



Landon Pearson Resource Centre  
for the Study of Childhood  
and Children's Rights

RYERSON  
UNIVERSITY

SCHOOL OF CHILD AND YOUTH CARE  
FACULTY OF COMMUNITY SERVICES

**Provincial Advocate  
for Children & Youth**

# Shaking the Movers V

**Divided We're Silent: United We Speak**  
Standing up for Youth Justice

**CRC Articles 37 and 40**



Prepared by: Amy Del Monte & Lauren Akbar  
April 2012

## PREFACE

Since 2007 the Landon Pearson Resource Centre for the Study of Childhood and Children 's Rights at Carleton University has sponsored a series of annual workshops for children and youth from across Canada and from a variety of backgrounds on themes related to the UN Convention on the Rights of the Child (CRC). According to Article 12 of the CRC (which was ratified by Canada in 1991), young people under the age of 18 have the right to speak out and be heard on issues that affect them directly. Shaking the Movers workshops are designed to provide a space for children and young people to "have the floor", to present their unique perspectives and experiences and to provide specific recommendations and input related to the theme chosen for the year. While some adults do attend, they are simply there to listen and hear the recommendations made, to be a resource, to provide support to the young participants and to ensure that the workshop takes place in a safe and comfortable setting. The outcomes, priorities and ideas presented by the youth are captured in reports like this one and the responsible adults who were present undertake to ensure that the words of the young people reach as many "movers" as possible and that some, at least, of the "movers" respond. Among the rights that have been addressed in the past are the right to language and culture, the right to be free from exploitation and child rights in cyberspace. The theme of this year's workshop, which was held with the support of Ryerson University and the Office of the Provincial Advocate for Children and Youth, was youth justice. Next year youth would like to address issues related to mental health and there may be two parallel workshops on the same model, one in Toronto and one on the west coast. Please read this report and please pay attention to what the young people had to say.

They are the experts in their own lives and we need to partner with them to find solutions to their challenges which will work.

Hon. Landon Pearson, OC  
April 26, 2012

# OVERVIEW

On November 18th and 19th, the Landon Pearson Resource Centre for the Study of Childhood and Children's Rights, in partnership with the School of Child and Youth Care at Ryerson University, supported by the Office of the Provincial Advocate for Children and Youth and the Public Health Agency of Canada conducted a two-day workshop with Canadian young people, for the purpose of:

- providing an opportunity for children and youth to exercise their right to take part in important civil and political processes with the assurance that their voices will be heard and valued
- providing an opportunity for children and youth to prepare comments and recommendations for governments and civil society with respect to Article 37 and 40 of the United Nations Convention on the Rights of the Child (UNCRC) and the themes that arise from these articles

Recent events, including the 'Tough on Crime' bill which includes new mandatory minimum sentences and tougher sentencing for young offenders, call for a response from children and youth. Youth Justice has been a popular topic in the media recently and it is important that youth have the opportunity to speak on the issue. Allowing young people to learn about their rights provides them with the opportunity and ability to have their voices heard. Authentic participation by young people on issues that concern them will give them the opportunity to 'shake' up the 'movers' who are making decisions about them.

This report highlights discussions that took place around four thematic areas addressed by 40 children and youth in a two-day workshop. The children and youth brainstormed solutions to some of the problems currently being faced by young people in the justice system. In preparation for the conference, students from the School of Child and Youth Care defined the UNCRC articles in youth-friendly language as follows.

Article 37:

- the right to be protected
- the right to be informed

Article 40:

- humane treatment
- rehabilitation and restoration

Article 37 was discussed on the first day and Article 40, on the second day.

## Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

## Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
  - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
    - (i) To be presumed innocent until proven guilty according to law;
    - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
    - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
    - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
    - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
    - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
    - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
  - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

The youth were split into four groups in order to discuss their thoughts on Youth Justice and how they are directly or indirectly impacted. Each group was facilitated by a small number of fourth year Child and Youth Care students from Ryerson University. The workshops were designed to allow a safe space for youth to share their experiences and have their thoughts heard by peers and Child and Youth Workers.

Prior to the conference, the youth were provided with an information package in order to have a clear understanding of what issues would be addressed. The information package included a detailed description of the Ashley Smith case and Articles 37 and 40 of the UNCRC. After a brief welcome by the Honourable Landon Pearson and Professor Judy Finlay, the youth took part in icebreaker activities to feel comfortable and meet the other youth. After the icebreaker, a speaker, video, large group discussion, or inner and outer circles introduced the theme being discussed. Then the youth broke into small groups to discuss the relevant theme and prepare a creative way to present their thoughts to the larger group. Once each group had their discussion, they returned to the larger group and presented their ideas to one another. The youth were incredibly insightful and provided some realistic and attainable solutions. The insights and solutions from the youth are discussed below.

After the structured discussions were completed, there were planned activities throughout the day and evening for the youth to take part in, such as scavenger hunts, and arts and crafts. One of the highlights of the two days was having the youth participate in the National Child Day celebration hosted at Ryerson University. At this community event, the youth were able to hear from the Provincial Child and Youth Advocate, Irwin Elman, Honourable Landon Pearson, former Provincial Child Advocate, Judy Finlay, and the President of Defence for Children International, Agnes Samler. The youth were also given the opportunity to share their presentations at the event and two youth performed songs with guitar and vocals.

The Landon Pearson Resource Centre for Childhood and Children's Rights and The School of Child and Youth Care at Ryerson University have committed to bringing the voices of young people to professionals in the field, government officials, political leaders, organizations, and researchers in order to better understand the needs of children and youth.

## UNIQUE FEATURES OF THE 2011 STM CONFERENCE

Two unique features of this year's conference were the participation by Child and Youth Care students from the host University and the involvement of children (ages 10 – 12 years) as participants.

One Advanced Group Work class deconstructed the UNCRC and the Ashley Smith story into language that the children and participants could understand and appreciate and organized and facilitated small group activities and discussions for the two days regarding youth justice and the provision of children's rights. A second Advanced Group Work class organized and facilitated activities for each evening which included ice-breakers, art and recreational activities as well as a scavenger hunt and developed supportive alliances with youth participants to encourage their active and meaningful engagement in the events of each day of the conference. The Children's Rights class prepared and facilitated presentations regarding children's rights throughout the ages for the National Child Day celebration. Child and Youth Work students were able to offer round-the-clock support and activity to the children and youth attending the conference. This served as a valuable teaching tool for our students as well.

This was also the first year that STM invited participants between the ages of 10 and 12 years. Special attention was given to the information provided to these children and how they were engaged in discussion and activities about that content. Specific Child and Youth Care students were assigned to these children throughout the conference for continuity and all engagement of these children was meaningful to their age and unique abilities. These eight children expressed themselves very well about the topics of each day. They were creative and passionate in their presentations to the larger group when debriefing at STM and to the audience at the National Child Day celebration. In follow-up conversations with these children, they stated:

*"When you learn about something when you are younger, it sticks with you."*

*"We should bring Shaking the Movers globally and raise more awareness."*

*"I felt that adults were actually listening to me and doing something about it."*

*"We should bring what we learn to assemblies at school to raise more of an awareness."*

It is recommended by these children, the student facilitators and the organizers of the STM conference that younger youth and children be offered the opportunity to participate in the conference in a meaningful way each year.



**Youth presentations at the National Child Day Celebration hosted at Ryerson University.**



## Article 37



**Small group breakout sessions**

**The BIG picture...** How are youth treated in the correctional system? How are Mental Health issues addressed? What are our rights?

**How WE fit in...** What is Canada doing to address the complex issues of incarcerated youth?

**Playing a role...** How can our voices be heard so youth like Ashley Smith are protected and cared for?



# Problems

## Ashley Smith's Story

Ashley Smith was born on January 29<sup>th</sup>, 1988 and she was adopted when she was five days old. When Ashley was ten years old, she began developing behavioural problems at school, such as being disruptive, talking excessively and disrespecting staff. This behaviour only intensified, which as time progressed, considerably challenged Ashley's ability to function within the established school system. Ashley was first charged in March, 2002, when she was 14, with offences related to public disturbances, trespassing and aggressive behaviour. Ashley was sentenced to one year probation and enrolled in the Intensive Support Programme in her community. At the age of 15, Ashley was placed in custody at the New Brunswick Youth Centre (NBYC) for accruing multiple charges including breach of probation and common assault. However, before going there, she was referred to the Youth Treatment Programme which determined that Ashley suffered from "a learning disorder, ADHD and borderline personality disorder". During the period between April, 2003 and October, 2006, Ashley was either a part-time or full-time resident of the NBYC. While there, Ashley accumulated upwards of 800 recorded incidents ranging from refusing to hand over a hairbrush to self-harm and suicide attempts. At the age of 18, Ashley Smith was transferred to an adult correctional facility in Nova Scotia. During her stay at each facility, like at NBYC, she spent most of the time in the seclusion room. She died almost a year later through suicide at a correctional facility in Kitchener, Ontario.

The story of Ashley Smith reveals the true picture of a youth who, in her own words and often inappropriate actions, lost hope in a system that should have been able to offer her more intensive treatment than it did. Therapeutic interventions should have been provided in an appropriate environment rather than one where the actions of a youth suffering from a mental illness or a severe behavioural disorder stand to be misunderstood, left untreated and, often, criminalized.

Adapted from "The Ashley Smith Report" by Ombudsman and Child and Youth Advocate, New Brunswick.

## Reactions to the Ashley Smith case...

After watching a short video clip on the Ashley Smith case, the young people had the opportunity to share their reflections and reactions. The majority of youth were shocked at the harsh treatment that Ashley Smith, a young woman, faced in the correctional system. Here are some of their reactions:

*"Ashley was fighting authority so much, which made the situation worse for herself. However, she should have still had the right to have her voice heard instead of being treated so inhumanely."*

*“The police should have taken responsibility for their actions and the police were too quick to judge Ashley Smith.”*

*“The way she was treated was unjust and not fair.”*

*“As a youth, I feel I have no power and my only option is to obey authority.”*

*“If the police were more gentle and understanding towards Ashley Smith, this never would have happened.”*

*“The Ashley Smith case is quite disturbing—many times people in positions of authority break laws instead of enforcing them—this is due to their position of power and this is what happened with Ashley Smith”.*

*“Why are police immune to the law? There was no help for Ashley when she needed it the most”.*

The majority of the youth were unaware of the Ashley Smith case. For most of the young people, this was their first encounter with real-life situations of youth in the correctional system. After watching the Video there were feelings of angst, sadness, and anger for how Ashley Smith was treated. Some youth felt that they could relate to her situation and her story really resonated with their own experiences. Particularly, the youth identified with developing the ‘jail mentality’ and no longer being treated as a youth but as a “criminal” instead. Many of the youth were shocked by the video and were not aware that this is how many young people in the system are treated.

### **How the correctional system impacted Ashley Smith...**

The youth were very disturbed by the treatment of Ashley Smith. Here are some of their reactions:

*“Did not foster a positive environment for Ashley—jail made her mental health concerns worse, they did not treat her like a youth.”*

*“There was lack of support and treatment for her mental illness—as well as others with mental illness in the system.”*

*“She felt alone, which affected her attitude and behaviour.”*

*“The jail guards were not looking out for Ashley’s best interest.”*

*“No one listened to Ashley’s voice. The responsibility falls upon the adults to be the liaison between young people and their rights—this is the problem.”*

## Assumptions commonly made about youth...

The youth expressed feelings that they are automatically assumed to be in the wrong, instead of given a chance to prove their innocence. In many situations, young people are unaware of their rights, which they are assumed to know, but have never been taught. Here are some of the words that the youth identified they feel they are labeled:

Youth are...

- lazy
- irresponsible
- too young
- uneducated
- guilty
- 'bad kids'
- Criminals

## Youth participants were asked:

Children and youth face violence in many different environments—at home, at school, and in the community. Many youth need the opportunity to feel protected from their situations and not assumed to be the problem. For example, youth described their situations below.

*“My friend began to act out against authority and got detained.”*

*“I don’t know anyone who has been incarcerated, but the police is always patrolling my School yard and nearby plaza.”*

*“Most police officers do not even tell youth their rights and many times the United Nations convention is broken.”*

Youth agreed that although every case is different, youth should be given the chance to learn from their mistakes because they are still learning and developing. The justice system should aim to turn young offenders into students instead of criminalizing them at young ages. The youth agreed that education for youth coming into the system should be a higher priority so that repeat offenses do not happen.

## Role of mental health in the justice system...

Many of the youth were confused by how Ashley Smith’s mental health issues could go undiagnosed and unaddressed. For the youth, they felt that her situation could have been drastically different if she was given a mental health diagnosis earlier. It appears that her needs were not being met and she was misunderstood because of her mental health issues.



**Small group breakout sessions. These children were the first ever 10-12 age group. The information they provided was insightful and intelligent**

## Solutions

All youth participants agreed with the following:

*“Treat people the way you want to be treated.”*

Youth deserve:

- respect
- loving
- caring
- listening

Adults who need to be vigilant about youth who are in the justice system include:

- parents/guardians
- public officials
- teachers/guidance counselors
- judges
- law enforcement

Children and youth need supports in their life in order to grow and develop in a healthy environment and build self-esteem. When talking with youth and asking what helped them get through a challenging period in their life, the number one answer was always—there was one person who supported them unconditionally.

## Article 40



### Group Presentations

**The BIG picture...** How is stigmatization and discrimination addressed in the correctional system? How are people in authority held accountable for their actions?

**How WE fit in...** What is being done to ensure that children and youth are able to express themselves?

**Playing a role...** How can we change how we treat people so that discrimination ends with us? What is being done so people feel safe to be who they are?

# Problems

## Stigmatization means...

*“When labels are forced upon you, even though it might not be true.”*

The youth felt that Ashley Smith was stigmatized: she was labeled as a criminal and not as a youth in need of support. The youth expressed that if these labels had not been forced upon Ashley, she may have been treated differently. The youth agreed that the media creates labels and we emulate them in society every day. Ashley Smith was labeled as...

- needing to be punished
- a ‘bad kid’
- a criminal
- displaying psychotic behaviour
- depressed

## The reality for Ashley Smith was that she needed...

- guidance and support
- to be treated as a young woman
- to be treated as a person with feelings
- proper diagnosis and support for her mental health issues

## What the youth had to say about labeling and stigmatization...

*“People are quick to judge young people and assume that they are up to no good”.*

*“Labels are mostly used negatively, but there are positive labels too”.*

*“Labeling is unfair because they only look at what people have done and not what they will do or who they are—people can change”.*

*“If everyone keeps thinking of someone negatively, they start to believe the same thing about themselves”.*

*“People are made to feel useless, but they have a whole other side”.*

*“Media and shows have a lot of labeling, for example, jocks are popular and smart kids are unpopular”.*



**This presentation illustrated the different labels attached to individuals. The children explained how hurtful it is when labels are placed unnecessarily on others.**

## **Aboriginal Youth...**

Aboriginal youth are at a higher risk of being incarcerated due to years of discrimination, racism and mistreatment. The majority of the youth at the conference were unaware of this reality.

*“Many people don’t know or understand the history of First Nations people”.* In high school, students learn about First Nations people, however the content is very limited and there is little discussion on what First Nations people are facing today in Canada. Through discussion with the youth, we found that many youth from remote northern Ontario communities are moved to bigger cities, such as Thunder Bay, in order to complete their high school education. For many of these youth, they have to leave behind their family, friends, and home in order to finish school. Thus, they have to adjust to a new environment during one of the most challenging developmental stages of life—adolescence. Some youth were willing to share their experience and the challenges they faced being an Aboriginal youth in a new city. Many shared how they were not trying to get into trouble but how it was almost inevitable because they did not have a secure place to stay. These youth had a lot to say about the treatment of Aboriginal youth:



*“Aboriginal youth are seen as troublemakers and that we skip school, but that isn’t the reality.”*

*“People see drugs and crime as a part of the culture, instead of as a result of colonialism, racism, you know?”*

*“Aboriginal youth are seen as criminals instead of the victim of a crime.”*

*“There is a glass wall between two cultures.”*

*“There is open discrimination against First Nation people.”*

It is of great importance that children, youth, and our communities are not only aware of how Aboriginal youth are at higher risk of incarceration, but where this stems from. A more realistic and factual history of our First Nations and their present circumstances needs to be taught in all schools across Canada. It is through education and awareness that children and youth will begin to understand and become sensitive to the lived experience of our indigenous peoples.

## **The correctional system changes you...**

*“Being in the system changes people—youth are at their prime developmental stage, it has made me who I am today—I inherited the ‘jail mentality’. That is why I always get into fights and physical altercations—not because I want to, but because I have that mentality.”*

As the youth stated above, being in the system has a large impact on you—it changes people, especially youth at such a vulnerable time in their life. In 2003, the Youth Criminal Justice Act was created in order to rehabilitate young offenders and effectively integrate them back into society. Currently, the ‘tough on crime’ Bill of 2011 is going in the opposite direction from rehabilitation to harsher sentences and more jail time for youth. The youth spoke openly and candidly about what the correctional system should focus on, instead of harsher punishments:

*“The correctional system should focus more on helping youth and focusing on the ‘why’ instead of the ‘what’.”*

*“Should look at the youth’s developmental age and see the youth as an individual.”*

*“Every child and youth is different, so if a treatment isn’t working, try something new.”*

*“Stop blaming the youth, look at the situation they are in or the systems that have been put in place.”*

*“Support and guide the young offenders—the justice system should be turning young offenders into students, not criminals.”*

*“Having young people in the system creates institutionalization.”*

*“Jail makes you cold and not care. Shouldn’t be making youth like this.”*

# Solutions

## Providing Youth with what they NEED...

### Giving necessities

- youth thrive in environments that provide support, a healthy learning environment and space to grow and develop
- although jail is not supposed to be a 'home', it turns into one for youth
- when speaking with youth who have entered the system—this became their home
- family support or non-familial supports are important for youth in order that they have someone looking out for them and believing in them

### Education for

- those in need and their families
- authority figures
- prison guards/protection workers

### Therapeutic supports and guidance required for the wellbeing of youth

- proper diagnosis for children and youth with mental illness
- putting in place supports and treatment for youth with mental illness
- having understanding guards and workers

### **Treat youth in the justice system humanely instead of like “criminals”**

- when people are treated like criminals instead of individuals, they become disconnected and fall into a criminal mindset

### Offer youth hope through opportunities for change

- trust and relationship building increase self-esteem and meets basic needs
- necessities of life are not being met in prison

### Proper training for those in a position of caring for youth

- proper training is required so that individuals can work with diverse populations including youth with mental illness, learning difficulties, and other cognitive impairments
- thus in the best interest of the youth, it is important to have ongoing training and supports in place when individuals are not trained in specific areas

### Rights

- should be written in a language that is understood by children and youth, not just adults
- should be taught in school in order for children and youth to understand and be aware of their rights from a young age
- knowledge is power – providing children and youth with the knowledge of what their rights are will allow them to recognize when one of their rights is being violated

## Laws

Two important things to know about laws:

- 1) What it says
- 2) What it means

Laws and rights should be in a language that children and youth understand and not have to be interpreted by an adult. If a youth does enter the correctional system, they should be explained their rights and the conditions of their charges.



**This unity star shows diversity and the acceptance of human differences.**

## Youth speak...

One of the small groups gave a powerful non-verbal presentation using signs to communicate their thoughts because they felt that many incarcerated youth were not being heard. Each youth held one sign and moved through their presentation. Here is what was written:

### I need...

- ...aid before punishment.
- ...to be able to trust.
- ...someone to be supportive of me.
- ...to be informed.

### I want...

- ...the education system to include rights as part of the curriculum.
- ...to be treated on my strengths, not my weaknesses.
- ...to be heard.

### I have the right...

- ...to be treated like a human.



**Group presentation on how to solve the problems associated with stigmatization**

## Lasting Impressions

Youth participants were incredibly insightful and candid about their impressions of, and their recommendations for the youth justice system. The youth were assured that their voices would be heard and would be taken seriously by professionals making decisions. It was incredible to see youth come together to form opinions and create solutions that will benefit youth in the long term.

One of the most meaningful contributions was from a youth who has faced many years in a correctional facility. He spoke honestly about his experiences and how they have shaped who he is today. At one point, he talked about not knowing the last time that he was hugged or cared for. Throughout the two days, this young man opened up and formed relationships with the other youth and adult leaders, sharing his experiences and his vulnerabilities. At the end of the conference, he thanked the entire group for accepting him and for not judging him because of his past. Unconditional acceptance was a powerful message for this young man.

The relationships formed over the two-day conference were special. The youth were given a chance to learn from one another and share their experiences in a safe and caring environment. The leaders were amazed by how forthright and honest the youth were in their communication about these difficult issues. Their insight, understanding and passion related to these youth justice issues empowered them to want to make change happen. Their compassion for those touched by the system was also moving. The youth participants, regardless of age and experience, came together as one cohesive group. Truly, the youth participants taught the adult leaders about compassion, understanding, and partnership in a powerful way.



**The Whole Group**