the delinquent behaviour won't stop and the public will not be protected.

"To be effective, a sentence should address family problems and risk factors," said Hamel. The theory behind the new Conservative crime law runs directly counter to that, he said: It holds that a harsh sentence will dissuade the majority of people from crime. "But it has been proved over and over that harsh sentences have little or no impact on the crime rate. In the United States where there is capital punishment, there are no fewer crimes."

And most adolescents, Hamel said, are not open to dissuasion. They don't think before they act. They commit a crime on impulse, under peer pressure or because they're drunk or high on drugs. If they do think about it, they don't believe they'll ever get caught.

Peter, who is now 18 and studying business administration at a Montreal CEGEP, was arrested more than a year ago at his high school by undercover police. He had 50 ecstasy tablets on him. (Peter is not his real name, but one he chose for this interview. Under Quebec's youth-protection law, he cannot be named because he was under the age of 18 at the time of his arrest.)

He was addicted to drugs. He was selling them. He was already known to youth protection and young offenders officials because of turbulence in his family, some "domestic violence." Neither he nor his mother, who was also at the interview, would say what happened.

When he was arrested at his high school, Peter said, he felt "sad and angry. I was regretful - not at doing it, but getting caught. I didn't really think it would happen."

He was first sent to a closed facility for adolescents, Cité des Prairies, a unit of the Centre jeunesse de Montréal, where he stayed a week. It was not a good place to be.

"One guy blew up a house," said Peter. "He spent the whole time sitting alone in his cell. Another guy killed someone who hit his girlfriend. No one wanted to get better there. Everyone's just very angry."

After a week, he was transferred to Le Portage, one of three drug rehabilitation centres in Quebec. The therapy was torture at the beginning. "Talking about your feelings, that's not me," said Peter. "When I started, I didn't take anything seriously. All you're doing is talking about yourself. I found it harder than jail."

After eight months of intensive group and individual therapy, Peter went home. "It was hard getting used to going to school again. I had stopped for two years. At first, I got 90s and 80s, then my marks started to slide because I wasn't used to the pace. Now, I'm doing better."

Peter said his therapy helped him with his anger. "I'm not angry all the time now. I appreciate the little things. I have tools to help me understand the anger, what triggers it, how to control it. When I feel angry, I breathe and I think about what I'm doing. I'm not really an angry person."

Peter's mother is anxious for him. She wants him to study hard, pick up his clothes, help out more at home and not ever get in trouble again. Her unwavering, relentless support of her son might drive him a little crazy, but it helped when it was time for youth justice officials to decide what to do with him.

"We look for protective factors," explained Cathy di Stefano, assistant provincial director with Batshaw Youth and Family Centre, young offender division. Batshaw is

one of 16 youth centres across the province, a network of agencies tasked with providing services to children in need of protection as well as to young offenders. "We're looking to see how involved the parents are, whether the youngster is capable of benefiting from our services, does he understand that what he did was really serious, is it a situational case or a career path?"

As unlikely as it might seem from a non-professional's perspective, Peter, who was both addicted to drugs and selling them, was a "situational" case.

A bright, athletic boy, he felt lost coming into a school of more than 1,300 students. "You're doing drugs because of something. I was confused," he said. "I didn't relate to some of the kids. They would gossip all the time. They were drama queens." Drugs blunted the edge.

Drugs are no longer part of his life. When he sees the kids he used to do drugs with, he says "hi" and moves on. He is on probation. He has to attend anger-management classes. He has rehab therapy once a week. "It's a little overwhelming when you get out," he said, "but I'm calmer now. I'm not really having difficulties now, not anymore."

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Peter, 18, says he is grateful for his second chance

Peter is grateful for his second chance. He knows that as someone arrested for drug trafficking he might have faced jail time under the new Conservative legislation. "The new law will ruin everything," he said. "When people get out, they'll all be really angry."

In the 1990s, Ontario under the Conservative government of Mike Harris tried a similarly punitive approach to the one the federal Conservatives are introducing

with Bill C-10. Harris's minister of correctional services hailed the province's pilot "boot camp" for young offenders as a signal success.

Later however, researchers found that according to the ministry's own documents there was no evidence that the boot camp experience had any impact on recidivism rates. "There was also no evidence of any overall beneficial psychological or academic impact of the boot camp experience over a standard correctional institution," the researchers stated.

At the time of the Harris government experiment, youth crime rates were already falling. Statistics Canada showed that across the country between 1998 and 2008, the rate of criminal charges per 100,000 youngsters age 12 to 17 fell from 4,364.95 to 2,764.16.

In 2003, Canada's Liberal government passed legislation promoting the use of alternative measures, which include performing community service, following a treatment course, taking training, apologizing to the victim or making restitution where possible. This new approach reduced the number of sentences requiring custody by more than half between 2003 and 2007. There was no upswing in youth crime rates for those years.

The use of alternative measures has gained in popularity in jurisdictions around the world as its results become better known. "We have people coming from Europe and South America to see what we do," said Judith Laurier of the Quebec Youth Centre Association. The research shows that Quebec is getting good results from its alternative measures approach, known by its practitioners as the "right measure at the right moment."

Université de Montréal criminologist Louis-Georges Cournoyer is author of a chapter in

Youth at Risk and Youth Justice: A Canadian Overview, edited by John A. Winterdyk and Russell Smandych, to be published by Oxford University Press in March. Since 2000, Cournoyer reports, about 8,000 young offenders a year have been supervised by the province's 37 alternative justice agencies in various alternative programs. The completion rate, considered a sign of successful treatment, is very high: 98 per cent. In 2009, 5,604 teenage offenders were dealt with using alternative measures, compared with 3,723 youngsters who received more conventional sentences. In Quebec, it is the individual youngster and his particular circumstances that determine which option is used.

According to Cournoyer, research shows there are two types of delinquency: "common" and "distinctive." The first type, he says, is committed by a large number of teenagers and is almost part of a developmental process. This kind of delinquency usually disappears on its own, although sometimes for that to happen a youngster has to be helped to become more aware of the consequences of his actions to his victim, his family and himself and in some cases to repair damages. About five per cent of youngsters fit the second category. Their crimes have started to harden into a lifestyle. Extracting them from that lifestyle is hard and sometimes not possible. (In Quebec, like elsewhere across the country, boys commit the majority of juvenile crime by a ratio of four boys to one girl.)

In Quebec, one of the most important decisions taken is which of the two categories a youngster fits. Under the new law, Bill C-10, a lot of that flexibility is removed: There will be minimum sentences and a set of charges that require youth courts to consider sending a youngster to adult court. These charges are first-degree murder, second degree murder, attempted murder and aggravated sexual assault. As serious as these charges are, the perpetrators are not always hardened

criminals, but under the new legislation, judges will be under pressure to make assumptions about the perpetrator based on the crime.

Specifically, judges will be under pressure to explain why adult court should not be an automatic option in the case of murder or aggravated sexual assault. Pierre Hamel believes there will be a tendency for judges to give in and send the youngster out of the juvenile justice system. This change is not necessary, he said. "The court already has the power to send a young offender to adult court if it determines that it can do nothing for him at the juvenile level." An average four to five cases are bound over to adult court in Quebec every year.

There is also the issue of a 2008 Supreme Court ruling, which held that "young people are entitled to a presumption of diminished moral blameworthiness or culpability flowing from the fact that, 'because of their age, they have heightened vulnerability, less maturity and a reduced capacity for moral judgment.' "

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Pierre Hamel, Quebec Association of Youth Centres**

To use the crime itself as an infallible indicator that a young person is beyond rehabilitation flies in the face of experience and research, said Hamel. He cited as an example the case of a youngster from Africa, living in Quebec. The boy's parents were academics, teaching at a Quebec university. The boy was one of only two visible minority students in his high-school. He was bullied constantly.

Rather than complain to his parents or the school, the youngster decided to take a kitchen knife with him for protection. The next time he was jumped by the bullies he pulled out the knife. In the scuffle, another

boy was stabbed and died. The African boy was charged with second-degree murder.

"He didn't intend to hurt anyone," said Hamel. "There was nothing in his background that suggested he was at risk of recidivism. His parents were very supportive. He was doing well in school. It was a very serious act, but we have to look at the circumstances, at what was behind it. For a sentence to be effective, it should address the underlying problems and the risk factors. Nothing would have been gained by sending him to adult court and treating him as a hardened criminal."

Jason, 17, is on probation for drug dealing at his high school - and for later breaking the terms of his probation order. Jason, a name he chose for the interview, said he switched schools in Grade 9. At his new school, with more than 1,000 students, he fell in the wrong crowd, he said. "I ended up being best friends with the biggest drug dealer in the school. We were selling drugs in and out of the school. It was fun having extra money. It was fun having all the girls like you because you had money."

Undercover police arrested Jason and his new best friend. Jason, who had never been in trouble before, was put under house arrest. The conditions of the arrest ran to four pages. One night, six months into his house arrest, when his parents were asleep he phoned another friend to come over. It was past his curfew. "We called a guy we knew. We went out and met him. I had \$20 for some marijuana. The guy only had cocaine. He said, 'Don't make me come all this way for nothing.' "

Armed now with cocaine, a knife, a pal and desire to do "something," Jason used his knife to try to break into a car. Three attempted break-ins later, he and his friend were surrounded by police cars.

This time, he was put in juvenile jail for two months. "I guess it was my fault," he said. "I

was there with people on gun charges, guys who were there for years."

Jason is back home, under strict supervision. A probation officer comes to his house every night at 10 p.m. to make sure he is there. He sees a probation officer once a week. He had 80 hours of community service to perform from 7:00 am to 3:00 pm.

"I was a janitor in a high school," he said. "I didn't know high-school kids could be so dirty."

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From research co-authored by Louis-Georges Cournoyer

Today, he is attending an alternative school. "It's good," he said. Asked a second time why he had switched schools, Jason, who is slender, said he wanted to leave behind who he had been, an overweight boy with no friends.

"I was putting on a show for myself," said Jason. "At some point you have to grow up. Thank God, I got a second chance."

Quebec has experimented with the kind of intensive probation Jason is under, with good results. According to research on youngsters at high risk of reoffending, coauthored by Louis-Georges Cournoyer and Jacques Dionne, 76 per cent of youngsters treated under intensive probation do not go on to commit another crime, compared with 48 per cent of youngsters who are kept in open custody. These findings are among the most successful in the world, said Cournoyer. They prove it is not necessary to jail youngsters.

"We have to tell the public that what we are doing works, that the new federal law is not a good idea, that with it we are in the realm

of pure ideology," said Hamel. He believes that elsewhere in the country a more punitive approach is favoured because other jurisdictions lack the professional resources Quebec has built up over time. In the 1970s, the province set up a network able to deal with youngsters in need of protection as well as young offenders. Both types of youngsters often needed similar kinds of therapeutic intervention.

"We know that the new law will cause lasting damage," Hamel said. "It will have the opposite effect of what it is billed as, but no government will have the courage to climb back down and throw out minimum sentences.

"It will take 20 years and then it will be a question of money, like it is today in Texas where they've had to choose between paying for their health or their prisons."