

Canada's new youth crime law

Liberals embrace the right's social agenda

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The Youth Criminal Justice Bill introduced in Parliament by Justice Minister Anne McLellan March 11 represents a further lurch to the right in Canada's social policy.

The bill, which is intended to replace the more than 20-year-old Youth Offenders' Act, is largely stolen from the programs of the right-wing Reform Party and Ontario's Tory government. It was more than a year in the drafting because many of its principal innovations were opposed by defence lawyers, social workers, youth and prisoner advocacy groups, and Quebec's Justice Ministry.

McLellan ultimately resolved the dispute with Quebec by giving provinces wide discretion in the application of the new law. (Under Canada's constitution, the provinces are responsible for administering the criminal justice system.)

The Reform Party, the Official Opposition in Canada's Parliament, has denounced the proposed legislation because it does not stipulate that 10 and 11 year olds implicated in crimes involving violence be placed under the jurisdiction of the criminal justice system, and because it maintains a separate "young offender" category to deal with most crimes committed by youths between the ages of 14 and 17. Reform wants 16 and 17 year olds to be tried in adult court, even for minor offences.

The cynical political calculations behind the bill are epitomised by a statement one of McLellan's aides made to the *Globe and Mail*: "We want to move right just enough to leave them [the Reformers] with the 10 year-olds."

Opponents of the existing Youth Offenders' Law have painted a picture of a liberal justice system fostering a veritable rampage of criminality among Canada's youth. This is a gross distortion. First, the overall youth

crime rate has fallen steadily during 1990s. Even the number of violent crimes committed by youths, which did rise in the first half of this decade, fell by more than 2 percent between 1995 and 1997, the last year for which such statistics are available.

Second, far from treating young offenders leniently, Canada incarcerates minors at twice the rate of most US states and 10 times more often than European countries. In 1997, only one quarter of young offenders in Canada were dealt with through community-based rehabilitation programs rather than the courts, as opposed to slightly more than half in Britain and the US. A Canadian young offender is four times more likely than his adult counterpart to be subject to some form of detention, although 82 percent of the charges against youth in 1997 were for non-violent crimes such as drug possession and shoplifting.

To mollify opposition to the legislation from the left, McLellan has given police and prosecutors greater leeway in employing alternatives to the criminal justice system for non-violent offences. Supporters of such alternatives are, nevertheless, highly critical of the Liberal government because of its unwillingness to adequately fund such alternatives.

The central thrust of the new law is both repressive and reactionary, privileging retribution over rehabilitation and seeking to shift all responsibility for the social pathology of crime onto individual young offenders, their parents and families.

The proposed bill would:

- * Lower the age, from 16 to 14, at which young offenders alleged to have committed violent crimes—including murder, manslaughter, sexual assault and aggravated assault—can be tried in adult court and subject to adult sentences;

- * Abolish the publication ban on the names of young

offenders who receive adult sentences;

- * Impose mandatory probation on all youths sentenced to jail;

- * Give the courts the discretion to accept statements given by young offenders to police, even when the police fail to ensure the suspects understand that their statements can be used against them;

- * Increase the jail penalty from six months to two years for parents who "wilfully" fail to ensure that their children adhere to court-imposed conditions for their release from police custody;

- * Make parents deemed not to be in financial need pay their children's legal costs.

The lowering of the age at which youth can be tried in adult court means that youth as young as 14 could receive life prison sentences. Under the existing Youth Offenders' Law, the maximum sentence is 10 years.

"The Liberals," one journalist has observed, "are making the same trek on justice that they did on the deficit--toward the right." They are not alone in embracing the right's law and order campaign. Despite criticism from the British Columbia Court of Appeal, BC's New Democratic Party government is defending a 1992 law that holds parents financially responsible for any wilful damage to school property committed by their children.

Late last year, Canada's Supreme Court gave what are in effect police powers to school administrators and teachers, when it ruled that they have the right to search students and their lockers and that the results of such searches can be used by police in the filing of criminal charges. The Court claimed school personnel need such powers because of growing violence in the schools, although the claims of school violence are not supported by the statistics on youth crime. Even if one grants that Canada's top judges were woefully misinformed about the level of school violence, it is significant that in their ruling they never raised the question, let alone tried to answer, why such violence is increasing.

The Reformers' and Ontario Tory government's hue and cry about crime, especially youth crime, is directed at channelling the mounting social anxiety and sense of helplessness created by increasing poverty and economic insecurity in a reactionary direction. But it is also part of a broader social agenda aimed at justifying greater state regimentation on the one hand and the

abandonment of any responsibility on the part of the state and society for rectifying social ills on the other.

Connecting the purported rise in youth crime to a more general attitude of disrespect for authority among young people, the Ontario Tory government is currently campaigning for the introduction of mandatory school uniforms in the province's public schools. The shifting of increasing legal and financial responsibility onto parents for the criminal actions of their children, meanwhile, must be seen within the context of the right's drive to transfer the burden for caring for the sick, the aged and the poor from the state onto individual families.



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