

Community

Family court: 2 sides in conflict

There are very real, extremely serious problems with the juvenile justice system in Peel," says crown attorney Steve Sherriff.

Mr. Sherriff, a prosecutor for almost 10 years, the last six in Peel, says the "extremely lenient dispositions" handed down by one of Peel's two family court judges are a serious problem. He also points to the way the same judge conducts juvenile court "running it with the rules he likes and leaving out the others."

Mr. Sherriff's complaint is part of a rift that rocks Peel's two family courts. Siding with Mr. Sherriff are the police and the crown attorneys' office, who Mr. Sherriff says believe the court is far too lenient.

On the opposing side are family judge Warren Durham and his supporters, who are equally adamant that the court's first responsibility is to help the young offender to cope with the stresses that made him err, not to punish him.

The schism is not a personally-motivated attack on Judge Durham, insists Mr. Sherriff, but an assault on his policies.

What irks Mr. Sherriff — and the police for whom he acts as an unofficial spokesman — is that the juvenile court seems to be gaining control over the entire justice system from arrest to disposition.

"If the police lose their right to charge or the crown its right to prosecute, the judicial system goes out the window with them," he says.

The courts cannot be both social welfare agency and a court of law, insists Mr. Sherriff, who says the court's reluctance to find a child innocent or guilty "is not fair to society's best interest, and in my opinion sometimes not fair to the kid."

As a crown attorney in adult court he says his role is clearly defined — to seek a fair trial and demand justice. But in juvenile court, with its preventive thrust and the judge's wide powers, his role is clouded.

The court itself "seems geared to the best interests of the juvenile which can appear different from the best interests of society," says Mr. Sherriff.

Driven by his own frustrations, Mr. Sherriff began to study the situation two years ago. The result, he says, is a huge file documenting breeches of the law.



appeared to be too young." When the crown protested the 12-year-old boy had a long record, the judge said he was privy to information the crown wasn't.

Mr. Sherriff resents the loose informality of the juvenile courtroom where he says the judge meets privately with the defence lawyer in his chambers and excludes the police and crown. To Mr. Sherriff such practices are blatantly unethical and autocratic.

"I want the judicial system to work right," he says. "And that means the way it was set up. In this case he (the judge) has too much power. If the police charge the juvenile then it's up to the courts to have a hearing."

As far as he's concerned the crown's role in adult court ought to apply in juvenile court. He's the first to admit there's room for change in the system — only not at the hands of a judge attempting to reform it from within.

What's needed — if there's to be a resolution of the rift — is a clarification of the role of the crown in the juvenile system, says Mr. Sherriff. "It's frustrating not to know what's expected of you when the purpose of the court is to prevent the child's returning to court and your role is to seek justice."

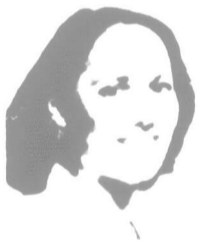
If he could have his way and be assured more juveniles who are guilty would be punished, Mr. Sherriff says he'd advocate increasing the numbers of children charged by police.

But what's the point when a judge insists on ignoring the rules, he asks.

Until the decision-makers lay down new policy guidelines that clearly establish who is right and who is wrong, the feud will continue. In the end, says Mr. Sherriff, "if the guilt of a juvenile is a minor issue then Judge Durham is right and I'm wrong. If that's the case refer the kids directly to the agencies and stop calling it a court. But if guilt or innocence is an important issue, then I'm right and let the courts be a court of law."

This year almost 60 per cent of all crimes investigated by Peel police involved juveniles — boys and girls under the age of 16. Police admit juvenile crime is a growing and serious problem. The Times conducted over 20 interviews with police, court officials, lawyers, parents and juvenile offenders for a five-part series on the situation. We found intelligent, thoughtful but conflicting approaches to the problem of juvenile crime — approaches that sometimes contributed to the problems.

Third in a series



Mary Louise Birks

For example, it bothers him that a family court judge can refuse to hear a case "dismissing it before

he's even heard it. And if the crown objects he's told 'it's none of his business.'"

Mr. Sherriff cites a case in which a judge threw out the case "because he said 'the juvenile

Other players are concerned

Many other agencies and professionals are intimately familiar with the mechanics of the rift in the Peel Courts.

John Huether supervises the ministry of corrections and social services' probation and aftercare program in Peel. The major function of his agency is to supervise the 180 Peel youngsters (110 of whom live in Mississauga) on probation.

He describes his agency's relationship with the courts as "pretty good."

"Sometimes the judge overturns our recommendation but if he rubberstamped every decision he wouldn't be performing his role," says the 35-year-old former probation officer.

It is important to him that the court respect a probation officer's opinion, but not necessarily agree with it.

There are certain problems he

sees "built into the court room". For instance, he says it's hard for a probation officer to threaten a child with a return to court when the judge gives him another chance once he gets there.

Mr. Huether believes in the formality of the courts so the youngster's rights will be protected, but also feels strongly that the juvenile system shouldn't be a carbon copy of its adult counterpart.

"A 13-year-old offender should have a right to a trial, but if he's found guilty the courts should have a right to intervene in his life," he says.

Mr. Huether agrees it's important to determine if the child is guilty or not, but he's against punishment to suit the crime. "A child shouldn't be accountable in the same way an adult is," he says. "A court has to look at why he did it, because if no attempt is made to

answer why, in all likelihood he'll go out and repeat it."

Steve Hilb is the Children's Aid Society's court supervisor. It's his job to monitor what happens to CAS wards in family court. He says the juvenile justice system in Peel "is the best system under the circumstances."

He praises the police youth bureau "for doing a damned good job" and for being "tuned in to who should be charged and who should be let off with a caution". But he also likes the informality of juvenile court, which he likens to "a round table discussion" between the child, his family, agency workers, the police and the judge.

Mr. Hilb believes the primary role of the family court judge "is to help the child," and says that aim is shared by all the professionals in the courtroom.

Dana Riddell is the public school board's chief attendance

counsellor. Under the Education Act children can be charged with being truant. In 1979, 25 children and five parents were charged under the act. Part of her job is to help the court make an appropriate decision in such cases.

A judge will probably make a finding of guilt in less than 25 per cent of the cases he sees, preferring not to give the child a record and to recommend counselling instead, she says. "Truancy is more often than not just the tip of the iceberg of what's really happening in the child's life," she says.

Ms. Riddell says she's seen both philosophies work in the courtroom and both fail. There is wisdom in both, she says, "because there are some cases when it is necessary to determine guilt and others when it's more appropriate to find help for the child." In her opinion, the juvenile justice system in Peel functions "adequately."



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