

The role of the community in implementing children's rights.

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*Katherine Covell, PhD & R. Brian Howe, PhD.
Children's Rights Centre
Cape Breton University, Nova Scotia, Canada*

Although the UN Convention on the Rights of the Child is touted as the most quickly and ratified Convention in world history, it is also the case that few countries have taken its implementation seriously enough to incorporate the Convention fully into domestic law. In Canada, the implementation of the Convention is undermined not only by its exclusion from domestic law and a complicated system of federalism and shared responsibilities, but also by a growing trend to making local communities responsible for the design and delivery of youth programming. The core requirements of the community's capacity to mobilize to appropriate action have not been questioned. Instead, it is assumed that the community has the requisite knowledge, skills, human and financial resources.

Canada's new *Youth Criminal Justice Act* is an example of the state's apparent assumption that the community is able to address such complex social issues as youth crime. We believe this assumption to be faulty and to impose a major impediment to the realization of children's rights. Our essential argument is that it is those communities in which children's rights are less well respected that are both the least able to provide and the most in need of rights-consistent preventive and intervention programming.

Youth Criminal Justice Act (YCJA)

Canada has a distinct system of youth justice. The federal government has responsibility for the making of law dealing with young offenders. The provinces and territories have responsibility for administration of the law including the provision of youth courts and programs of crime prevention and diversion. In practice, it is the local community that has responsibility for the design and delivery of diversion programming.

The *Youth Criminal Justice Act* (YCJA) took effect April 01, 2003. Explicitly guided by the UN Convention on the Rights of the Child, the *YCJA* is designed to focus more on rehabilitation and reintegration than the *Young Offenders Act* (YOA) which it replaced. Consistent with Convention obligations under article 40, and in contrast to the *YOA*, the *YCJA* is designed to make extensive use of community-based programs in place of custody where possible. Less serious offenders (most youth in conflict with the law) are to be dealt with through community and restorative justice programs, such as victim-offender mediation, family group conferences, and circle sentencing. Custodial dispositions are to be used only for the more serious offenders, and it is stipulated that the last portion of a custodial sentence is to be served in the community for purposes of reintegration. With this *Act*, significant responsibility for youth justice has devolved to the community, to community organizations, and to volunteers. The extent to which communities have the capacity to provide these programs has not been addressed.

There are many potential challenges for communities in implementing the *YCJA*, consistent with the rights of the child (Covell & Howe, 2001; Howe & Covell, 2001; Smandych & McGillivray, 2000; Canadian Foundation for Children, Youth and the Law, 2001). The basis of the difficulties in ensuring rights-consistent implementation is that

the new *Act* contains no provisions to ensure consistency across jurisdictions. Rather it allows wide latitude in diversion conditions and programming. The extent of social and economic diversity in Canadian communities must be expected to effect local capacity and willingness to provide for the rights of youth in conflict with the law, and result in wide variation in the implementation of the *Act*. The major areas of concern are summarized here.

First, as noted above, the *YCJA* allows for significant variation in its application. In fact, the *Act* allows for the provinces to determine the age at which a youth can be sentenced as an adult (between 14 and 16 years), and it allows widespread variations in the type of reintegration or rehabilitation programming (Denov, 2004). Jurisdictions can limit the availability of diversion programs for reasons such as limited financial resources (Howe & Covell, 2001). And under section 39 of the *Act*, the use of custody can be justified on the basis of a lack of availability of extrajudicial alternatives. This is particularly problematic given Canada's reservation to article 37c that requires youth to be detained separate from adults. Separate custodial facilities for youth are rare. It seems likely then that the extent to which youth in conflict with the law are provided appropriate community programming may well vary with the resources of their community. For the same offence, youth in one community may receive restorative justice whereas those in another may be given a custodial disposition, perhaps as an adult. Disadvantaged or rural communities are unlikely to be able to provide the same quality or variety of programs as more advantaged or urban communities. Although the federal government did promise to provide funding supports to enable the availability of community based dispositions (Bala, 2003), there remains to date a gap between promise

and reality, and wide variations persist. Such variations in response to youth in conflict with the law are inconsistent with the Convention's principle of non-discrimination (article 2).

Second, communities vary in their social capital and human resources. Variation among communities in their responses to youth in conflict with the law is not simply a matter of limited financial capacity. There may be a problem with the amount of cooperation needed among agencies and justice officials (Griffiths & Corrado, 1999). Inter-agency cooperation is difficult in disadvantaged communities where typically there is competition for resources and agency staff are worked to capacity. In smaller communities, there also may be limited knowledge about or trained personnel able to develop programs and make decisions that are in the child's best interests. Described in article 3, the best interests principle requires that the best interests of the child be a primary consideration in all actions concerning children. The principle of best interests requires that communities and community organizations have the capacities – resources, knowledge and trained personnel – to develop programs and make decisions in the child's best interests. In this context, the principle also requires motivated, meaningful and dependable citizen involvement in monitoring and supporting diversions and reintegration programs.

Third, meaningful participation of youth may vary by community. The principle of participation (article 12) requires provision for age-appropriate input by young persons into decision-making affecting them, including informal as well as formal proceedings. One problem that has been identified here is that of perceived power imbalances (Bazemore, 1997). In small or rural communities, where frequent interactions among

youth and those in power are more likely, the problem of power imbalances or real or perceived coercion that undercuts genuine participation is more likely.

Finally, inconsistent with the privacy rights described in article 16 of the Convention, the *YCJA* allows disclosure of a youth's identity under a range of conditions. The *Act* permits the public identification of names of youth who receive an adult sentence, and of those who receive a youth sentence for murder, attempted murder, manslaughter, aggravated sexual assault or repeat violent offences. In addition, the privacy rights of youth in conflict with the law may be compromised in family group conferences by allowing victims, community participants, police officers, and school authorities wide access to youth records. There is no requirement that the court consider the youth's best interests when allowing the disclosure of personal information (Denov, 2004). Such access to information may not only compromise privacy but also be detrimental to successful community reintegration. The impact of identity disclosure would be greatest in communities that are rural or small where typically residents are exposed to the same media information and follow the lives of their community members closely. An increase in negative stereotypes about youth is a common outcome of disclosure.

In sum, the implementation of the *YCJA* will vary with community resources, knowledge, trained personnel, commitment to its youth, community volunteers, coordination and partnering among the different sectors, and interagency cooperation. Together they need to be able to provide for restorative justice, for rehabilitation and reintegration, to protect and to promote the rights of youth in conflict with the law. The importance of appropriate community responding is underscored by the variations

allowed in the implementation of the *Act*. Effective community partnerships, motivated and able to respond to youth in conflict with the law, are needed to recognize and respect the rights of the child. Those who have studied community partnerships identify four major characteristics that are predictive of success.

Effective Community Partnerships

First is meaningful youth participation. Young persons must be routinely involved from the start as equal partners with supports and training provided as needed. Measures should be taken to ensure the participation of youth is not restricted to those who are the most articulate or most experienced with community involvement (Matthews, 2003). In addition, adult members of the partnership should be educated about the Convention, the importance of respecting the principle of participation, and how to avoid obstacles to youth participation (e.g., meeting times, locations etc.).

Second are shared partnership outcome goals that are based on common perspectives and knowledge (Bringle & Hatcher, 2002; Stead Lloyd & Kendrick, 2004). Effective community responses for youth in conflict with the law require that partnerships comprise those who appreciate the need for rehabilitative rights-consistent approaches, and understand the links between rights violations and criminal involvement.

Third is effective communication based on trust, mutual respect, and leadership (Boydell & Volpe, 2004; Swick, 2003). Community agency partners should not feel that the mandate, resources or action priorities of their individual agencies are threatened by the demands of the partnership. Academic partners should not feel their expertise is disregarded by community beliefs in pluralistic knowledge (Bringle & Hatcher, 2002).

Youth partners should not feel that their presence is tokenistic, or that their views are not being taken into account.

Fourth are the practical concerns – partnerships require time, commitment, stable funding often involving shared budgets, and the resources necessary to undertake programming. How likely are partnerships in socially or economically disadvantaged communities to have these four characteristics?

Disadvantaged Communities

When states devolve responsibility to communities, they do not take into account the underlying social and structural conditions that may be responsible for creating and maintaining the problems that need to be addressed. Rather, it is supposed that the local citizenry is best equipped to identify its needs, and that there will be both the motivation and resources in the community to effectively respond to those needs. But demoralized and poorly resourced communities are unlikely to be able to effect the type of community partnerships needed to respond appropriately to youth in conflict with the law.

The community disorder that is pervasive in disadvantaged communities generally reduces the capacity of the community to respond effectively to the needs of its youth. As has been explained (Donnelly & Majka 1998; Skogan, 1990), community disorder (1) undermines the potential of the community to exert control by encouraging citizen withdrawal rather than involvement, (2) undermines citizen morale, and thereby motivation to act, by creating concerns about personal safety, and (3) undermines the stability of the neighborhood by increasing stigma, thereby encouraging moving away. The collective and cooperative mobilization of a community requires an antithetical set of circumstances. Not only will poor morale, fear and citizen withdrawal make difficult

effective community partnerships, social agencies in disadvantaged communities typically lack resources and struggle to maintain basic functioning. Caseloads for social workers for example are as high as 200 families.

Disadvantaged communities also tend to be those in which children's rights are least respected. Children growing in neighborhoods characterized by social and economic disadvantage are more likely than their advantaged peers to experience poor socialization and violence in their family, school, and community. In the family they may experience harsh punishment and authoritarian styles of parenting, and be exposed to spousal violence, parental substance abuse, poor mental health, and criminality (Gagne & Bouchard, 2004; Hicks-Coolick, 2003; Kearney, 2003; Kidd, 2003; Trocme et al, 2001). In schools, they may be bullies or the victims of bullies, and be responded to negatively by teachers (Covell & Howe, 2001; Jensen, 2005; Olweus, 1995; Thompson et al, 2002). In the community, they are at heightened risk of exposure to dangerous neighborhoods, and of witnessing or experiencing assaults and robberies (Henrich et al, 2004; Kroneman et al, 2004; Schwartz & Proctor, 2000). It is not only children's protection rights that are threatened by community disadvantage. The provision of education, adequate health care, recreational opportunities and so forth are also less likely, and participation rights tend to be severely limited by the authoritarian nature that characterizes disadvantaged homes schools and communities. In essence, the risk factors and rights violations children face in disadvantaged communities increase the likelihood that they will come into conflict with the law. Unfortunately the *YCJA* does not take into account the social disadvantage that underlies so many youth offending behaviors (Denov, 2004). And the disadvantaged

nature of their communities increases the likelihood that the community will be unable to respond effectively to these youth when they do come into conflict with the law.

An Illustration: The OxyContin Crisis

From the perspective of a participant observer, we summarize a case study of one particular community and its response to a drug crisis. The response highlights the challenges faced by disadvantaged communities, and their questionable capacity to cope effectively with their youth. The community in question is disadvantaged and in an obvious state of social disorder. It is semi-rural, has a high rate of unemployment, and a declining population. Much of its housing, schools and commercial establishments are in a state of disrepair. Many of its residents have low educational attainment; many are single parents. Amenities, recreational facilities and local labor opportunities for youth are few. The community has been highly negatively stereotyped in local and national media as a failing community rife with drug abuse and related crime.

During 2004, led by the chief of police, the media reported an OxyContin crisis in the community – the message was that the abuse of this prescription pain killer had reached epidemic proportions, the drug was widely available, and was causing criminal behaviors to obtain it as well as a number of deaths among youth. A community partnership was established to respond to the problem. The partnership involved administrators and faculty from a nearby university, law enforcement and medical personnel, community volunteers, educators, and social service agency representatives. The intent of the partnership was to reduce the misuse of prescription drugs and the

correlative criminal offending. The partnership faced many challenges that limited its effective and rights-consistent functioning.

There was no consideration given to youth involvement until a few months had passed when the importance of youth membership was raised at a meeting. At that time, members agreed to consider inviting youth into the partnership after they had determined processes and direction. Their expressed concern was that youth participation would interfere with the progress of the committee. Underlying this concern was negative stereotypes of youth fueled by media portrayals, and concerns about practical issues such as which youth could be invited and the transportation difficulties surrounding the participation of youth at meetings.

Outcome goals were shared – to lessen criminal offending and prescription drug misuse - but common knowledge and common perspectives were not in evidence. In fact there were significant disagreements about whether programming should initially be targeted toward adults or youth, and even greater disagreements about the nature of that programming. Community volunteers and agency members on the committee had very different perspectives from academics. As Bringle and Hatcher (2002) noted, whereas academics believe knowledge resides in experts, community volunteers and workers tend to hold a belief that knowledge is pluralistic and resides within the general community. In addition, the crisis nature of the situation and concerns that the reputation of schools and community agencies may be at stake, led to some members urging speedy adoption of programming. The gap that so often exists between researchers and policy makers (Arthur & Blitz, 2000; Petrosino et al, 2000) grew as some argued for evidenced-based programming and others focused on the adoption of readily available and easily obtained

programming. Sometimes programs are adopted because of media attention, or because they fit with the ideological climate, or because they promise a quick and simple solution and the political climate demands action (Petrosino et al, 2000). These criteria of adoption were taking precedence over evidenced-based.

The disagreements over direction and approach to the problem highlighted the lack of trust, mutual respect and leadership in the partnership. Members clearly were feeling threatened. Concerns about individual agencies arose, their public images and their role in the partnership. Cooperation among agencies and organizations was undermined by the blurred roles, the different perspectives, and the lack of trust. The overarching common goal of the partnership was being replaced by mandate, agenda and image concerns of its constituents. Some left the partnership.

Commitment to the partnership was further eroded by lack of resources, time and pre-existing agency or organization obligations. Common resources were scarce and competition among partners to obtain them was strong. Time for most partners was even more scarce, and as tensions grew within the partnership, the time demands of involvement became less tolerable. It became increasingly difficult for partners to justify attention, time and effort being diverted away from their pre-existing obligations to the partnership.

It is, of course, possible that partnerships in larger more urban communities would flounder for the same sorts of reasons. But it seems less likely. Larger communities have a wider array of expertise, experience, and resources that would facilitate cooperation and commitment to partnerships. Image and reputational concerns may be less in larger centers where anonymity is more readily maintained. Citizens in more advantaged areas

would be expected to have higher morale and motivation for involvement. And importantly, larger centers are more likely to have existing structures and organizations that preclude the type of crisis responding of the OxyContin partnership.

At this time, one year later, there has been little outcome from this partnership other than a recommendation of a methadone clinic and significant turnover of its members. The most significant change since the inception of the partnership is that the drug of choice among some young people has changed to crystal- methamphetamine. Problems continue. OxyContin misuse continues and youth crime continues to have a high profile in the community. In consequence there has been a groundswell of demands for a more punitive approach to dealing with all youth in conflict with the law. In fact, local politicians have asked to federal government to replace the new *Act*, suggesting that a return to greater incarceration is necessary. The hope for effective community cooperation in the delivery of restorative justice, rehabilitative and reintegration programming for its youth is less than ever.

The case study emphasizes the need for governments to take more seriously the social and economic conditions of a community and their potential impact on both the likelihood of youth offending, and on the community's capacity for appropriate responding. If governments are going to continue their current trend to deemphasize their role in youth justice through the transfer of responsibility to the community, then it is incumbent upon governments to take action to build the capacity of the community to respond appropriately. A rights-based approach is necessary.

First, to be consistent with the anti-discrimination principle of the Convention, under article 2, and to be consistent with the best interests principle of the Convention,

under article 3, governments should set minimum national standards of justice programming for youth. These standards should be based on best practices as indicated in the social science literature, and would include provisions for youth participation. Second, there needs to be supports provided communities such that variation in programming is not an outcome of lack of expertise, time, commitment, motivation or resources. This may require the federal government accepting a leadership role for the creation and funding of community partnerships including the articulation of membership, roles, and dispute resolution mechanisms. Third, to promote appropriate and less stereotyped responding to youth, governments should fulfill their obligations under article 42 of the Convention and ensure that citizens are aware of children's rights. Also important here is accompanying education on the importance of respecting children's rights for the healthy development of the child and of the community, and of the link between children's rights violations and involvement in criminal offending. With these conditions in place trust, cooperation, shared agendas and pooled resources are more likely; a shared vision and a collaborative culture are more likely to be maintained.

It may be a nice ideal for central governments to promote community involvement, and in ideal circumstances local knowledge may be useful in identifying needs and targeting resources. But there appears to be a large gap between the ideal and reality. Communities may know what they want, but not have the capacity to achieve their desired outcomes. Disadvantaged communities, in particular, simply may not have the capacity to execute the responsibilities given them under the *YCJA*. Their response to problems— in this case to call for harsher penalties for youth in conflict with the law — further violates the rights of already disadvantaged children.

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