



## ***Ontario Bar Association***

### ***Roots of Youth Violence: Working Group Submission***

Established in 1907, the Ontario Bar Association (OBA) is a branch of the Canadian Bar Association. It is the largest voluntary legal association in Ontario and represents more than 17,000 lawyers, justices, law professors and law students.

The OBA is a member-driven association. As ‘the voice of the legal profession’, the OBA represents lawyers through its 35 practice and substantive law Sections. Our Sections provide opportunities for excellence in legal and practice education, advocacy and the professional needs of lawyers.

The OBA is independently governed by an elected Council and Executive. Both OBA Council and OBA Executive represent lawyers from across the province and from all practice areas. The Council meets quarterly and the Executive meets monthly to discuss issues that affect Ontario lawyers and the justice system.

The OBA partners with other legal associations, justice stakeholder and legal advocacy groups to effect positive change in the law and legal services.

In this discussion, the OBA Working Group focuses on the roots of youth violence, in society, in the community, in school, between friends and peers, among other youths and in the family. The discussion reviews factors that are likely root-causes of youth violence; the action or lack thereof in neighbourhoods or communities that help to address youth violence. At the end of that discussion, there are recommendations. Given the legal definition of “youth” in the criminal justice systems, and the social definition of youth, the discussion deals with that category of “youth” separately. In addition, the Working Group is mindful that the numerical cut-off for youth is under 18 years of age, practically; the psychologically period of youth cannot be so defined. In identifying that fact, there is a discussion about youths 18 years and older.

In this Part, the focus is on our views on the roots of youth violence in society, in the community, in the school and with family or in the home.

### **Defining Violence & Youth**

"Violence" might be defined as "the unauthorized use of physical force, coercion or threats to well-being (as in bullying), which may cause physical or psychological injury to a person, the person's loved ones, or property". In more basic terms, simply "acts causing harm or injury to others".

In Ontario, however, the definition of "Youth" is not uniform. There are two thresholds for consent – one at 14 and the other at 16. To this we can add that a young person can be held

criminally responsible at age 12 under the YCJA and it seems that one can consent to sexual conduct at 14, but not to medical treatment until 16. One can enter the military service at 16, not legally die within it until 18, not vote for the government that may send you to war when under 18, but, not drink to your country, legally, until 19. Wages can be paid to a person under 18, but, absent a parent, guardian, or trustee, no other benefit can, including "student "welfare" to homeless youth. Most remarkably, Children's Aid Societies cannot provide assistance to youth over 16, and yet, no youth can legally contract, for shelter or otherwise, until they are 18.

At the same time it seems well accepted that males 15-25 years are the perpetrators of most crimes against property and "minor" violence, as well as being the victims of the greatest number of "penetrating" wounds treated in emergency wards.

### ***Youth 18+***

For most legal purposes young people are treated as adults at 18.<sup>1</sup> Criminological data collected by StatsCan notes that while most people "age out" of violent behaviour, there is not a sharp decline at age 18 and, in fact the decline is noted when people reach their mid-twenties and the decline continues until the mid-thirties. Thus it is worth noting that in addressing the root causes of youth violence, the social and program supports that are effective in rehabilitating people under the age of 18, should be available for youthful offenders 18 or older. An example would be the termination of wardships of children who have been Crown or society wards when the young people turn 18, although they may not have completed secondary school or have the skills to successfully live independently. Young people who are sentenced as youth should not be transferred to adult custodial facilities at 18 if there is a reasonable prospect that the young person will be returned to the community fairly soon. The youth system can and often does provide better supports in the community that reduce the risk of re-offending. Experience in the adult system is less rehabilitative for young people.

### ***In society***

Our observations are generic in scope and are limited to the geographical boundary of Greater Toronto Area ("GTA") and specific to our working group's expertise as lawyers. Violence among youth is present in all classes, creeds, cultures and races. From studies, and literature, it is likely that youth violence is more prevalent among underserved and marginalised youth. By and large, underserved and marginalised youth are youths-of-colour, Aboriginal youths, and youths from low-income communities who have either rejected normal societal systems or are about to do so. Their status as underserved and marginalised youths indicates that the conventional or traditional strategies that we have adopted to deal with them are inadequate. These youths are not intractable to change. In the main, violent acts are perpetrated in the neighbourhoods where underserved and marginalised youths live, go to school or "hang out" for entertainment and recreation. Seldom, they are able to find meaningful employment in those neighbourhoods; often the jobs are dead-end jobs offering minimum wage rate.

The negative factors or influences that may be the root-causes or major contributors to youth violence are legion. Below are several common factors:

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<sup>1</sup> Tobacco and alcohol "adult "rights are conferred at age 19.

The absence or the breakdown of a family or extended family structure and the social and psychological support that such family structures used to provide or members used to enjoy. This is more poignant for those who had enjoyed such support in their country of origin. This is particularly relevant to new Canadians and refugees, where language and culture likely create challenges or tension between the youths and parents, youth and teachers, youth and peers and even among siblings. For the youth, juggling cultures, may lead to such dire tension or external and internal pressures, that lead to estrangement between family members and may culminate into family violence. By extension, that tension may cause youth to look for external support. Often this support comes from youths with similar challenges or youths who are seeking negative attention. Groups may evolve into posses and ultimately “gangs”. The lack of a familial support structure and the attendant problems are not restricted to new Canadians. For example, in second-generation families, violent outcomes are created because of the absence of such resources coupled with isolation. Often in this group, financial challenges or constraints and isolation may lead to youth violence.

The lack of accessible and meaningful systemic after-school programmes that will hook youths and engage their interests, keep them active and curious—programmes that will engage their heroic imagination and make them everyday heroes.

Even more critical, is the lack of coordinated and permanent infrastructures and strategies to deal with youths who need a range of **mental health care**. Of particular concern is the impact of stresses on youths as a result of negative experiences from the home and school communities. These stresses may be caused by abuse in the home or the absence of a nurturing environment in the home and school, bullying at school, systemic societal bullying at school.

- The lack of a coordinated structure and strategy to follow up on the health, including mental health, and physical well being of children. Ontario’s mental health care system for children and youth needs a lot more resources to meet current demand.
- The lack of practical parental philosophy or skills and an ethos of commitment to the welfare of children and youths. While the impact of the absence of this likely begins at birth, the impact of the absence of this critical resource is usually manifested during adolescence. These nurturing tools are essential in the development of children and critical to the foundation of the character of youths. The absence of one or more of these tools in infancy or childhood might lead to, contribute to or sustain alienation, estrangement or tension between the child and parent, ultimately resulting in the child’s involvement with the Children Aid Society; truancy; bullying (either a perpetrator or a victim by seeking negative attention); higher drop out of school, especially among underserved and marginalised youths; negative peer group associations and behaviour; vagrancy; and ultimately, problems with the Youth Criminal Justice System.
- The inadequacy or absence of coordinated systemic programmes. There might be numerous programmes in the communities for youths. These are managed by NGOs, service clubs and other community organisations. However, there is a sense of low-key delivery of those programmes or no central database where youth might gain access to these resources or to know of their existence. Where youths are aware of these programmes, there seem to be an absence of oversight, or consistency of audit of the efficacy and accessibility of these programmes.

### ***In the community***

The very forces that affect families ultimately affect the community, being composed of families. Thus, where family trauma leads to youth violence it is in the community that the larger effect will be felt. Paradoxically, the community has a great impact on the family. A supportive community can alleviate some of the stresses upon the family. One significant factor within family that ultimately affects community is the dislocation of new Canadians. This dislocation and its many attendant challenges, likely create real tension within the family. Thus, where community activities are widely available, youths have an opportunity to engage in pro-social or community-sanctioned activities as opposed to negative behaviour.

Identifying and responding to the roots of youth violence is a challenge shared by all levels of government. Strong, healthy communities are the foundation blocks to building strong cities. Under the *Planning Act* growth management strategies must be developed that have regard to the provincial policy statement and other matters of provincial interest. Provincial interests include interest in community safety, environmental protection, heritage protection, arts and culture, and a mix of housing availability among other things. One of the more significant initiatives is the Province's "Places to Grow" report outlining how development is to occur to promote urban intensification around pre-determined nodes and transit facilities. Proper attention must be given to identify the specific community character when planning public facilities, which can include anything from streetscape design to park design to community and recreational facilities. The needs of youth must be taken into account when deciding between building baseball diamonds or soccer fields versus basketball courts or skateboard parks. Mixed income housing, mixing commercial and residential areas, creating public spaces that are open and visible are effective elements of a Crime Prevention of Theory of Environmental Design ("CPTD") that must also be taken into account.

Programs that provide opportunities for home ownership provide stability and a buy-in to the local community are effective tools to provide stability for youth. Outside of the central urban core, youth often tend to congregate at shopping malls, community centres or in school yards, and often properties under private ownership such as shopping malls are not youth-friendly. Policies to promote stable communities are important and include the need for youth-friendly private and public spaces.

The current initiative by the City of Toronto and the Toronto Community Housing Corporation to revitalise Regent Park is worth close review. When Regent Park was first built, it was hailed as an outstanding planning achievement and it was only much later that we learned by creating high density, low income housing with lots of dark corners for privacy, we were in fact creating an environment that promoted violence and unrest. Over the course of its life time Regent Park went from award winning to Toronto's best-known trouble area and now it is back on track to reclaiming award winning status. By comprehensively redeveloping this site the City is creating a real opportunity to ensure the mix of non-profit, rent geared to income and market housing, along with commercial development and employment opportunities, to create a vibrant mixed community. Similar projects in urban areas across Ontario are also to be commended.

Community programming in communities must include the following to respond effectively to youth violence:

- addressing physical barriers and accessibility issues;

- respecting diversity;
- fostering personal empowerment and building skills;
- encouraging mentorship opportunities and providing peer education;
- addressing socio-economic barriers;
- providing community outreach and building partnerships;
- working with families;
- enforcing and building healthy public policy;
- youth violence prevention mentoring.

The City of Toronto's statistics shows there to be a high proportion of young children (under 14 years) in rent-g geared-to-income housing units. These are the kinds of facilities where attention is needed to ensure that recreational and educational programs are available for youth, affordable child care is available, employment programs for youth and young adults are provided, health services are accessible, facilities are needed to address the needs of new immigrants, and programming is available that is focused on youth violence prevention in addition to the usual mentoring services.

In addition to programming, space must also be provided for youth to simply escape the worst of the summer heat and winter chill. Heating and cooling centres need to be available in areas where youth frequent, including community centres and schools, so there is a place for young people to go to escape the extremes of our weather and feel welcome.

Some municipalities have imposed curfews on young people as a way to keep them off the street and out of trouble. There is a Charter of Rights and Freedoms concern with imposing curfews as they breach equality rights and they discriminate against youth based solely on age. Curfews unfairly penalize youth. Curfews will lead to more young people coming into conflict with the justice system as they get picked up for breach of probation or otherwise held for no reason other than being out in public after the prescribed hour. Some argue that curfews are merely a band-aid and do nothing to address the causes of youth violence. Teen involvement and programs provide a more realistic solution.

## **Disabilities**

Autism Spectrum Disorder (ASD), Asperger's Syndrome, ADHD, and NLD (Non-Verbal Learning Disability) are conditions that affect the social interaction and communication skills that we rely on to function everyday. These are hidden disabilities that often appear to the general population as anti-social behaviour. Genuine attempts to respond to a situation can be misinterpreted as being deliberately rude, anti-social or lacking in empathy. Some of the behaviours and characteristics that young people with these disabilities may exhibit include:

- difficulty maintaining eye contact;
- insistence on changing the subject of conversation to a topic of his/her choice;
- difficulty making sense of verbal and body language of others;
- inability to quickly process and respond to requests, commands and questions;
- be a poor listener, who may not seem to care what you have to say;
- be unable to understand what others are thinking and why they are thinking it;
- repeat words, statements, body language and mannerisms of an investigator or questioner;

- make statements that are tackless or ‘brutally honest’;
- have a naiveté about them that allows them to be overly influenced by a friendly investigator and say whatever his/her new friend wants to hear;
- may have a strong vocabulary and appear very articulate, even gifted;
- will talk at people rather than to people;
- difficulty understanding humour or sarcasm;
- concrete or literal interpretation of language often leads to misinterpretation.

The lack of social and communication skills often means that these young people are likely to be the victims of violence crime and often end up being labelled as social misfits by their peers. Young people with these disabilities can also get into trouble without realizing they have committed an offence. Their poor social awareness and, inability to understand non-verbal communications and to respond to “normal” social behaviour can lead them to make what are perceived as threatening statements; inappropriate sexual advances; act in a way that would be characterised as personal, telephone or internet stalking; be a willing accomplice to crime with false friends; or make physical outbursts at school or in other public environments. In essence, they have difficulty learning and adjusting to normal social situations.

There is also an information gap about young people with learning disabilities who come into contact with the criminal justice system. What little information there is available tends not to be Canadian, or tends to be part of broader statistics lumping these individuals within a broad category of the mentally disordered.

There is a skills gap in training for criminal justice professionals about how to deal with this rapidly increasing population of young people. Police, prosecutors, defence lawyers and judges have difficulty understanding how these youth are different without this training. As these disabilities are extremely diverse and there is no one set of characteristics that will apply across the board, identifying these disabilities is difficult at best. Access to a psychological assessment at the time a pre-sentence report is ordered is critical. Without this, these youth may end up being mistreated by our criminal justice system. Often, opportunities to conduct psychological testing occur within our school system. It is necessary to ensure that there is adequate funding of our schools to ensure the opportunity for psychological assessment of all students who appear to need this. These disabilities are being identified at an alarming rate and we currently have a two-tier system where those who can afford private testing and support services are accommodated while others must wait for years. The fundamental human rights of these young people are being violated without access to basic psychological testing and identification programs.

While the *Youth Criminal Justice Act* makes it clear that custody is not to be used “as a substitute for child protection, mental health or other social measures”,<sup>2</sup> it is the regrettable experience of many of the defence bar that too often, custody and detention are used because there are no mental health or addiction services available. This is particularly true in southern Ontario when residential services are needed. But it is broadly true if one considers long wait lists that make services effectively unavailable. While the *Youth Criminal Justice Act* recognizes that young people experience time differently than older people and mandates speedy

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<sup>2</sup> s. 39(5)

resolution to criminal matters, the health system (including addiction and mental health) in Ontario does not. Both addictions and mental illnesses are more easily treated with early intervention. The problems become more entrenched and more resistant to treatment the longer the young person must wait for help.

A significant proportion of young people involved in the criminal justice system have learning disabilities or intellectual disabilities. The most recent Canadian data is from British Columbia, but there is no reason to think that the Ontario experience is significantly different. McCreary Centre research quoted by the province's Child and Youth Officer as recently as 2005 suggests that 69% of aboriginal youth in custody have learning disabilities, mental illnesses or intellectual disabilities.<sup>3</sup> An older American meta-analysis revealed 36% of young people in custody had learning disabilities and an additional 12.6% had intellectual disabilities.<sup>4</sup> Since learning and intellectual disabilities are knowable before a child reaches the age of criminal responsibility, it is appropriate to provide remedial programming and coping supports before the child becomes violent. Even where a disability is suspected, there is still too long a waiting list for assessments provided by school boards. While some progress has been made to shorten wait times, for children, wait times should be negligible, in the interest both of the long-term protection of the public and of the maximizing of the productive potential of the child.

### ***In schools***

#### ***Crossover Kids***

Young people who have been or are in the care of the state (society wards or Crown wards) are disproportionately represented in custodial facilities. This phenomenon has been studied by Judy Finlay, formerly Ontario's Child Advocate, now on the faculty of Ryerson University. She indicates that the kind of child maltreatment and trauma (including neglect, witnessing domestic violence) and attachment disorders that occur prior to or as part of a child coming into care, are the antecedents to criminal behaviour. The impact of such negative childhood experiences can be significantly improved with mental health intervention. A failure of a parent to provide necessary treatment can lead to the apprehension of the child. When the state assumes legal custody and responsibility for the child, the legal responsibility to provide necessary treatment follows. Yet the state too often fails to meet this obligation creating, by omission, one of the causes of youth violence.

Young people placed in foster care are less likely than those placed in group homes to end up in the criminal justice system and in custody. Prof. Finlay also notes that some group homes are more likely than others to lay charges against young people whose behaviour is aggressive. Further, the older the child is at the time of the first placement in the child welfare system, the greater the likelihood the youth will end up in custody. Despite this fact, once a child reaches adolescence, the focus of care is on the young person's behaviour, rather than on the child's history or family environment that brought the child into care. While a legal "assault by one child on a sibling is unlikely to result in the calling of the police with charges being laid, children whose legal parents are the state are often criminalized in similar circumstances. Since the

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<sup>3</sup> A. Murphy, M.Chittenden and The McCreary Centre Society, *Time Out II: A Profile of B.C. Youth in Custody*, 2005

<sup>4</sup> Casey and Keilitz, *Estimating the Prevalence of Learning Disabled and Mentally Retarded Juvenile Offenders: A Meta-Analysis*, 1990; and see R.K. Otto et al., *Prevalence of Mental Disorders Among Youth in the Juvenile Justice System*, 1992.

research suggests that the more contact young people have with the police and the criminal justice system, the more likely they are to re-offend, rehabilitation and long-term protection of the public would be better served by the avoidance of the first charge, wherever possible and where treatment would be an appropriate alternative.

Prof Finlay cites numerous authorities for her conclusions and conducted expensive interviews with young people in custody. Her paper can be found in draft on the Provincial Advocate's website at <http://www.provincialadvocate.on.ca/documents/en/CrossoverKids2-draft.pdf>.

Ontario's laws about the rights and duties that attach to youth are, as noted, inconsistent. Young people who would benefit from the care system may not be apprehended or brought into after when they have reached their 16<sup>th</sup> birthdays. Young people whose lives at home are not healthy enough should be able to access the services and support of a children's aid society until they are adults, although, since they are legally permitted to leave home and live independently at 16, they cannot be subject to forced apprehension when they have reached that age. Parents are required to provide their legal children with support, and so, some suggest, children of the state should have the same entitlements.

In family law, parents can be required to continue to support their children until they have finished school or are able to live independently. The state, it is argued, should have the same obligation to its children. Rather, the Child and Family Services Act provides that wardship terminates when a child turns 18 and thereafter, services can be provided only as part of special needs agreements. Few parents believe their children can support themselves and live successfully and independently at 18. The state should, perhaps, treat the children for whom it has assumed legal responsibility the same way.

Treatment and financial support are two important supports that should be better provided by our child welfare system because poverty, addictions, mental health issues and other unmet treatment needs correlate to an increased risk of youth violence.

### **Legal Framework for School Boards, Schools and Staff**

School Boards, the schools that operate under specific school boards, and school board staff (in particular, Superintendents, Principals, Vice-Principals and Teachers) have specific legislative duties pursuant to the common law, the *Education Act*, and the *Child and Family Services Act* to protect the well-being of students.

Students also have the right to equal treatment in the provision of educational services without discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability. Any action taken by school boards, schools and school board staff must be consistent with Ontario's *Human Rights Code*. There can be no discrimination in the provision of educational services to students.

School Boards are public institutions, and have a responsibility to work with other public institutions, such as the Police, the various Children's Aid Societies, Public Health, and the Courts for the protection of students. A School Board's relationship with other public institutions may be governed by legislation; other relationships develop because of the overlap in responsibilities and services available to students. Sometimes these informal relationships are formalized by agreements between public institutions.

For example, the Ministry of Education and the Ministry of Public Safety and Security have issued a policy direction that School Boards and Police Services establish a protocol for the investigation of school-related occurrences.

Many school boards also have protocols with their local Children's Aid Societies and Police, which identify each institution's responsibilities and how matters will be co-ordinated between the various institutions.

## Common Law

Unlike the community at large, school boards stand in *loco parentis* and thus take responsibility for teaching, caring for, and protecting the students under their supervision. This relationship gives rise to a duty of care at common law and, as a result, school boards responsible for protecting and supervising students can be held liable in negligence for failing to meet the required standard of care. The Supreme Court has indicated the conduct of school boards will typically be measured against the standard of care of a careful or prudent parent.<sup>5</sup>

The duty of care that school boards owe to students is broad and goes beyond simply ensuring the physical safety of students. The courts have recognized that school boards have a duty to provide a discrimination free school environment<sup>6</sup>, educate students about human rights and implement measures to prevent harassment and discrimination, including the allocation of sufficient resources for a broader educative approach to deal with issues of harassment and discrimination that is beyond a mere disciplinary approach.<sup>7</sup>

Combined with other statutory requirements, these duties place unique obligations on school boards, principals and teachers to ensure that order and discipline are maintained in schools and that there are adequate violence prevention, sexual harassment, and bullying policies and procedures in place - and that students are in fact protected from these various forms of violence and harassment.<sup>8</sup>

Unfortunately, schools and students are familiar with violence in many forms, physical, verbal and emotional. It should also be noted, however, that in publicly funded school settings, a student's behaviour would not be considered "violent" if that student was incapable of controlling his/her behaviour and had no appreciation or understanding of the consequences of his/her behaviour. While such behaviour might cause injury, the negative connotation that the word violence attracts would not be appropriate in such circumstances.

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<sup>5</sup> *Myers (Next friend of) v. Peel County Board of Education*, [1981] S.C.J. No. 61 (S.C.C.)

<sup>6</sup> *North Vancouver School District No. 44. v. Jubran*, [2005] B.C.J. No. 733 (C.A.) at para. 92 and *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825.

<sup>7</sup> *North Vancouver School District No. 44. v. Jubran*, [2002] B.C.H.R.T.D. No. 10 at para. 112. and *Kafe et Commission des droits de la personne due Quebec c. Commission scolaire Deux-Montagnes* (1993), 19 C.H.R.R. D/1 at para. 84.

<sup>8</sup> *Education Act*, R.S.O. 1990, c. E-2, at Part XIII, *Operation of Schools – General*, Regulation 298, R.R.O. 1990, s. 11: <[http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_900298\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900298_e.htm)>; *Violence Free School Schools Policy*, 1994: <<http://www.edu.gov.on.ca/eng/document/policy/vfreeng.html#Part1>>; "Bullying Prevention and Intervention", *Policy/Program Memorandum No. 144*, October 4, 2007: <<http://www.edu.gov.on.ca/extra/eng/ppm/144.html>>.

## **Education Act**

A student has the right to attend school, without the payment of a fee, in the jurisdiction in which the student resides.<sup>9</sup> Not only are students between the ages of 6-18 entitled to attend school, but a student must attend school from the age of 6 until the age of 18 unless otherwise excused.<sup>10</sup> Note that students as young as 4 years may be entitled to attend schools depending on whether a board offers Junior Kindergarten and/or Kindergarten classes in the jurisdiction where the student resides [section 34 Ed Act]. Because students do not have a choice whether to attend school between the ages of 6-18 years, and students also have a right to attend school in the jurisdiction where they reside, it is essential to address the issue of violence in schools.

In an attempt to ensure that violence in schools is minimized, if not eliminated, the *Education Act* imposes various duties on educators and school boards. Such duties include the duty of the Principal to maintain proper order and discipline in the school (section 265(1)[a]) and the duty of the Principal to refuse to admit to the school or classroom a person whose presence in the school or classroom would be detrimental to the physical or mental well-being of students (section 265(1)[m]).

A teacher has a duty to maintain, under the direction of the Principal, proper order and discipline in the teacher's classroom and while on duty in the school and on the school ground (section 264(1)[e]).

Moreover, Part XIII of *Education Act* contains the legislation's student discipline provisions.

There have been very well publicized attempts to address violence in schools through legislation. Both the "safe schools" legislation, which amended the *Education Act* to add Part XIII in 2001, as well as the most recent amendments to Part XIII of the *Education Act*, which came into force on February 1, 2008, were subjects of extensive debate in the media and among educators.

The infractions for which discipline must be considered now include bullying, and the infractions outlined in the legislation no longer require mandatory consequences. In addition, the Ministry of Education has outlined expectations for progressive discipline, which would include consequences that are not as significant as suspension and expulsion. The mitigating factors outlined in regulations continue to be applicable and a list of "other factors" has been created that must also be taken into consideration before a student is subject to suspension or expulsion as discipline.

While the mitigation of discipline is to be considered, there is no corresponding list of aggravating factors to guide administrators in evaluating the impact that a particular violent

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<sup>9</sup> *Education Act*, supra 4, s.32

<sup>10</sup> Students must attend subject to meeting one or more of the exceptions set out in section 21(2) of the *Education Act*, supra 4. Parents and guardians have a duty to cause their child(ren) and/or youth of compulsory age to attend school unless their child is at least 16 years old and has withdrawn from parental control, supra 4 at section 21(5). A parent or guardian who neglects or refuses to cause their student who is of compulsory age to attend school is liable to conviction and a fine, supra 4 s.30(1).

incident had on the victim as well as the school community. Currently administrators must rely upon school board policies, procedures and practices as well as their experience as educators in determining whether a particular incident should attract discipline on the more severe end of the spectrum as a result of specific circumstances and its impact.

The legislation also requires school boards to ensure that students will continue to be offered the opportunity to access educational programs and services while they are suspended or expelled. Moreover, the new legislation is being used to encourage teachers and administrators to use positive teaching practices to influence student behaviour before an incident or incidents of violence occur. These measures have been taken in an attempt to ensure that students will remain engaged while in school and to reduce the number of at risk students who drop-out of school before receiving a secondary school diploma.

It remains to be seen whether the changes to the legislation will have a long term impact on student success, such that a decrease in the rate of violence among youth will be impacted.

### **Gaps in Legislation**

There are gaps in the legislation governing School Boards and other public institutions that present challenges to the goal of reducing youth violence in schools, and the goal of helping youth who have perpetrated violence, as well as those who have been the victim of violence.

### **Consent**

In order for a student to access many types of support and/or professional services (ie. psychological assessment), whether through a School Board or another public institution, parental consent is sought for students who are not adults. The age at which a student may consent on his or her own behalf to a particular service, without parental consent, depends on the circumstances and the type of support or service sought. Where parental consent is required, if a parent or guardian does not consent, the student does not access the service, even if the student wants the service, or would benefit from it.

School Boards are also faced with the challenge of maintaining a safe environment at schools, but not having all of the relevant information available about the students in each school. Parents and guardians are not required to disclose important, relevant health information about a student who may present safety risks to other students and staff. In the absence of information provided by the parent or guardian, School Boards are left to problem-solve and accommodate based only on the information they are able to observe.

### **Youth Criminal Justice Act (“YCJA”)**

For youth charged under the *YCJA*, the bail conditions often include a requirement that the student attend school. For charges related to violent crimes, it is unclear whether the court undertakes any risk assessment of the youth to determine whether the youth presents a safety risk to other students at school prior to imposing this type of bail condition.

The strict privacy requirements to protect the identity of youth who have been charged under the *YCJA* present a challenge for School Boards to ensure a safe environment at schools, and to ensure that a youth who has been charged complies with bail conditions that relate to the school environment. In addition to the requirement to attend school, bail conditions sometimes include

a requirement that a youth stay away from other persons under a specific age or that a youth stay away from other persons of a specific gender.

It is a challenge for School Boards to balance the youth's right to privacy under the *YCJA* with the practical need to inform appropriate Staff who work at the School, and at the School Board, in order to provide the youth with an education, and to ensure a safe environment for all students and staff. We should add however, that the Supreme Court of Canada makes it clear that schools, because of their role in *loco parentis* status have the legal authority to search lockers and students and seize any contraband they may possess.<sup>11</sup>

### **Removing Barriers to Reporting Violence in School**

Students must feel safe to come forward and report incidents of violence, sexual harassment and bullying in schools. Surveys have indicated that there is a discrepancy between the number of violent incidents that occur and the number that are actually reported by students. This is consistent with reporting among adults and general societal attitudes – particularly with respect to sexual assault. The reporting by students of incidents of violence is necessary for school safety and school boards.

Students who are victimized by violence, sexual harassment or bullying will not come forward if they are fearful of retaliation, believe their complaints will not be taken seriously or will not be effectively addressed. To this end, evaluative mechanisms should be established to better understand and monitor the effectiveness of policies and practices implemented by school boards to address student violence.

Measures should be implemented to ensure that students feel safe to report and understand the consequences of failing to report.

Efforts should also be made by the Ministry of Education, Ontario Teachers' Colleges and school boards to ensure that teachers receive sufficient training to assist them in identifying students at risk of sexual harassment, bullying and other forms of violence, both as victims and perpetrators.

There is already much information dealing squarely on youths' violence at school – the Falconer Report being one of these. Rather than re-inventing the wheel this report must be studied carefully. Although it is focused on the Toronto District School Board, it is applicable to the school culture in urban Ontario.

### ***With friends and peers***

Youth who become violent are behaving in a way that is approved of and encouraged by their peers who may be acquaintances, friends, a posse or a gang. They meet these peers at school, in their neighbourhoods at clubs and hangouts. Often, especially in lower income and marginalized populations these peers model behaviour which is criminal including property offences and offences against the person. The motive can be simple or it can be vengeful retribution designed to prove loyalty or belonging in the group. Noone "rats" or tells the police or the authorities who did it. That's their law.

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<sup>11</sup> *R. v. M.R.M.*, [1998] 3 S.C.R. 393.

The youth who are most at risk are those who are not “attached” strongly to adults such as parents, other adult family members, or teachers. Not having these attachments the youth do not choose to model the behaviour of these adults, rather they turn to their peers.

In addition what we now know about the development of the frontal cortex of the adolescent brain and the inability of the youth to plan and anticipate consequences when the peers are engaged in risky, criminal behaviour. Youth do not have the brain power to think their way out of the situation.

To get at the roots of youth violence we must find those youth who are “detached” from society, from adults and target our efforts at them in preventive efforts to provide them with adult models and mentors. In Toronto, a major problem has occurred with newcomer groups who have arrived here unable to speak English and often with a single parent. Very quickly the child learns English at a faster rate and the parent has been left behind. Traditional authority structures are outdated and the child rebels and attaches to peers.

This same pattern can be seen however in any of Toronto’s designated at risk neighbourhoods. There are few adults present because of the need for parents to work long hours causing the shift of attachment to peers and the consequent poor judgment results. Once a youth is introduced to the justice system he/she is also introduced to peers who are also in the system and the likelihood is that the youth will continue in the system.

To effect any change we have to identify areas where youth are especially at risk such as the designated 13 priority Toronto neighbourhoods. We must promote and recognize youth leadership in those areas so that youth can have positive peers to model. Also in these neighbourhoods there has to be a coalition of the agencies working in those areas, community centres, police, school teachers, the justice system to create a positive, strong model of adult leadership and protection for youth in the community. This should be a model intended provide support to youth who do not have strong family supports. This involves soliciting volunteers and mobilizing the communities in a positive effort to win back the youth rather than the previous reactionary anti-gun anti-violence efforts.

In trying to address the problems of youth violence as lawyers, we can recognize that children and adolescents are missing the leadership that adults need to provide in society. As parents and as community members who become their role models, we must consciously accept responsibility for re-establishing integrity in everyday actions and value honesty and accountability.

Also through public service and volunteerism, in efforts to re-establish leadership in compromised communities, lawyers can model behaviour for youth in situations where parents are not present so that youth do not turn to peers for all guidance.

### ***With family***

In an above segment, we talked about the importance of familial environment for the nurturing and support of children and youths. It is trite to say that the family, traditional or non-traditional, is the nucleus of society. Caring stable families build strong, stable neighbourhoods. By

expansion, therefore, the lack or breakdown of the family structure, and the attendant problems spill over in the community and often form or inform the norms and values of our society. As noted earlier, tension in familial environment may result in estrangement and ultimately a propensity towards violence. There has been a paradigm shift in what is perceived to be “family” yet; the basic function of family remains the same. Notably, the type of family support may change depending on the needs of its members. Some specific factors that may contribute to violence include:

- The absence of a nurturing and caring home environment, where there is love, respect, trust, communication, common vision and values, cooperation and a sense of purpose.
- Abuse within the family, by caregivers, siblings, extended family persons and persons who hold themselves out as family friends. Specifically, parents fail to provide the basic necessary of life; cause physical, mental, psychological, verbal, and sexual abuse to the child; otherwise failing to provide a nurturing environment for the child, including leaving the child to grow up on its own and even forcing the child to be parent-like to their siblings.
- Familial culture shock and external culture shock. Often in new Canadian families, youths do not spend their formative years with biological parents and siblings. During youth, they are introduced to a new family, a new school, new community, new society and new country. The totality of these cultural stresses, especially familial culture shock, may be so grave that the youth responds negatively. He or she finds peers, who are often youths of like-experience. Often, their inability to fit-in, makes them targets or victims of taunting, which frequently leads to violence. In addition, their need to fit in may result in forging alliances with offenders or recidivists, which may lead to violence, robbery, for example. Integral to the familial culture shock is the youth confronting false perceptions of material wealth and status created by the absent parent(s) to foster respect and create the perceptions of success. In addition, those youths reject conventional ways to obtain things they need or want. Upon realising that needs, let alone wants, of material things cannot be met, youths may turn to crime, e.g., robbery to satisfy, the “I want it and now” attitude.
- Cultural dislocation and identity confusion. These factors although they may flow from the first three above, they might be more rampant in the Aboriginal culture and non-English speaking new Canadians. Two examples are the Aboriginal family that is removed from a reserve into the shock of urban lifestyle; and the Sudan refugee family, where the parent(s) is unable to speak English or read and write in the language of her mother tongue. In addition to the language barrier, there are differences in cultural norms regarding parent/teacher/pupil role in the education schema. The attendant tension and frustration have resulted in truancy, and ultimately violent crime, e.g. grabbing an old lady’s purse and pushing her over and running: (Robbery).
- Misdiagnosed or unidentified mental or physical health issues or the lack of effective and ongoing treatment for such issues.
- Broken home or family breakdown may lead to stresses, diminished parental guidance and security.
- Neighbourhoods with negative image or reality: they fall prey to negative influence, substance abuse, crime and gangs (as a victim or participant). There may be feelings of isolation where such neighbourhoods have a ghetto image, which may lead to lack of self-esteem, anger and ultimately violence.
- Poverty. Lack of money and feelings of helplessness may motivate youths to commit offences including acts of violence e.g., robbery, or drug trafficking, which is wont to attract violence.

- The last three factors often intersect. Family breakdown may cause the socio-economical displacement of a youth: from affluence to poverty. Often, this causes relocation to a poor neighbourhood where violent crime is rife. ; are factors that may contribute to youth violence.
- The lack of affordable housing, and the ability to provide proper nutrition key factors that impact negatively on the well being of the children. Anxiety and depression may result by absorbing parental stresses caused by family breakdown and the inability to afford these basic needs for their children.

## **Recommendations**

There are laws and regulations in place, which affords assistance to youths in need of protection. The effectiveness of those laws is determined by their enforcement, which also depends on adequate funding and proper human resources to carry out the statutory mandate. There are other laws in place, which seek to address negative behaviour: For example, the *Youth Criminal Justice Act, 2003*. As stated in the preamble, the YCJA attempts to strike a balance between supporting the development of young persons, and having a youth criminal justice system that commands respect, and fosters responsibility and accountability. It may be time to review the YCJA to see if the appropriate balance is being struck in day-to-day practice. Again the efficacy of that legislation is dependent upon the way in which it is enforced, the competencies of the enforcers and their commitment to fulfil the legislative mandate.

Some social factors that may help reduce youths' family stressors are:

- Make available and maintain moral support interfaces (*e.g.*, Big Brother, Big Sister, parental mentorship circles, *etc.*).
- Encourage youths to seek mentors and be mentors.
- Encourage parents to become actively engaged in the youths' goals (education, work, faith-based and the like).
- Provide support resources for family breakdown. Ensure that these resources are accessible and efficient.

Provide adequate affordable housing. Such housing must not be in poor neighbourhoods.

- After identifying the root causes, it is critical to identify the solutions to prevent, reverse, or ameliorate the circumstances that trigger violent conduct. We believe that the single most veritable and effective tool to arrest youth violence is to provide youths with a positive nurturing home environment. We recognise that such strategy ought to begin at the earliest time, as early as prenatal. This includes providing resources for people to develop practical parenting skills; a formal mandatory follow-up to monitor the health and well-being of children up to junior kindergarten years; more resources to enforce the apprehension of children who are in need of protection; and speedy placement geared to placing children in more a permanent positive environment.
- Create positive environment in school to meet the needs of children. The programmes must be practical and sensitive to the different learning abilities of children and youths.
- Intentionally create interfaces between home, school, community and business organisations (employers).

- Create a central database, identifying category of programmes and help services that are accessible to youths and their caregivers. For example, as simple as a 1-800 number or e-links to sites frequented by youths.
- Intentionally tailored site-based youth development programmes in targeted communities. The programmes must be accessible (cost as well as location), high quality, practical and must engage the interests, needs of the youths. It is essential to deliver these programmes during critical non-school hours, for example, after school, PD days, during civic holidays, and during the spring, summer and winter vacation.
- There ought to oversight and audit to measure the efficiency of the content and delivery of the programmes.
- Meaningful and sustainable employment opportunities.

Ontario should ensure that addiction and mental health services are available for young people throughout the Province with wait lists that are shorter than the time between a charge and a first appearance.

The ultimate goal of community is to develop nurture and sustain a deeper structural fabric of interpersonal relations and intrapersonal skills. The values created in this forum can be woven tightly to enhance a functional society for youths.

- Bring accessible, high quality, social programmes for youths into the communities, especially underserved and marginalised communities, during critical non-school hours. This may include homework clubs, literacy, chess, scrabble, book, computer clubs, and the like. Accessible, efficient, community-based youth programmes can create and sustain effective links between home, community, faith-based entities and business. These programmes help create and develop healthy attitudes, leadership, teamwork and other life skills, problem-solving strategies, and stewardship, which are transferable to education, home and work-life. They may strengthen and support familial relationships, and foster respect and cooperation at home.
- Create and develop new and purposeful strategies that will hook youths and keep their interests active and curious (Pittman (1991)).
- Encourage youths to take part in creating and developing strategies and programme efforts<sup>12</sup>
- Using age, gender or psychological maturity as a criterion to divide the youths into categories, with each group meeting separately except for specific cross-learning events.
- Deliver programmes during critical out-of-school hours: after school, PD days and vacation time (spring, summer and civic holidays).
- Provide programs that help to develop skills that are transferable to life and work.
- Use Youth-teaching-Youth method as part of service delivery method. That attracts and keeps youths engaged, especially those prone to be bored easily.

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<sup>12</sup> Benson, P.L. (1997). *All kids are our kids: What communities must do to raise caring and responsible children and adolescents*. San Francisco: Jossey-Bass; General Accounting Office. (1998); Pittman, K. (1991). *Promoting youth development: Strengthening the role of youth serving and community organizations*. Washington, DC: Academy for Educational Development; Pittman, K., Irby, M., Tolman, J., Yohalem, N., & Ferber, T. (2001). *Preventing problems, promoting development, encouraging engagement: Competing priorities or inseparable goals?* Takoma Park, MD. The Forum for Youth Investment, International Youth Foundation. Available at: <http://www.forumforyouthinvestment.org/preventproblems.pdf>

- Mentorship: Use Youth-mentoring-Youth or Youth-Coaching-Youth as part of the service delivery (both creates learning and leadership opportunities).
- Parent Mentorship: Providing an informal or formal parent mentorship and mentoring circles to help parents, in particular new Canadians or immature young parents to develop skills.
- Intentionally fashion the curricula to the needs of youths' abilities, social needs and employment trends
- Design learning opportunities for underachieving students, which will have a sustainable impact on their future education, and work-life
- Create and maintain sustainable seamless partnerships or interface with home, business, community organisation and government
- Create and develop curricula with intentional interface to business and community organisations to enhance educational and employment opportunities (*E.g. Coops, internships, auditing, leadership, etc., etc., etc.*)
- Engage or encourage front line educators to take part in relevant continuous learning; in-person in-service training to integrate and apply new and more complex knowledge and skills; create and develop new strategies to teach new content, revisiting former content and method from time-to-time to assess effectiveness and relevance.
- Collaboration with home, school, community organisations, businesses and government is crucial if a new paradigm and the implementation of new and different strategies are to yield optimum practical results.
- Integral to their role in *loco parentis* with youths, school should engage in threat assessment as an ongoing tool to identify youth who have a proclivity to violent behaviour. In our view, such assessment must begin at the earliest so that preventive or proactive methods can be taken.
- Introduce civic duties, including a mentorship component as an integral to the ordinary curricula.

The following references provided background information in respect of these matters:

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