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Juvenile Justice in Quebec: 25 Years of Change (1960–1985)

Use of the juvenile court system has become more frequent despite efforts to increase the use of diversion measures.

By Jean Trepanier

This paper provides an overview of some of the changes undergone by the juvenile justice system in Quebec since 1960, with a particular emphasis on the evolution of the legal framework. Major legislative changes have stressed children's rights and diversion away from the legal system. The underlying philosophy of the law has been changed extensively for juveniles. Statistics reveal that despite diversion policies, the number of court referrals has grown considerably. Juvenile court decisions seem to show a greater degree of intervention than before.

Over the past 25 years in Quebec, the juvenile justice system has grown to include juvenile court, the director of child welfare, a deputy attorney general, deputy for youth, juvenile homes, child welfare committee, and social services center. In the 1960's, one spoke of the family court system, of litigations, institutions, and family agencies. But the difference is more than just the words; in 1960, certain juvenile cases were heard by the Magistrate's Court; the climate was generally informal. Cases were heard and decisions made much more rapidly than they are today. The youth and his parents were usually excluded from the exchanges between the judge and the probation officer. Police officers could refer cases to the court at their discretion. "Judiciary diversion techniques" were not yet devised by the Canadian Commission of Law Reform and court intervenors were, with minor exceptions, not formally trained; their motivation was to help juveniles.

Child protection laws

The Child Protection Law now in force has its roots in the last century. The Trade Schools Law permitted a magistrate to place abandoned children in a trade school. It was later amended several times to become the Schools for the Protection of Children Law.

Through these changes one constant remained: the court was the center for child protection. When a child was in danger, he was referred to the court where a judge determined the seriousness of the situation.

An attempt was made to revise the Child Protection Law in the early 1970's by Claude Castonguay, then the Social Services Minister. At the time, social services reform was a major development. He tried to move the base for child protection from the courts into the social services arena. In certain cases when the disputing parties agreed on the nature of the problem and the necessary measures, the judiciary process was seen as not being useful and suffering from an overload of cases. This revision was strongly opposed and later dropped by the government. It was replaced by an amendment allowing the Justice Minister to act directly in the case of child abuse, circumventing the judicial process. The latest Child Protection Law took effect in January 1979.

The new Child Protection Law has two key aspects. One is the move away from the judicial process, whereby the social services center, and not the court, became the point of entry into the child protection system. Reaction to this move was generally positive. Those cases not requiring judicial intervention could be addressed more easily by the social welfare system which in turn handled voluntary decisions and implementing measures. But certain problems remained. For instance, the so-called voluntary decisions were not exactly voluntary for the youth, who would be referred to the court if he refused to follow them. And there was a problem in getting the minor to follow these measures; if the youth was to be removed from his surroundings, a legal decision would

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be more binding and judicial proceedings would prevent hasty placement decisions.

These issues were closely linked to the second key aspect of the Child Protection Law: protection of the rights of children. Certain limits were seen as necessary to protect the freedom of minors and their families. This was soon extended to children in danger of abuse. Judicial procedures protecting minors were reinforced and replaced those usually associated with civil actions. But the legislation did not stop there: a chapter concentrating almost entirely on children's rights was added to the law.

The new Child Protection Law was seen as a giant step forward. The fundamentals of the law remained intact, even after a parliamentary commission reevaluated it and made recommendations in 1982. Only the regulation of certain issues was addressed by the amendments made in 1984. Generally, the evolution of the law was met with satisfaction.

Society's reaction to juvenile delinquency

A. Legislation

While the first Canadian legislative action concerning juveniles goes back to 1857, it was only in 1908 that the Federal Parliament enacted a law gradually permitting the development of juvenile courts. These special courts in Quebec, as in other Provinces, were created over time. They did not yet exist in certain districts in 1961 when the MacLeod Commission in Ottawa began revising the Law Governing Juvenile Delinquents. Changes to the law were difficult to enact. The MacLeod report was met with strong opposition. Extensive consultation was sought on a preliminary plan of a new bill, which finally came into effect in 1984. The essential work was done in Ottawa, although several Quebec commissions researched similar areas; the Prevost, Batshaw, and Charbonneau reports, for example.

1. *The spirit of the law.* Under the Law Governing Juvenile Delinquents, a minor found guilty of a misdemeanor must be treated not as a delinquent but as one who is in delinquent surroundings and needs help and good supervision. This act does not refer to the minor's responsibility for his actions nor to the action taken vis-a-vis the gravity of the crime, and allows recourse to measures of indeterminate length until the youth reaches 21.

This was the general perspective 25 years ago and the orientation endorsed by the MacLeod Commission. The preliminary plan of 1967 and the bill of 1970 established certain limits to the right of intervention for minors, but preserved the preexisting principles.

These principles were questioned. One report on youth proposed they assume responsibility for their acts, but suggested that they were more in need of help, encouragement, direction, and supervision than punishment. While in this instance, the accent was on help first and supervision second, the Youth Offenders Law turned this around. Supervision, discipline, and training came first; advice and assistance last. The protection of society was of foremost importance; the good of the youth was no longer considered a major objective of the law.

2. *The rights of youth.* As stated earlier, the perspective of the authors of the Law Governing Juvenile Delinquents of 1908 was very clearly dissociated from the classical perspective that inspired (and still inspires) Canadian penal law. The law of 1908 proclaims that rather than punish the youth, he must be helped. No malicious intent exists. One intervenes for him, not against him. Consequently, a law was adopted that recognizes different rights for minors than those given to adults.

Protection of the individual against abusive intervention by the State is a fundamental part of penal law. Rather than punish minors, the state should protect them. In its report published in 1965, the MacLeod Commission agreed with the clause of the Law Governing Juvenile Delinquents allowing for a procedure that provides for the good administration of justice, while recommending enlarging several recognized rights of minors, notably in appeals.

In the United States, the Supreme Court had declared unconstitutional legislation which deprived minors of "due process of law." A good number of States revised their laws to conform with this decision; debates over these changes were echoed in Canada.

In this context, the Prevost Commission in 1970 recommended that measures used for the arrest, interrogation, detention, and proceedings of adults be extended to minors. Several other reports also emphasized the rights of minors.

The law now in force affirms that youths enjoy certain rights and freedoms. In particular, youths are protected when in the custody of the police or when passing through the judicial process. In addition, voluntary measures may replace court intervention in certain cases; the choice would be between a known measure and an unknown court measure. But for many juveniles, there is the fear of receiving a punishment they feel is too harsh for the crime. This is a serious issue for the majority of juvenile delinquents who come from low-income families and are at a disadvantage when it comes to defending themselves against injustices.

3. *Judiciary diversion techniques.* Diversion was unknown in Canadian law until the 1960's, although the practice was followed by police officers. Their court referrals were limited to only those cases they felt required judicial intervention. But these instances were informal; in 1965 the MacLeod report recommended formalizing these decisions by establishing a person named by the court to decide which cases must go before the court.

In the meantime, a new judicial intermediary appeared in the juvenile justice system in the United States—new organizations, such as the Youth Service Bureaus, to which the police could refer juveniles in place of the courts. Two years later, Great Britain followed suit with a similar proposition. In 1970, the Prevost Commission recommended following the same route. The court should appear as a last resort, only when other possibilities have been exhausted. The same year, Bill C-192 revealed the Canadian Government's hesitation to engage in these referral programs without legal supervision; the judge would decide if the case could be decided without a court appearance.

The absence of legal staff did not prevent these ideas from coming to light during the following years. From 1971, litigation attorneys of Family Court in Montreal began to select the cases that would go to court. This procedure was rapidly extended to cases of juveniles residing outside of Montreal and those whose return to the family home seemed most appropriate to protection and delinquency cases. Other judicial districts followed suit. In 1975, both the Quebec provincial government and the Canadian Government announced their intention to pursue diversion for delinquency, and in 1977 the Canadian Government left the final decision on the form of diversion programs to the Provinces.

But the juvenile justice system diversion bill anticipated since 1976 never passed. In 1977, the mechanism of diversion was extended to cover delinquency when the National Assembly of Quebec unanimously adopted the Youth Protection Law; it more or less established a common diversion mechanism for delinquency and protection cases. However, the police could no longer refer cases directly to the courts. The case had to first go to the director of child protection who, after evaluation, would decide in conjunction with a person designated by the Minister of Justice if they should close the case, propose a voluntary solution, or refer the file to the court. The constitutionality of this process was successfully challenged. With rumors persisting that the police were trying to regain their former direct access to the courts, the Quebec government began to revise the law. They created the Charbonneau Commission, which recommended reestablishing a clear distinction between cases of delinquency and those involving a child in danger.

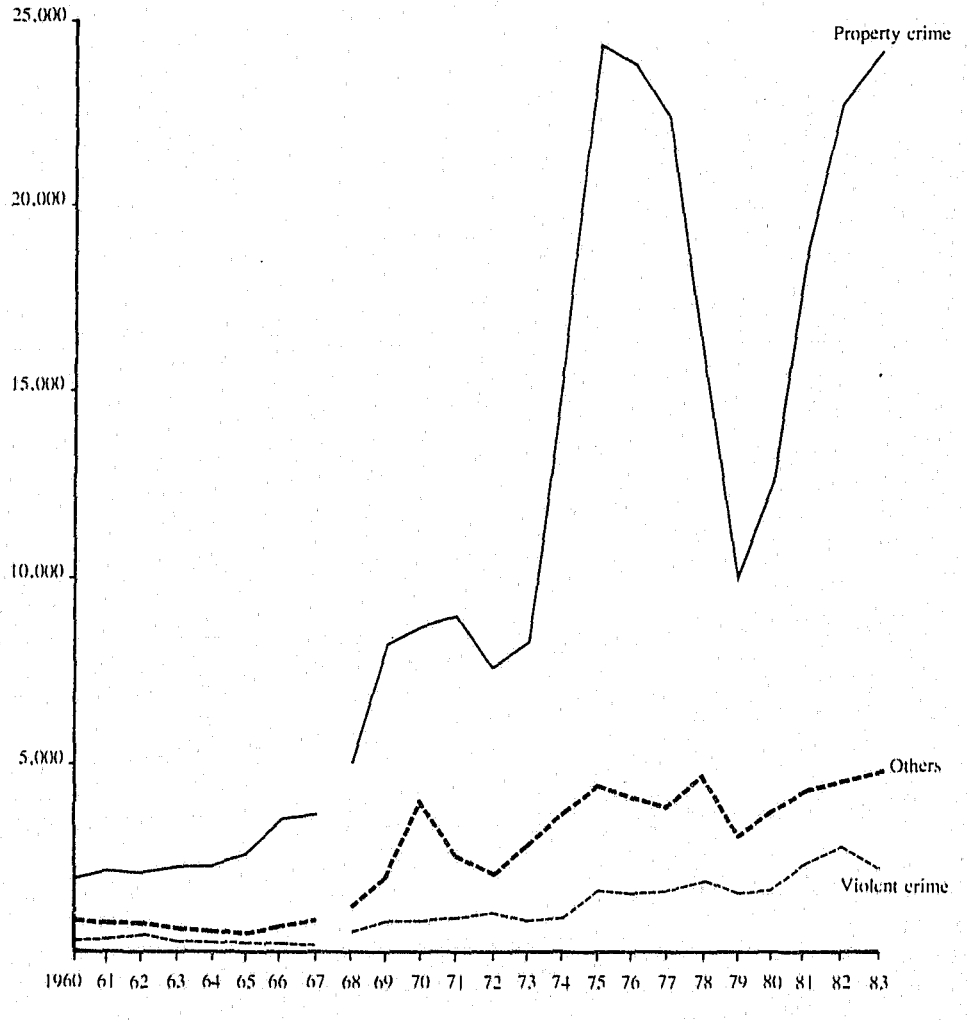
In 1982, the Federal Parliament finally adopted the Law for Juvenile Offenders which, beginning in April 1984, replaced the Law Governing Juvenile Delinquents. This law sanctioned the principle of diversion and permitted recourse to other measures whose form was to be decided on by the Provinces. In April 1984, the Quebec government passed a series of amendments to the Child Protection Law which eliminated from the law all references to delinquency. A series of ministerial decrees and orders followed which detailed certain forms of Federal law implementation which had previously been left to the Provinces. Two distinct systems, protection and punishment, reappear at this point: one stemmed from the Child Protection Law, and the other from the Youth Offenders Law, supplemented by the forms of implementation (such as the program of countermeasures) instituted by the Quebec decrees. Founded on the interventions of the deputy attorney generals and directors of child welfare, a relatively complex new procedure would govern court access and countermeasures in the area of delinquency.

B. Changing court clientele and decisions

Statistique Canada has reported on the enforcement of the Law Governing Juvenile Delinquents for many years, but its statistics are problematical. Until 1967, the reports of Statistique Canada on juvenile delinquents only concerned cases where the minor was less than 16 years old, which corresponded to the threshold of the age of majority in force in most of the Canadian Provinces. Only since 1968 do the data relative to Quebec include minors 16 and 17 years old. The data given earlier must be analyzed in light of the exclusion of this age group between 1960 and 1967. In addition, from 1970 to 1973 a temporary change was made so that the published statistics for each Province were calculated on the basis of the number of delinquents rather than on the number of cases. With this understanding, it is possible to evaluate the clientele of the court.

From Graphs 1 and 2, three periods are apparent. The first period extends from 1960 to 1973. The number of cases grew during this period, with property crime, particularly theft, dominating, and violent crime counting only for a meager 5.9 percent of the total. Between 1960 and 1969, probation was the most popular measure (61.5 percent), followed by unsupervised measures (30.4 percent), and lagging far behind, placements in juvenile homes (8.1 percent).

Graph 1: Number of cases referred to the juvenile courts in Quebec for infractions of the criminal code and other Federal laws

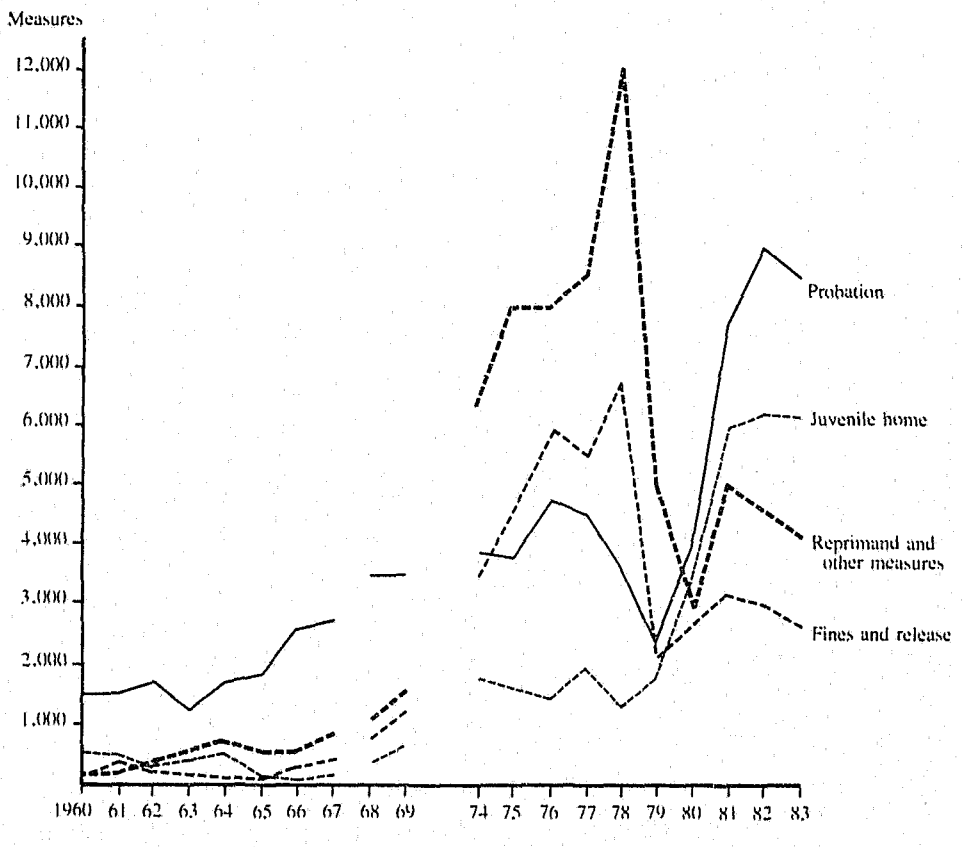


Source: *Statistique Canada, Jeunes délinquants, annuel.*

The second period covers 1974 to 1978, a period marked by an explosion in the number of reported cases. Property crime continued to dominate. Within this group, a new phenomenon arises: the predominance of breaking and entering over thefts began in 1975 and became more pronounced starting in 1977. Unsupervised measures were used the most (70.7 percent) by judges. The punishment suggests that the judges considered these to be light offenses.

The third period, from 1979 to 1983, was marked by the diversion mechanism. An initial strong drop in the caseload (from 27,581 to 12,839) during this period was followed by a steady rise that approached the level of the previous period. This temporary decrease in the caseload affected all categories of offenses; however, it was much less evident in the violent offenses category than in other categories. This drop in the number of cases was reflected in a corresponding drop in the use of diverse measures but did not prevent an increase in the number of placements in juvenile homes, beginning in 1979. The return to the high volume of cases was matched by recourse to all measures, with a special emphasis on probation and juvenile home placements. In total, probation counted for 34 percent of the rulings of the court during these 5 years. Juvenile home placements followed with 25.9 percent of the total (a three-fold increase over the first period); reprimands and other measures as well as fines and releases followed with, respectively, 24.1 percent and 16 percent of the rulings. And as Graph 2 clearly illustrates, after 1981 the use of probation and placements in juvenile homes strongly took the lead over the use of nonsupervisory measures by the court. This emphasis on supervisory measures is exactly the reverse of the preceding period, where the unsupervised measures were employed most frequently.

Graph 2: Statistics on measures taken by the tribunal



Source: *Statistique Canada, Jeunes délinquants, annuel.*

From these statistics, the judges appear to perceive a need for more interventions than previously. Whether the cases are more serious, the intervenors' perception changed, or judicial practice evolved toward a stronger degree of intervention are unresolved issues.

Another dilemma posed by these statistics is the rise in official supervision through the formal diversion mechanism. This contradicts a stated objective of this mechanism which was to reduce official supervision. Not all juveniles were to be referred to the courts. The higher statistics cited suggest that the reduction in the number of juveniles referred was only temporary. In addition, the number of police referrals to the courts increased.

Notably in Quebec in 1979, police received a directive to not exercise any discretion and to notify the child welfare directors of all cases where the proof of the offense was sufficient. With the new law, however, they had to choose between returning the youth to his home and notifying another person who would decide if proceedings should be initiated. Formalizing nonjudiciary measures transformed the decision of the police officer into a "nondecision," removing from him the seriousness of the decision. The consequence appears to be that police officers decide less frequently to drop the charges and more frequently to notify the court of the case. The youths are then referred to the director of child welfare when, under the previous system, they would simply have been sent home. Paradoxically, a system that aimed to reduce the official social control over juveniles has actually potentially enlarged its scope. And contrary to its stated objectives, the police refer more cases to the court; there was only a temporary reduction in the number of cases.

Conclusion

A certain number of changes have transformed the juvenile justice system of Quebec over the past 25 years. The legislative changes have emphasized the rights of children and diversion; the spirit of the law was considerably modified, particularly concerning minors; and use of the juvenile court system has become more frequent, despite efforts to diversify to other measures. If the official statistics present a true picture, it appears that intervention is stronger than before.