

Community-Based Responses to Youth Offending:  
Politics, Policy and Practice Under the *Youth Criminal Justice Act*

by

Lorinda Stoneman  
B.A., Simon Fraser University, 2005  
M.A., Simon Fraser University, 2008

A Dissertation Submitted in Partial Fulfillment of the  
Requirement for the Degree of

DOCTOR OF PHILOSOPHY

in the School of Child and Youth Care

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University of Victoria

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## **Supervisory Committee**

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Professor Neil Boyd, Additional Member  
(School of Criminology, Simon Fraser University)

## Abstract

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This research focused on diversion and community-based alternatives to custody for young offenders. For the purposes of this research, diversion, and community-based responses to youth crime include informal processes and non-incarcerating sanctions utilized for young offenders for the purposes of diverting youth away from the formal justice system at any juncture, and/or reintegrating that offender within the community. Measures of interest included extrajudicial measures, extra-judicial sanctions, conferencing, restorative justice, and intensive support and supervision under the YCJA (2002). This research followed a qualitative approach to examine policy and practice.

Phase 1 involved an examination of over a decade of policy-related discussions within the House of Commons and Senate as well as their respective committees and resulting legislation reported by *Legisinfo*. Initially, all transcripts were examined. At a later stage, a proportional stratified random sample was drawn, restricting the sample to 32 items. Phase 2 involved semi-structured interviews conducted with 14 professionals in the field of youth justice with the aim of accessing practice narratives on policy implementation. Chain-referral and maximum variation sampling techniques were employed to access a diverse group of professionals including police, youth workers, restorative justice personnel and probation officers

in the regions of Greater Vancouver, the Fraser Valley and Vancouver Island in the province of British Columbia. Participants ranged in length of service from one year to over 35 years. Thematic narrative analysis of phases 1 and 2 occurred iteratively with data collection.

In this dissertation, I present findings regarding community youth justice measures at three levels: the operational/practice level, the policy-making level and the macro socio-political level. Specifically, findings related to the operational level include: insufficient resources available to individual workers; narrowing the net of youth who are eligible for services; a reliance on informal and formal charitable contributions to provide basic youth justice services; and outsourcing of diversion strategies by government to community organizations. On a policy-making level, I discuss findings related to the complex fusion of restorative justice and diversion strategies; the substitution of anecdotes for evidence in policy-making; and the simple rather than complex stories used to frame the “youth justice problem” by policy-makers. Finally, on the macro socio-political level, I highlight the reversal of the welfare state and the associated implications of this reversal. I analyze and discuss the impacts that ideological and policy shifts have on policy-making and individual practice, notably on the efforts of professionals who must begin the work of closing the gaps in youth justice services, and who do so based on their own understanding of social responsibility and the “ethos of care.” This research contributes to the body of work on youth justice in Canada by exploring the connections and disconnects between policy discourses at each of the political, policy and practice levels and highlights how such a multi-dimensional analysis is a meaningful way to assess an important social policy issue.

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## Acknowledgements

My heartfelt thanks to my supervisory committee: your level of dedication, reassurance and guidance is unsurpassed. Dr. Sibylle Artz, thank you for your unwavering commitment to mentoring me and encouraging me to keep writing. Dr. Doug Magnuson, thank you for always challenging me to consider methodology from another perspective. Dr. Tara Ney, thank you for inspiring me through your own policy research. Professor Neil Boyd, thank you for letting me “borrow” you from SFU; I have so appreciated your reasoned approach and keen legal eye. Additionally, I wish to thank Dr. Russell Smandych, my external examiner, not only for your service to the committee, but for your own research which has inspired me in turning a critical lens towards youth justice policy.

I am forever grateful to have been able to connect with my 14 participants. Thank you for sharing your insights and candid stories with me and for taking the time to carefully explain your perspectives and the challenges you encounter on a daily basis. It goes without saying that this work would have been impossible without you.

I wish to recognize the enduring support of my good friend and trusted mentor, Dr. Sheri Fabian. Sheri, thank you for always being there to listen and thank you for helping me keep it all in perspective. Many friends have helped me stay on track through during some of the most challenging days, especially those from SFU: Abby, Adrienne, Elise, Kristen, Lauren, and Vanessa. I greatly value your friendship and I deeply appreciate your belief in me.

I want to thank my husband, Bryan Kinney. I imagine that being the partner of someone who is writing a dissertation can be especially trying at times, however, I would not really know because you have never shown me anything but support, patience and compassion. Thank you from the bottom of my heart; it is my pleasure to dedicate this work to you.

Finally, I wish to recognize the financial support for this research from the Social Sciences and Humanities Research Council of Canada and the University of Victoria.

## CHAPTER 1: Introduction

*Canadians want a system that prevents crime by addressing the circumstances underlying a young person's offending behaviour, that rehabilitates young people who commit offences and safely reintegrates them into the community, and ensures that a young person is subject to meaningful and appropriate consequences for his or her offending behaviour. Canadians across the country know that this is the most effective way to achieve the long term protection of society. Bill C-7 constructs a youth justice system which will do just that. It is also abundantly clear that Canadians are committed to supporting children and youth. They are firm in their belief that as a society we must do everything we can to help young people avoid crime in the first place and to get their lives back on track if they do run afoul of the law. ~ Anne McLellan, 2001<sup>1</sup>*

In Canada, youth aged 12 to 18-years-old who come into conflict with the law as a result of having been suspected or accused of a crime are dealt with in the youth justice system. As per the *Constitution Act* (1867), the federal government holds responsibility for statutes (e.g., youth justice legislation) while the provinces are responsible for the administration of the youth justice system (e.g., courts). Since 1908, the Canadian youth justice system has treated youth separately from adults in a system first legislated by the *Juvenile Delinquents Act* (JDA, 1908), then by the *Young Offenders Act* (YOA, 1985) and now by the *Youth Criminal Justice Act* (YCJA, 2002). “It has long been recognized that the principles that govern the adult criminal justice system are not necessarily suitable for young people accused of crime” (Dauvergne, 2013, p. 4) and thus, the youth justice legislation provides for young offenders to be dealt with in awareness of their developmental capacity. Over the course of the past century, the youth justice system has undergone several wide-reaching reforms (i.e., with the introduction of new youth justice legislation three times) and many more targeted amendments (i.e., specific changes to existing legislation) that will be discussed fully in Chapters 2 through 4. One of the most comprehensive reforms in recent years, one that is the focus of this dissertation, can be summed up with an excerpt from the preamble of the YCJA. In the YCJA, legislators emphasize that the youth criminal justice system should be one that “reserves its most serious intervention

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<sup>1</sup> This quotation is an excerpt from a major speech given by then-Minister of Justice and Attorney General of Canada, Anne McLellan introducing Bill C-7 to the House of Commons on February 14, 2001. Bill C-7 eventually became law as the *Youth Criminal Justice Act*.

for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons” (YCJA, preamble). As a result, informal responses to youth crime that avoid the formal processing brought on by criminal charges, appearances in youth court, and periods of incarceration are integral aspects of the YCJA and of youth justice practice in Canada (Bala, 2003). Such practices are covered under the umbrella term, community-based responses to youth crime, and form the central topic of this dissertation.

The purpose of this study is to examine politics, policy and practice around community-based responses to youth crime in Canada, and more specifically in the province of British Columbia, as established by the YCJA (2002). Diversion and community-based responses to youth crime include informal processes and non-incarcerating sanctions utilized for youth offenders for the purposes of diverting youth away from the formal justice system at any juncture, and/or reintegrating that offender within the community. The community-based responses of interest here include extra-judicial measures, extra-judicial sanctions, intensive support and supervision (ISSP) orders, youth justice committees, conferencing, and restorative justice, and are often referred to throughout the literature using the term, “diversion.” These measures are aimed at reducing the overall rate of youth receiving detention or custodial sentences as well as those required to appear in court (Bala, Carrington, & Roberts, 2009; Giles & Jackson, 2003; Kuehn & Corrado, 2011), and are based on the idea that many youth are better served in the community utilizing measures such as police warnings (e.g., police taking a youth home to their guardian rather than working toward a recommendation to charge) and cautions (a more formalized warning), and the support of individual youth workers, rather than through formal processing such as courts and custody (Bala & Roberts, 2006).

Given the premises described above, I have examined community-based responses to crime within youth justice legislation, policy, and practice, with attention to the context and resulting implications for practice. Specifically, in this dissertation I consider how practitioners and lawmakers have determined what to do with youth who come into conflict with the law, and what the meanings attached to their actions around youth justice policy reveal. In the following section, and in order to provide context to my research, I discuss official youth crime data that help to illustrate changes to the administration of youth justice since the coming into force of the YCJA (2002).

## Statistical Trends in Youth Justice

It is widely agreed that a chief objective of the YCJA (2002) was to reduce the number and proportion of youth (particularly those accused of minor offences such as property crime and mischief) who are dealt with through such formal youth justice measures as court and custody (Bala et al., 2009; Barnhorst, 2004; Doob & Spratt, 2004). To accomplish this aim, federal legislators included within the YCJA specific guidance to structure provincially operationalized police discretion (e.g., to allow for warnings, cautions and extrajudicial measures rather than charges), as well as specific alternatives to formal processing at the post-charge stage (e.g., Crown cautions, extrajudicial sanctions) and sentencing stage (e.g., increased availability of community sentences) (Carrington & Schulenberg, 2008). Importantly, the YCJA contains the explicit assumption that such strategies are “often the most appropriate and effective ways to address youth crime” (section 4(a)). A comprehensive discussion of these measures takes place in Chapter 3, however, the following overview provides important context to the key shifts in youth justice as evidenced by official police and courts data produced by Statistics Canada. The data examined throughout the following sub-sections are also useful in illustrating the present context regarding community-based responses to youth offending. The data suggest that increasingly in recent years, a large proportion of youth are diverted out of the formal system and dealt with within the community.

The Canadian Centre for Justice Statistics (CCJS), a branch of Statistics Canada, releases summary statistics on police-reported youth crime, youth court, and youth corrections on an annual basis.<sup>2</sup> From these data, several key shifts following 2002—just prior to the implementation of the YCJA (2002) on April 1, 2003, are evident. The official data I examined ends in 2013, 2011/12, and 2012/13, for police, courts and corrections statistics respectively. These are the years that most closely mirror the study period and the years in which data were available at the time of writing:

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<sup>2</sup> CCJS collects police-reported data via the Uniform Crime Report (UCR), court data via the Integrated Criminal Court Survey (ICCS) and data on youth corrections via the Corrections Key Indicator Report for Young Offenders. Each of these is a national data collection survey designed to gather administrative data from the justice sector. These data are published by Statistics Canada in regular *Juristat* publications and also in raw form within the CANSIM database: <http://www5.statcan.gc.ca/cansim/home-accueil?lang=eng>.

1. A higher proportion of youth accused of crimes are “not charged”<sup>3</sup> (56%) as compared to “charged” (44%), representing a reversal from 2002 and signaling increased use of community-based alternatives;
2. The youth crime rate<sup>4</sup> has decreased;
3. The youth crime severity indices (CSI)<sup>5</sup> have decreased (Perreault, 2013) signaling that youth crime has not become more violent;
4. The proportion of youth receiving court referrals to extrajudicial measures or restorative justice programs has increased;
5. Both the proportion and the rate of youth sentenced to custody have decreased.

In the following sections I discuss these trends in more detail and outline the status quo with a focus on Canada and British Columbia. This examination is one way of illustrating the changes in the administration of youth justice that have accompanied the first 12 years of practice under the YCJA, and provides important context for this research.

### ***Trends in police charging, 2002 to 2013***

To achieve the goal of reducing custody and court for youth accused of minor offences, the YCJA (2002) directs youth justice professionals to divert youth accused of non-violent, low-level crime from the system where possible. Specifically, the YCJA sets out extrajudicial measures with the presumption that they are:

Adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a **non-violent offence** and has not previously been found guilty of an offence...extrajudicial measures should be used if they

<sup>3</sup> The category of “not charged” includes youth who are accused by police and subject to extrajudicial measures including a referral to a community program, a formal caution, or a warning, rather than charged.

<sup>4</sup> Where youth are concerned, the crime rate will typically be an underestimate of youth who actually commit offences. The reason for this is that only offenders who are *identified* can be recorded as part of this rate because it is only then that their status as a youth is known. However, it is widely agreed that this remains a good comparison against previous years. The rate represents youth accused of an offence by police per 100,000 population of youth aged 12-17 years. Also note: because the youth crime rate is calculated differently that the overall crime rate, these measures are not comparable.

<sup>5</sup> There are three types of youth CSIs calculated by Statistics Canada: the overall youth CSI, the non-violent CSI and the violent CSI. These indices are weighted indicators of the severity of crime such that more serious crimes (as identified by more serious sentences delivered by judges) are designated higher weights so that more frequent but less serious crimes do not dominate the score. This statistic complements the crime rate, which is heavily affected by large numbers of less serious crimes (Babyak, Alavi, Collins, Halladay, & Tapper, 2009).

are adequate to hold a young person accountable for his or her offending behaviour and, if the use of extrajudicial measures is consistent with the principles set out in this section, nothing in this Act precludes their use in respect of a young person who (i) has previously been dealt with by the use of extrajudicial measures or (ii) has previously been found guilty of an offence. (Subsection 4(c), (d); emphasis added)

The YCJA then establishes the requirement that:

A police officer **shall**, before starting judicial proceedings or taking any other measures under this Act against a young person alleged to have committed an offence, consider whether it would be sufficient, having regard to the principles set out in section 4, to take no further action, warn the young person, administer a caution, or...refer the young person to a program or agency in the community that may assist the young person not to commit offences. (Section 6(1), emphasis added)

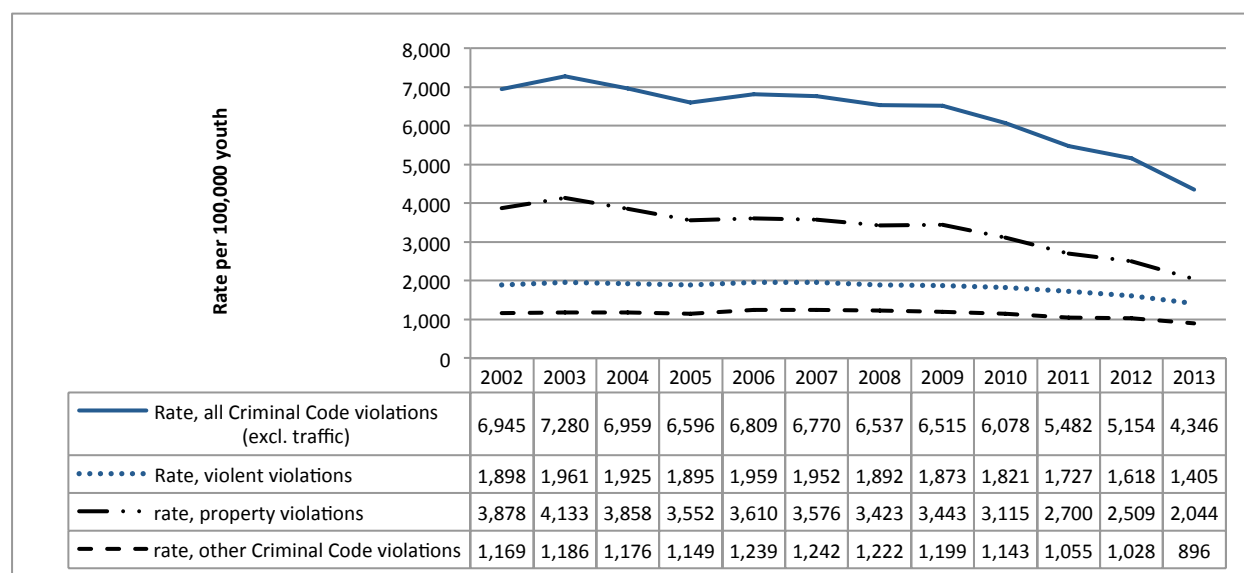
That is to say, youth justice professionals, notably police, are directed by the YCJA to deal with non-violent youth outside of the formal system whenever possible.

Overall, as evidenced by Figure 1, the national youth crime rate began declining in 2004, shortly after the introduction of the YCJA (2002) and underwent a 37% decrease from 2002 to 2013 (Statistics Canada, 2014c). The rate of violent violations decreased by 26%, property violations decreased by 47% and the rate of other Criminal Code violations<sup>6</sup> decreased by 23% during this period. While youth crime rates do not include every crime committed by a youth, they do illustrate the youth-related crimes that have come to the attention of police, and for which a youth has been accused. For this reason, youth crime rates are a useful indicator of overall year-over-year shifts and longitudinal patterns.

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<sup>6</sup> The category of "other *Criminal Code* offences" includes offences that are not contained in the violent and property crime categories such as counterfeiting, disturbing the peace and administration of justice violations (e.g., breach of probation, failure to appear).

Figure 1: National Youth Crime Rate (Youth Accused) by Category, 2002 to 2013<sup>7</sup>



(Statistics Canada, 2014c)<sup>8</sup>

The youth crime rates in British Columbia have followed a comparable pattern from 2002 to 2013, yet with more pronounced decreases. Specifically, a 58% decrease in overall crime rate, a 55% decrease in rate of violent crime, a 64% decrease in rate of property crime and a 42% decrease in rate of other Criminal Code offences (Statistics Canada, 2014d).<sup>9</sup> It is widely agreed that downward trends in youth crime rates across the country have occurred as a result of a real decrease in the phenomenon of youth crime and changes to the ways in which police respond to youth crime. These trends suggest, as expected given the implementation of the YCJA, police are diverting youth who they previously would have accused of a crime (Boyce, Cotter, & Perreault, 2014).

Relatedly, as reported by Carrington and Schulenberg (2005), Statistics Canada data began reflecting national decreases in the rate of youth charged (a subset of those who are

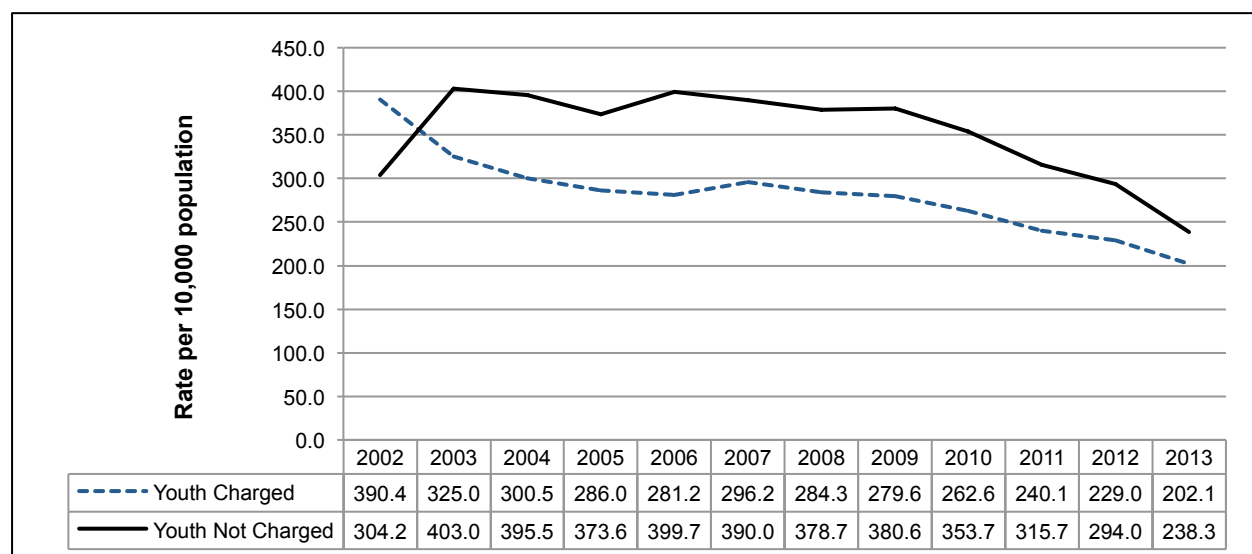
<sup>7</sup> Rate of youth accused is the rate youth “charged” and rate of youth “not charged” (diverted through extrajudicial measures) and represents all youth accused by police of a crime.

<sup>8</sup> All figures in this chapter have been assembled by the author using raw data provided by the Cansim series as provided by Statistics Canada.

<sup>9</sup> This is an overall rate change from 8,199 in 2002 to 4,573 in 2013; violent crime rate from 2,126 in 2002 to 1,201 in 2013; property crime rate from 4,603 in 2002 to 2,296 in 2013 and rate of other Criminal Code offences from 1,470 in 2002 to 1,077. All rates per 100,000 youth aged 12-17 years.

accused) as early as 2003. That year showed a 16% decrease in rate of youth charged from 2002, with a rate change from 4,493 to 3,760. In other words, “in 2003, approximately one out of six young people apprehended in Canada was not charged, who would have been charged if police had continued to use the same charging practices as in 2002” (p. 14). In contrast, and as expected, the rate of youth who were given extrajudicial measures increased over the same one-year period by 29% (3,467 per 100,000 in 2002 to 4,473 per 100,000 in 2003) (Carrington & Schulenberg, 2005). For the most part, the declines in the rate of youth charged, and corresponding increase in rate of youth diverted, remained steep from the introduction of the YCJA (2002) through 2005 when they began to stabilize (Sprott, 2012) (see Figure 2). From 2010 onwards, the trend of both youth charged and youth not charged has declined.

**Figure 2: Rate of Youth Charged and Not Charged in Canada, 2002 to 2013**



(Statistics Canada, 2014c)

Throughout Canada, by “2006, almost 60% of youth implicated in an offence did not face charges but were dealt with through alternative means such as warnings, cautions, community programs and extrajudicial programs” (Taylor-Butts & Bressen, 2007, p. 8). Although measures to avoid charging youth reduced charges in nearly all offence categories, they contributed proportionally more to a decline in charging for minor crime rather than serious crime, consistent with the YCJA’s (2002) emphasis on diverting youth accused of non-violent offences (Sprott,

2012) as explained above. In British Columbia for example, since 2002, the rate of youth charged with Criminal Code violations (excluding traffic) has dropped by 64% from 3,039 to 1,102 per 100,000 youth. However, the bulk of this decrease was made up of youth charged with property offences, which showed a decrease by 78% (1,691 to 372 per 100,000 population). At the same time, the rate of youth charged with a violent offence decreased by 50% (928 to 455 per 100,000 population) (Statistics Canada, 2014d). “[T]he YCJA has clearly resulted in a significant drop in youth charged by police and an increase in the use of various methods of police diversion” (Bala et al., 2009, p. 139), a trend which continues to be illustrated by the most recently available data.

After undergoing declines over the past decade, by 2013, in British Columbia 27% of youth offences (accused) were violent, 48% were accused of property offences and 25% were accused of other *Criminal Code* offences. Of violent offences, 42% were assault level 1.<sup>10</sup> Of property offences, about half were theft under \$5000 (non-motor vehicle). Of other *Criminal Code* offences, nearly two-thirds were disturbing the peace (Statistics Canada, 2014d). Relative to other provinces and territories, British Columbia’s youth violent crime rate in 2013 was the lowest (952/100,000)—a rate that was 32% lower than the national average (1,405/100,000); British Columbia had the third lowest rate of youth property crime in 2013 (3,472/100,000), lower than the national average (4,346/100,000) (Boyce et al., 2014).<sup>11</sup> Although the precise reasons that British Columbia data show comparably low rates of crime have not been well documented, these findings do suggest that the use of community-based responses in dealing with youth crime occurs widely throughout the province.

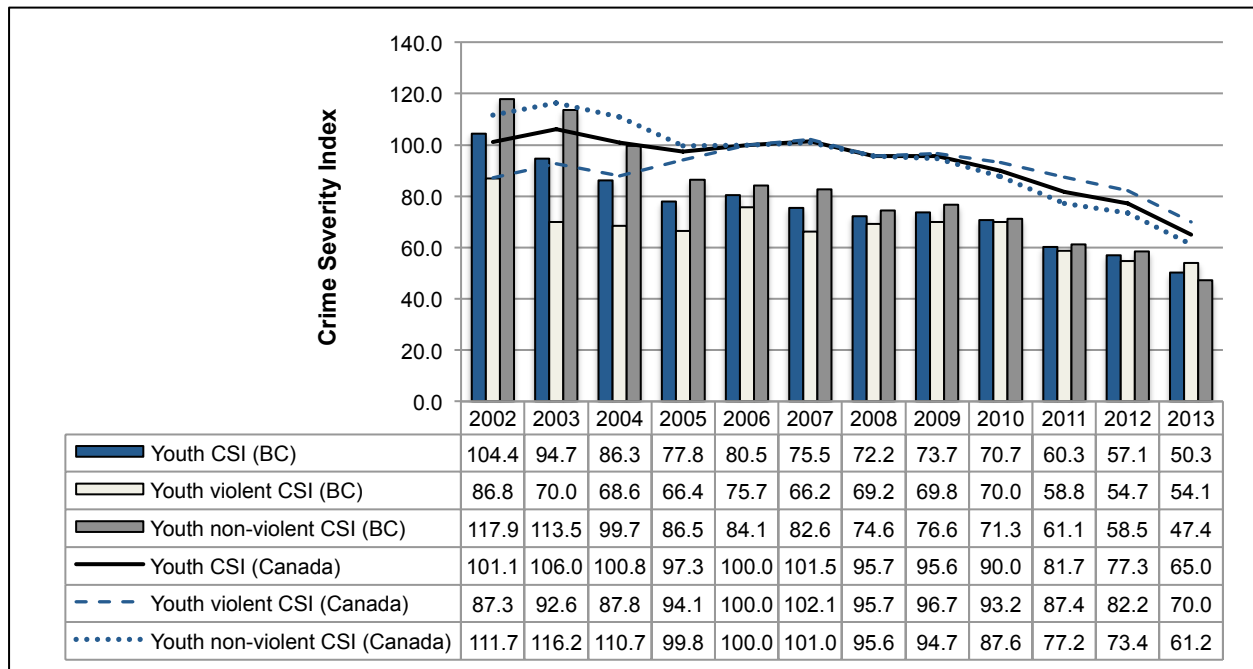
With respect to the severity of youth crime over the past decade, the national overall CSI reflects a steady downward trend since 2008 (Boyce et al., 2014), driven by decreases in both the national youth violent CSI and youth non-violent CSI (see Figure 3). Similarly, British Columbia’s overall youth CSI began its downward trend in 2007 in violent and non-violent CSIs in 2011 and 2010 respectively (Statistics Canada, 2014a). In comparison to other provinces and territories, in 2011, 2012 and 2013, British Columbia showed the lowest overall youth CSI (50.3)—a figure lower than the national average (65.0).

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<sup>10</sup> Assault level 1 includes assaults that cause little or no physical harm to the victim.

<sup>11</sup> It is worth noting that due to British Columbia’s charge approval system, where Crown must approve police recommendations for a charge (based on substantial likelihood of conviction), youth crime may be undercounted. In other provinces, police are responsible for laying charges.

Figure 3: Youth Crime Severity Indices, Canada and BC, 2002 to 2013



(Statistics Canada, 2014a)

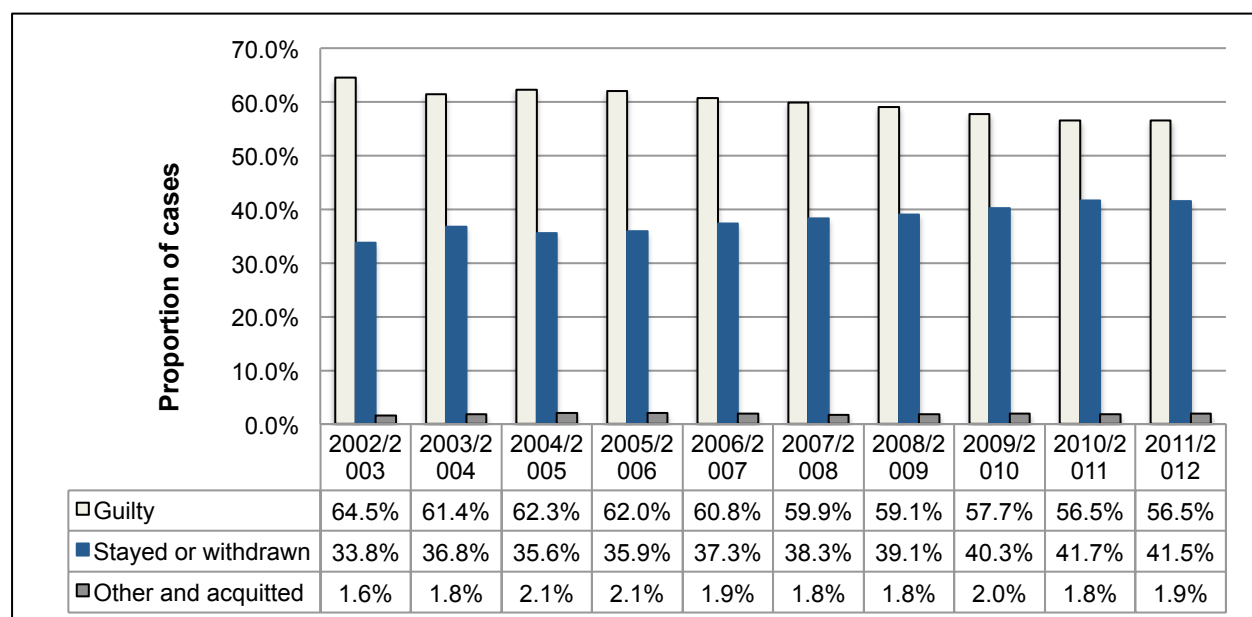
This province also showed the second lowest youth violent CSI after Newfoundland and Labrador and the third lowest youth non-violent CSI (Statistics Canada, 2014a) in 2013. Not only have the rates of youth accused of crime and youth charged shown declines since the inception of the YCJA, the reported seriousness of crime has also undergone decreases, primarily in the last few years, with British Columbia represented among the provinces with the least serious youth crime overall.

Broadly, these statistics help to depict a shift in the administration of youth justice since the inception of the YCJA (2002) and that despite the new measures under the YCJA that would cause fewer youth to be formally processed within the youth justice system, police-reported youth crime has not surged. These conclusions echo the earlier findings of Bala, Carrington and Roberts (2009), whose review of statistical data from the first five years of the YCJA illustrated an increase in police diversion, a decrease in youth being charged and no associated increases in recorded youth crime.

### ***Trends in youth court and guilty findings, 2002 to 2013***

Given the opportunities available to both police and Crown to divert youth at numerous stages prior to youth court, decreases in the number of youth appearing before a youth court judge would also be expected over the past decade. Statistics Canada (2013d) data reveal a 37% decrease in the number of youth court decisions from 2002/03 to 2011/12 (76,204 in 2002/03 to 48,229 in 2011/12)—a decrease that far outpaces the 1.5% decline in the youth population over the same time period (Statistics Canada, 2014b). In addition to the overall decrease in the use of youth court, shifts in patterns of court findings are also illustrative of the policy changes associated with the YCJA (2002). The process of court for youth who appear on a charge can have one of three results: a finding of guilt; an acquittal; or a stay/ discharge/ dismissal/ withdrawal/ referral. Charged youth who agree to participate in some type of extrajudicial measure are recorded in the last category. While Statistics Canada does not show the breakdown, we know that 42% of youth court cases in 2011/12 resulted in a stay/ discharge/ dismissal/ withdrawal/ referral compared to only 34% in 2002/03 (Dauvergne, 2013; Statistics Canada, 2013d) (see Figure 4). It is reasonable to attribute at least some of this shift to a rise in youth cases being dealt with through extrajudicial measures at the court level (Dauvergne, 2013).

Figure 4: Proportion of Youth Cases by Type of Decision Annually, 2002/03 to 2011/12<sup>12, 13</sup>



(Statistics Canada, 2013d)

While British Columbia has shown similar decreases in the proportion of youth found guilty in youth court, 68% of youth cases in 2011/12 resulted in a finding of guilt in this province, a figure more than 10% higher than the national average. The variation in the proportion of guilty cases in British Columbia as compared to the national average is most likely due to pre-charge screening—a practice unique to British Columbia, Québec and New Brunswick (Dauvergne, 2013). In these provinces, Crown prosecutors examine each charge recommended by police and make the decision on whether or not to approve the charge. The Crown may use this juncture to recommend extrajudicial measures rather than approving a charge, and this variation permits an additional opportunity to divert youth into community-based alternatives. In other provinces and in each of the territories, police press charges independent of Crown approval. This procedural difference may translate to a higher evidentiary burden for charges, and the

<sup>12</sup> “Stay or withdrawn includes stays, withdrawals, dismissals and discharges at preliminary inquiry as well as court referrals to alternative or extrajudicial measures and restorative justice programs. These decisions all refer to the court stopping criminal proceedings against the accused” (Statistics Canada, 2013d).

<sup>13</sup> “Other decisions include final decisions of found not criminally responsible and waived out of province or territory. This category also includes any order where a conviction was not recorded, the court’s acceptance of a special plea, cases which raise Charter arguments and cases where the accused was found unfit to stand trial. Acquitted means that the accused has been found not guilty of the charges presented before the court” (Statistics Canada, 2013d).

opportunity for Crown to divert less serious offenders prior to approving charges. This in turn could help to explain why more British Columbian youth who appear in youth court are found guilty as compared to their counterparts in the rest of the country. With respect to the category of stay/ discharge/ dismiss/ withdraw/ referral, 30% of cases resulted in these findings in 2002/03 compared to only a slight increase to 34% in 2011/12 (Statistics Canada, 2013d). The small increase is likely explained by a combination of factors: the pre-charge screening system and the greater use of pre-charge diversion.

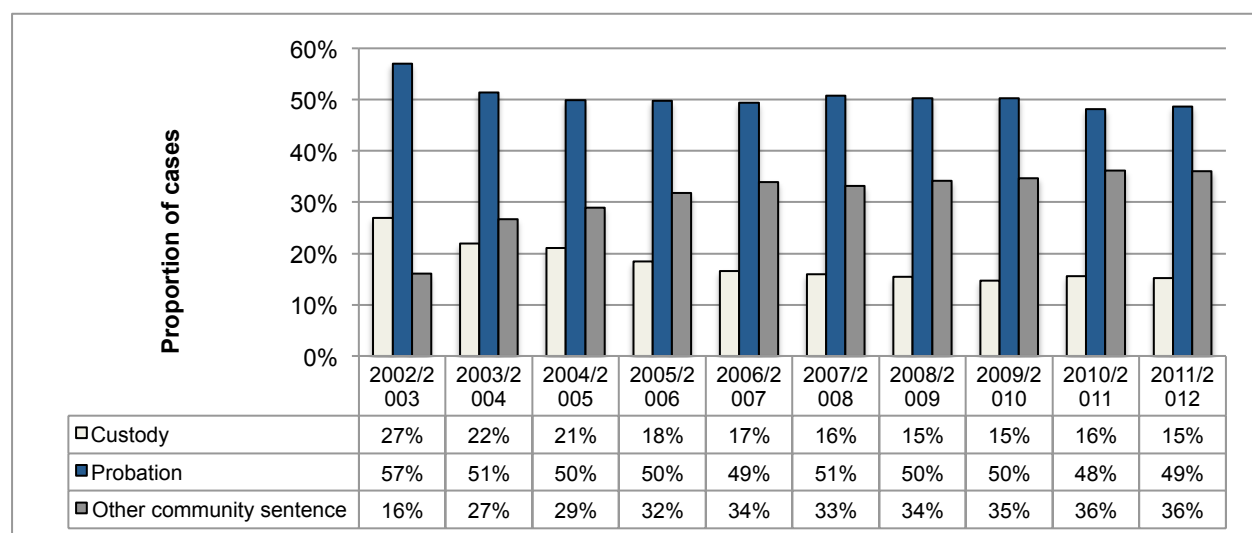
### ***Trends in the use of custody, 2002 to 2012***

If a youth is unable to be diverted by police, Crown, or during the adjudication stage in youth court (approximately one out of every five to seven youth is not diverted at these stages), they may receive a sentence in youth court that allows them to be dealt with via community measures. Like the direction around diversion at the police level, the YCJA (2002) makes stipulations regarding the use of custody by judges; the legislation also sets out numerous community-based alternatives to custody such as a reprimand or fine on the less serious end, and specialized community support and supervision for more serious offenders. The YCJA's sentencing principles state, "all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons..." (section 2(d)). Unsurprisingly then, across Canada, the proportion of youth sentenced to custody has also decreased since the promulgation of the YCJA; correspondingly, the proportion of youth sentenced to the community have increased. Like the declines in cases going to court, the declines in court cases resulting in custody began prior to the implementation of the YCJA as a result of shifts in attitudes within the public and in the courts (Spratt, 2012) given "evidence throughout the 1990s that far too many minor cases were in youth court and custody" (Spratt, 2012, p. 318). While throughout the 1990s between 25-30% of guilty cases completed in youth court resulted in custodial sentences, year over year decreases had culminated in only 22% of guilty cases resulting in custody by 2003/2004; a proportion that has stabilized since 2007/2008 at about 15% (Statistics Canada, 2013c). Deferred custody and supervision, a community sentence introduced in the YCJA, accounts for about 5% of youth sentences.

The duration of custodial sentences is such that nearly 50% are for one month or less with an average sentence of 39 days in 2011/2012. The most common sentence for youth cases

resulting in guilty findings is the community-based sentence of probation (58% in 2011/2012).<sup>14</sup> The second most common sentence falls under the “other” category, and includes several community-based sentences: intensive support and supervision programs, conditional sentences, attendance programs, absolute or conditional discharge, prohibition, seizure, or extrajudicial measures such as restitution or compensation, pay purchases, essays and apologies and counseling. In 2011/2012, 38% of guilty cases were given “other” sentences (See Figure 5).

**Figure 5: Proportion of Youth Court Cases by Most Serious Sentence, 2002 to 2012<sup>15</sup>**



(Statistics Canada, 2013b)

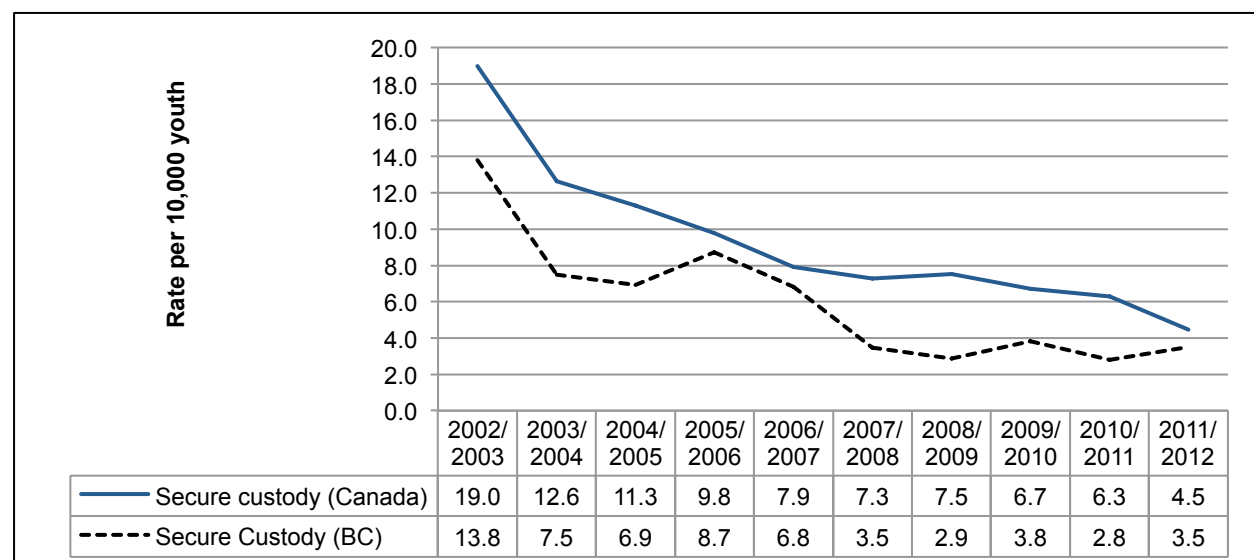
Finally, the figures for custodial populations have, as a result of diversion at police contact, charge stage, court attendance, and sentencing stages, decreased. As such, the youth incarceration rate in Canada decreased by 53% from 2002/03 to 2012/13 (a change in rate from 15 per 10,000 in 2002/03 to 7 per 10,000 in 2012/13). The decrease was even more pronounced in British Columbia where a 57% drop was seen over that time period (a change in

<sup>14</sup> While a youth probation sentence greater than six months to 12 months is the most common length of probation in 2002/03 and in 2011/12, probation sentences in 2011/12 are generally shorter than they were in 2002/03. Specifically, in 2002/03, 16% of probation sentences were for six months or less, while in 2011/12, 21% were for 6 months or less. In contrast, in 2002/03 82% of youth probation sentences were for more than 6 months, while in 2011/12, just 70% were for more than six months (Statistics Canada, 2013a).

<sup>15</sup> “Other community sentences include: conditional sentences, fines, community service orders and new sentences under the YCJA: intensive rehabilitation custody and supervision, deferred custody and supervision, intensive support and supervision, non-residential program attendance and reprimands” (Statistics Canada, 2013b).

rate from 7 per 10,000 in 2002/03 to 3 per 10,000 in 2012/13) (Statistics Canada, 2014e) (see Figure 6). In 2010/2011, an average of 121 youth were incarcerated in British Columbia on any given day. This represents 716 unique admissions over the span of a fiscal year (MCFD, Youth Custody Services, 2011)—these are the youth who are not subject to community-based responses. A report published by the McCreary Centre Society (MCS) in 2013 reported an average of 85 youth incarcerated in British Columbia on any given day (Smith, Cox, Poon, Stewart, & McCreary Centre Society, 2013). MCS indicates that 81% of these youth are male, 53% are between the ages of 16 to 18 years old and 52% identified as Aboriginal. Of the 114 youth surveyed by MCS, 51% reported being on remand while 16% were serving sentences in secure custody, 28% were serving sentences in open custody and 4% reported to be both serving a sentence and on remand. The most common charge youth cited that caused them to be in custody was administration of justice offences (58%), “assault/uttering threats (37%), robbery (36%), and weapons related offences (31%)” (Smith et al., 2013, p. 16): 78% of youth who participated in the survey reported having been in custody before.

Figure 6: Rate of youth admitted to secure sentenced custody, Canada and BC, 2002 to 2012<sup>16, 17</sup>



Although official statistics are not a complete measure of the phenomenon of youth crime given under-reporting, police discretion, variations on the administration of youth justice as well

<sup>16</sup> (Statistics Canada, 2014f).

<sup>17</sup> BC data prior to 2009/2010 should be interpreted with caution due to reporting practices.

as the number of crimes that go undetected, they can be considered to be a good measure of formal responses to youth crime (Winterdyk, 2012) and do provide insight into patterns and trends over time. As the crime rates, CSIs, court and correctional statistics have shown, youth justice in Canada, and more specifically youth justice in the province of British Columbia, has seen more youth dealt with via community-based responses, fewer youth incarcerated, and a lower recorded youth crime rate since the introduction of the YCJA (2002)—decreases that have begun to stabilize in recent years. The improvements, according to the Canadian Bar Association suggest that the YCJA has been “an unmitigated success” (Canadian Bar Association, 2010, p. 1). Because of the sharp drop in these statistics in 2003 and slightly before, academics conclude that shifts in attitudes and behaviours of practitioners while the legislation was being debated in government and the implementation of the YCJA itself can take a good deal of the credit (Bala et al., 2009; Carrington & Schulenberg, 2008). This section demonstrates that policy changes regarding a focus on community-based alternatives brought in by the YCJA (2002) were met with resulting changes to practice. As it stands, most youth who come to the attention of criminal justice system officials are dealt with in the community. Even those offenders who are sentenced to custody must serve the last third of their sentence in the community, a new provision under the YCJA (section 42(2)(n)(q)). In the next section, I consider the importance of examining the politics, policy and practice surrounding community-based responses to youth crime (that cannot be undertaken by examining official statistics).

## **Approaching the Research**

As evidenced by the preceding section, youth justice has undergone important policy and practice shifts under the YCJA (2002). These shifts are reflected in the statistical data concerning charge rates, court appearances, custodial dispositions and the overall custody population. The data support a picture of increases in diversion and community-based responses to youth crime throughout the country (Bala & Roberts, 2006). This picture, however, is incomplete given the many aspects of youth justice that are not measured via official data—a challenge exacerbated by a phenomenon of increasing numbers of youth being dealt with informally (i.e., not being captured in police statistics at all). As a result, it is critical to examine the policies introduced under the YCJA as well as their resulting practices and the overall political backdrop. In this dissertation, I examine community youth justice measures on an operational level and also on a policy-making level, and finally on a macro socio-political level. I

investigate the impacts of ideological and policy shifts and policy-making on individual practice and on the efforts of individual professionals. This research contributes to the body of work on youth justice in Canada by exploring the connections and disconnects between policy discourses at each of the political, policy and practice levels and highlights how such a multi-dimensional analysis is a meaningful way to assess an important social policy issue.

Data to undertake this examination was collected in two phases and analyzed iteratively utilizing thematic narrative analysis procedures. Phase 1 involved an examination of over a decade of policy-related discussions within the House of Commons and Senate as well as their respective committees and resulting legislation reported by *Legisinfo*. Phase 2 involved semi-structured interviews conducted with 14 professionals involved in the delivery of community-based youth justice responses in British Columbia, with the aim of accessing practice narratives on policy implementation. As stated above, there is a wide array of community-based responses to youth crime. In order to focus the research, phase 2 emphasized a group of practices: extra-judicial measures, extra-judicial sanctions, intensive support and supervision (ISSP) orders, youth justice committees, conferencing and restorative justice. The diverse group of professionals who participated in the interviews included police, youth workers, restorative justice personnel and probation officers in the regions of Metro Vancouver, the Fraser Valley and Vancouver Island within the province of British Columbia. Participants ranged in length of service from one year to over 35 years.

With respect to temporal scope, this research examines the time period beginning just before the introduction of new youth justice legislation, the YCJA (2002), and ends with the introduction of Bill C-10, which received Royal Assent on March 13, 2012, and introduced the most comprehensive changes to youth justice since the YCJA (to be discussed in Chapter 4). This study is both national in focus, given that the research includes federal documents in Phase 1, and also local, in that the focus narrows to include only participants located in British Columbia in Phase 2. In sum, this project encompasses an examination of the fundamental changes surrounding community-based responses to youth justice and surrounding discourse within the past decade.

## ***Dissertation framework***

This dissertation includes 12 chapters. Chapter 2 begins the discussion of the legislative history of the youth justice system in Canada providing important contextual features that aid in understanding the contemporary setting. Importantly, and in relation to community-based youth justice measures, the historical overview commenced in Chapter 2 examines the origins of those measures as well as the key philosophical, political and operational histories that helped to shape youth justice under Canada's first youth justice system legislation, the JDA (1908) and later, the YOA (1985).

Chapter 3 provides a history of the key reforms introduced under the YCJA (2002) with attention to how they have been implemented across Canada. The chapter presents the intellectual tradition surrounding the ideas and practices of these extrajudicial measures, including their associated histories and the assumptions they carry. It closes with a description of the philosophies and practices that have emerged from diversion and also restorative justice, and how these practices have evolved in British Columbia. Chapter 4 continues the discussion of youth justice under the YCJA with a more recent focus on some of the key issues and controversies surrounding youth justice from 2007 to 2012.

In Chapter 5, I describe the conceptual framework of this dissertation in detail by connecting the key shifts identified in Chapters 2, 3 and 4 to the literature, and by introducing concepts that help to form the foundation of the analysis chapters. Specifically, the chapter describes theories and models of the policy process and the utility of employing qualitative methods to examine policy landscapes. The chapter closes with attention to the extant literature on the causes and locations of disconnects between written policy and operational policy.

The methodological framework, data collection procedures, and analysis techniques are covered in Chapter 6. The chapter describes the rationale behind the research decisions and the overall fit between what I undertook to examine in this dissertation, the data, methods, data management and the analytic process with attention to the two-phase research design. The chapter ends with a discussion of how I maintained quality and rigor throughout the research.

Chapter 7 and 8 are the first of five results chapters and examine the themes, trends, concepts and patterns that emerged from phase 1 of the research, the archival analysis. In

these two chapters, I identify and examine key narratives in the archives over the sample with attention to community-based responses as situated in the wider context of Parliamentary/Senate discussions about youth justice policy. In addition to the identification of key narratives, in Chapter 8 I discuss the ebb and flow of the narratives over time with a focus on the process by which some narratives become more important and other become less important and how issues are framed and the policy story is told. The chapter presents broad findings on the whole of the archival data set and specific findings about the more restricted sample. Throughout this chapter, findings are compared with the literature.

Chapters 9, 10 and 11 present the narratives that emerged from the interview data. In Chapter 9, I first describe the 14 participants involved in the delivery of community-based youth justice responses who participated in semi-structured interviews. Next, I examine five key practice narratives that revolve around challenges affecting implementation of the YCJA (2002). The stories are arranged in such a way that they reflect both where and how challenges arise as well as the key ways in which professionals discuss their own ways of overcoming these difficulties. In Chapter 10, I take on the very specific area discussed by participants of restorative justice as a form of community-response available in some communities. I discuss the stories professionals shared of how they negotiated between competing values of community justice, restoration and crime control, and I consider how bridging diversion and restorative justice has affected operational youth justice. Chapter 11 examines how professionals concern themselves with negotiating and renegotiating the act of “doing good” in their everyday practices—the *caring ethos of social services*—and the significance this has for community-based responses to youth crime. I examine the influence of individual beliefs on the practice setting and compare these findings with literature on the ethics of care.

In the final chapter, Chapter 12, I summarize key findings and speak to the implications the research has for community-based responses to youth crime and for policy theory, and I discuss how these findings expand what we know about how policy is implemented. The chapter ends with recommendations for future research.

## CHAPTER 2: Historical and Legislative Context of Youth Justice in Canada and British Columbia

*Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision. ~ Section 3(2), Juvenile Delinquents Act (1908)*

### Chapter Overview

The legislative history of the youth justice system in Canada provides an important backdrop through which to understand the contemporary youth justice setting, particularly some of the policy issues that are critical today. Importantly, and in relation to community youth justice measures, the overviews in Chapters 2, 3, and 4 examine the origins of those measures as well as the key philosophical, political, and operational histories that helped shape community youth justice policy and practice today—that which I described with statistics in Chapter 1. As a matter of course, this examination also identifies the key changes in how young people were dealt with in the community under the YOA (1985) as compared to the JDA (1908). A generally accepted way to compare and contrast youth justice systems (over time and across geography) and their varying political approaches is by comparing a system to youth justice models—generic models that identify key categorical characteristics of the dominant youth justice systems as arrived at by Corrado (1992). Although Corrado’s original typology identified six distinct models (participatory, welfare, corporatism, modified justice, justice, and crime control) in practice, and as will be made clear later in this chapter and in subsequent chapters, contemporary youth justice systems—and Canada is no exception—are typically illustrative of a mixture of several models.

In Canada, youth justice laws are the responsibility of the federal government with individual provinces and territories delegated the power to develop their own policies and practices by which to administer and implement the law (Bala & Roberts, 2006; Katz & Bonham Jr., 2006). Given the federal government’s control over youth justice policy, transfer payments are allocated to provinces and territories for the administration of national laws and development of appropriate local programming (e.g., the delivery of youth justice services like probation and

custody is a provincial responsibility) (Corrado & Markwart, 1992). For this reason, under the practice of federalism, Parliament is expected to engage in extensive consultations with the provinces and territories on legislation. This relationship between the provinces and the federal government is significant to the understanding of the landscape, evolution and reform of youth justice policy and practice (Corrado, 1992).<sup>18</sup>

This chapter examines the near century-long period from 1908 to 2003 and provides an overview of the historical, legislative, and policy contexts surrounding youth justice in this country, with particular attention to the legislative and operational developments of community-based alternatives to the formal justice system. This history helps to situate present-day responses involving community-based responses to youth crime.

### **The *Juvenile Delinquents Act***

From 1908 until 1984, the *Juvenile Delinquents Act* (JDA, 1908)—Canada's first piece of juvenile-specific justice system legislation—governed the area of youth justice (Bala, 1992). Prior to the development of the JDA, several pieces of legislation had created special provisions for young people (e.g., separate incarceration of youth from adults; the age at which punishment could be dealt out; and trials for youth), but none had developed an entire system specifically dedicated to young offenders. Instead, prior to the JDA, youth who came into conflict with the law were often treated harshly and non-uniformly (Carrigan, 1998). At the same time, minor offenders were, in some cases, permitted to remain in the community under supervision—a process that marked the earliest informal uses of community supervision (Davis-Barron, 2009). A pronounced change, the approach embodied in the JDA created upper age guidelines (an upper limit of 16 years or that decided upon by each province) for those who would be subject to the legislation, and underscored the uniform treatment of youth as vulnerable beings throughout the country (Bala, 1992; JDA, s. 2).

Philosophically, the JDA (1908) was guided by *parens patriae*, a paternalistic, welfare-oriented view of youth justice, that presumed it was best for the state to decide the future of youth in conflict with the law (Leschied, Jaffe, Andrews, & Gendreau, 1992). The presumption

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<sup>18</sup> As Corrado (1992) elaborates, the rationale for the division of responsibilities for youth justice (and other criminal law) was to maintain consistency across jurisdictions as well as equality before the law, while at the same time, allowing some flexibility in local settings.

rested on the idea that youth were not fully capable of understanding, or taking responsibility for, their own actions (Davis-Barron, 2009; Denov, 2004), and is credited—at least in part—to the influence of the child savers movement. Child savers, mostly from the middle and upper class, were part of a highly influential social movement during the last 25 years of the nineteenth century, that sought to integrate a wide array of social welfare measures into the way children were treated (Carrigan, 1998; Leschied et al., 1992).

Another key philosophical influencer of the JDA (1908) was the belief that young people are largely a product of their socialization—deficits relating to social factors such as family, peers, poverty, and education were seen to be at the root of delinquency (Corrado, 1992). This thinking represented an important shift away from the pre-JDA emphasis on free will and rational thought, and towards a focus on external forces as causes of crime and delinquency. A product of this social context, the goals of the JDA were to reform and rehabilitate young people who were believed to have little control over their own deviance (Davis-Barron, 2009), and to protect these vulnerable persons. It should be noted that there are some divergent theoretical explanations for the roles of economic and macro-political forces that had influenced the creation of the JDA in the first place (Stoneman, 2011). While scholars identify the altruistic welfare-based efforts of the child savers as the dominant explanation for the creation of a youth-specific justice system, the new policy direction can also be viewed through a separate lens. Platt (1969) and Rothman (2001) for example, note that the JDA was but one of an increasing set of regulatory and controlling policies and programs for young people that more broadly underscored their role as rights-bearing consumers in the capitalist system.

### ***Community alternatives under the JDA***

Given the JDA's (1908) late 19th-early 20th century emphasis on rehabilitation and the treatment of youth as vulnerable people, informal responses to youth offending were widely used, thus continuing the inroads into community-based responses to youth offending that had begun prior to the JDA. Instead of exclusively utilizing the courts and incarceration, police, probation officers, prosecutors, and even school officials in some cases, warned youth, brought them home to their parents, or administered their own form of punishment on the threat of juvenile court if the youth continued their offending behaviour (Bala, 2003). While the JDA did not have specific requirements for diverting youth, these informal measures were commonly

employed (Bala, 2003). Probation—a sentence allowing offenders to serve all or part of their sentences under supervision in the community—was a formal diversionary practice legislated under the JDA, and allowed youth to avoid incarceration in certain cases (Hillian, Reitsma-Street, & Hackler, 2004; Maclure, Campbell, & Dufresne, 2003). Inside of courts, judges were encouraged to provide sentences based on the “best interests of the child” rather than proportionality to the offence, an idea that gave rise to indeterminate sentencing. The practice of providing indeterminate sentences meant that youth justice professionals outside of the court system were tasked with deciding on the length for which a youth was incarcerated (Leschied et al., 1992). The challenges associated with implementing indeterminate sentencing will be discussed later in this chapter.

Another mechanism that emphasized the treatment of youth in the community rather than in the courts and custody under the JDA (1908) was included in a 1926 amendment to the legislation where provisions for *adjournment sine die* (JDA, section 16) were added. “Adjournment sine die” allowed judges to elect to adjourn proceedings against a youth prior to adjudication until community-based measures had been attempted (Caputo & Vallée, 2010). In practice, according to Corrado and Bala (1985), judges typically used the section 16 provisions with minor and first time offenders, and usually adjourned proceedings in order for youth to attend school or receive counseling. Though judges could resume proceedings under section 16, in practice they rarely did. Adjournments sine die, however, were added to a youth’s record and could be considered by the judge upon future court proceedings (Bala & Corrado, 1985). Typical of community-based measures, these provisions were not used uniformly across Canada. Save for the 1926 change to the legislation, although youth justice practices evolved under the JDA, as the next section will show, the legislation itself remained largely untouched until it was replaced (Doob & Tonry, 2004).

Although the philosophical principle of *parens patriae* and the diversionary practices implemented under the JDA (1908) seemed to show that legislators and professionals were keenly aware of the vulnerability and diminished capacity of young people, put into practice, youth were often not allowed procedural fairness and were not subject to effective rehabilitative techniques (Bala, 1992). Furthermore, despite the positive change brought in by the JDA of creating a separate system for youth, because section 2 of the legislation granted each province the authority to determine the minimum and maximum age (the act guided the upper age, but

did not set it) for youth captured under the legislation, very different practices were evident across the country (e.g., in some provinces, youth as young as seven were dealt with through the youth justice system, while in other provinces, 14-years-olds were the youngest youth subject to the legislation) (JDA; Bala & Corrado, 1985).<sup>19</sup> The use of community-based sentences and diversion (e.g., “adjournment sine die” and informal diversion, as described above), as well as the availability of legal representation, also varied dramatically from province to province. Where diversion was concerned, some provinces (e.g., Québec) had extensive formal diversion programs, while others had limited or no diversion program at all (Bala & Corrado, 1985). In their 1985 study of the administration of youth justice within courts across Canada, Bala and Corrado found that while the courts they examined varied significantly in how they operated, they did so under the flexibility permitted by the JDA. For this reason, the authors affirmed that there were “many local juvenile justice systems” (p. 147) in operation, rather than a nation-wide system.

In addition to provincial variation, the amount of judicial discretion allowed under the JDA (1908) was heavily criticized, as it tended to limit due process rights afforded to youth, and tended to produce non-uniform sentences. Indeterminate sentencing, as mentioned above, was one practice at the centre of criticism, and involved sentences of custody or reform school of indeterminate lengths. Justice system officials would craft sentences based on the best interests of the child—governed by their own discretion—without any legislative guidance, a practice that allowed harsh sentences (Bala, 1992). On the other hand, the JDA was also criticized for permitting judges to use their discretion to sentence too leniently and in so doing, failing to address the goal of public safety (Bala, 1992). In addition to discretion and the administration of the youth justice system, the JDA was criticized for a failure to rehabilitate young offenders, and accordingly, a failure to achieve one of the key goals of the legislation as described earlier in this chapter. Many incarcerated youth were subject to physical and sexual abuse in poorly run custody settings at worst, or at best, stays in custody with little to no rehabilitation (Bala, 1992).

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<sup>19</sup> Bala and Corrado (1985) reported that while a minimum age of seven had been established by common law, and was used in British Columbia, Ontario and Nova Scotia, policies in Alberta and Quebec set the minimum age at 12 years of age and 14 years of age, respectively. Further, Alberta, Ontario and Nova Scotia set the maximum age at under 16 years, British Columbia set the maximum age at under 17 years, and Manitoba and Quebec set maximums of under 18 years of age.

Dissatisfaction with the treatment of youth under the JDA (1908) owing to non-uniformity, a lack of due process, and concerns over the effectiveness of rehabilitation programs, as described above, contributed to the wide adoption of diversion practices across Canada (despite the fact that diversion was encouraged, but not expressly legislated under the JDA) during the 1970s (Maclure et al., 2003). Social agencies were among the first to establish the early formal diversion programs in Canada as alternatives to the criticism-ridden formal processing under the JDA (Davis-Barron, 2009). Along with this dissatisfaction, the 1970s marked important shifts in social control policy: minor deviations by youth began to be more commonly understood as consequences of their immaturity, and as a result, diverted by police (Maclure et al., 2003).

The sociological approach to the study of deviance known as “labelling” theory played an important role supporting the development of diversion under the JDA (1908) (Bala, 2003; Maclure et al., 2003). Labelling theory indicates that an individual tagged with the title of “deviant” eventually comes to see him/herself as such. Seeing oneself as a deviant contributes to an offender’s deviant self-concept, which may lead to secondary deviance or commission of future offences (recidivism) (Lemert, 1951). “Those associated with labeling argued that the earlier theories had placed too much emphasis on the individual deviant and neglected the variety of ways that people could *react* to deviance” (Williams III & McShane, 1994, p. 130). Accordingly, it came to be believed that being processed by the juvenile justice system could itself contribute to criminal behaviour. This view was particularly influential to policy-makers.

In the era of labelling theory, consciousness among policy-makers and practitioners was raised regarding the powerful effects of stigmatizing offenders, particularly youth. During this time, government reports even began referring to youth as “young persons in conflict with the law” instead of “juvenile delinquents” or “young offenders” to avoid the stigma thought to be associated with the label (Doob & Sprott, 2004); this practice signaled the beginnings of a shift in how young offenders were understood. The research of American sociologists like Howard Becker (e.g., 1963) and David Matza (e.g., 1964) was highly influential in Canada. In their work, researchers recommended policy responses to youth justice that recognized the detrimental effects of labelling and, where possible, favoured screening youth out of the formal system (including diverting out of the formal court process altogether) (Bala, 2003; Doob & Sprott, 2004). Labelling theory was highly influential in shaping social control policy and practice during

the late part of the JDA (1908), along with the resulting “deinstitutionalization” movement (Caputo & Vallée, 2010) that affected practices of institutionalization of vulnerable people in general (e.g., it was during deinstitutionalization that many mental health facilities in Canada and the United States were closed) throughout North America (Bolton et al., 1993). Coupled with new community-based alternatives to deal with delinquent youth outside of correctional facilities, deinstitutionalization saw fewer admissions to youth correctional facilities throughout the 1970s and 1980s. The concerns around the JDA set in motion, not only these important shifts in youth justice practice, but also youth justice policy reform that centred around reducing overall incarceration and transitioning to more formalized and regularized programs of community-based responses to juvenile offending as the next section sets out.

### ***Youth justice reform from the 1960s to the 1980s***

Unsurprisingly, and according to Corrado and Markwart (1992), reform of the JDA (1908) began simultaneously with the above-noted shifts in youth justice philosophy and practice. A key policy juncture was marked with the Federal Department of Justice’s Advisory Committee, appointed in 1961 to review and make recommendations on the state of juvenile justice in this country. The committee’s report, released in 1965, considered the wide range of stakeholders and interest groups involved in the delivery of youth justice services, as well as international youth justice trends, and the expert opinions of criminologists. The committee set out to identify comprehensive strategies to reduce the number of delinquents who were incarcerated; committee members were also highly critical of a lack of resources available to the provinces to properly administer youth justice and to realize the extensive rehabilitative intents of the JDA (Corrado & Markwart, 1992). Ultimately, “the criticisms made of the JDA by the labeling theorists, behavioural psychologists and the due process advocates were reflected in the Report in 1965” (Bolton et al., 1993, p. 961). As described by Corrado and Markwart (1992), for the most part, the committee’s recommendations set the legislative framework for revised youth justice legislation, including: an emphasis on procedural fairness (due process); custody as a last resort; regularization of diversion; and the institutionalization of individual rights. Further, though the committee did not recommend the removal of welfare-based practices; it did recognize the risks inherent in the welfare approach when individual liberties were curtailed by a quest for rehabilitation (Bolton et al., 1993). The rights and due process-oriented shifts

recommended by the committee were, as Corrado and Markwart argue, timely given the civil rights movement in the United States.

The period of time from the release of the committee report in 1965 to the early 1980s when new youth justice legislation was introduced (the YOA) was marked by policy proposals that incrementally decreased emphasis on welfare-based principles in favour of an integration of more crime control concepts such as protection of the public (Bolton et al., 1993). For instance, an early version of the YOA (1985) introduced by the Liberal government in 1970—Bill C-192—demonstrated a preservation of welfare-based youth justice policy alongside new crime control and legalistic ideals. Although the bill was found to be overly legalistic by interest groups and academic experts alike, its proposal signaled the continued adherence to a welfare approach in the early 1970s, but with room for crime control. In the end, however, neither the New Democratic Party on the left, nor the Conservatives on the right agreed with the approach taken by the Liberals with Bill C-192 (Corrado & Markwart, 1992).

By 1975 and after considerable consultation, the Liberal government had introduced another proposal for youth justice legislation that, like Bill C-192, maintained a welfare approach blended with a legalistic approach drawing on due process and also introducing the concepts of accountability and responsibility—a blend of philosophies. This blend, according to Corrado and Markwart (1992), is evidence of efforts to produce a compromise that would be accepted by divergent interest groups. Like its predecessor, this proposal was not accepted, and by 1977 the newly elected Conservative government developed new directions on youth justice and introduced a proposal which shifted the key goal of youth justice policy to protection of society. By 1982, after another change in government, the Liberals would introduce Bill C-61, a proposal nearly identical to that brought forward by the Conservatives five years earlier. All three parties endorsed the bill. The philosophical direction of Bill C-61 signaled that the balance between welfare, crime control and due process concepts had been found by de-emphasizing the welfare approach. The shift that had been perceived by policy-makers and experts as “too radical,” and perhaps overly legalistic in the 1970s was welcomed in the 1980s (Bolton et al., 1993, p. 964).

Bolton et al., (1993) argue that coupled with the realization that rehabilitative programs had not adequately curtailed recidivism under the JDA (1908), and given the emphasis on diversion and other community-based responses to youth crime that had emerged in the 1970s, by the 1980s, the public was becoming increasingly concerned over a growing youth crime

problem. The last of these three reasons had allowed the balance to shift and made the government's proposal opportune. In fact, by this time, the move away from welfare-based legislation towards crime control and rights-based legislation was a philosophical change that would be nearly completely overlooked during Parliamentary debates on the YOA (Bolton et al., 1993).

Corrado and Markwart (1992) propose that the 1970s research-based movement towards a “nothing works” view of rehabilitation further explains the shift away from the welfare approach of the JDA (1908). Prior to being challenged in the 1980s, the pessimistic view helped to undermine support for a rehabilitative direction in youth justice policy (and other correctional policy) at a time when discretion coupled with rehabilitation was seen to be damaging to individual rights (e.g., indeterminate sentencing as discussed above). According to Corrado and Markwart (1992), the impact of uncertainty around rehabilitation amid a concern for individual rights led to policies that situated rights as “a new kind of child saver” (p. 155): if the state could not help children through rehabilitation, it would at least do no further harm and would protect their individual rights.

In sum, and as articulated by Corrado (1992), the philosophy underscored in Bill C-61 emphasized free will and rationality—the assumption that delinquents choose their behaviour—and also the notion that responsibility may be mitigated by individual factors such as age. The key principles of the bill more closely aligned the youth system with the adult system, but with some distinct features. Specifically, similar to the adult system, the bill recognized both the responsibility of young offenders for the crimes they commit, and the necessity to achieve protection of society. Distinct from the adult system, however, the wording of the bill accepted the limited accountability of youth and the “special needs” that they possess (section 3(1)(c)) (Corrado, 1992). In fact, the Charter is considered to have been a central catalyst for long-desired youth justice reform (Bala & Roberts, 2006; Maclure et al., 2003). In the following section I: (a) discuss the culmination of the 1960 to 1980 reform, the Royal Assent of Bill C-61, the *Young Offenders Act* (1984); (b) focus on the emergence of new youth justice policy and; (c) examine how community-based responses to young offenders shaped, and were shaped by, the new legislation.

## **The Young Offenders Act**

In 1984, more than two decades after the Federal committee was struck to review and make recommendations on youth justice, the YOA (1985) was given Royal Assent, transforming the youth justice system once again. Beyond a new emphasis on due process, offender rights, and public protection in addition to rehabilitation (Leschied et al., 1992), the Act established the age jurisdiction for the youth justice system from the 12th to the 18th birthday, promoting a uniform approach across the country (Bala, 1992). As discussed, the new legislation represented a shift in thinking, away from *parens patriae* and towards the idea of the self-determining child. The concept of the self-determining child was underpinned with the beliefs that young people are responsible for their own actions, and that young people are the bearers of individual rights. Accordingly, while youth were still afforded special and separate treatment, policy under the YOA emphasized individual accountability and protection of the public (Denov, 2004). The overall character of the YOA was a blend between a “get tough on crime approach,” also known as a crime control approach, with a focus on accountability and responsibility placed on young offenders (Corrado & Markwart, 1995), whilst retaining some aspects of a welfare approach to youth justice (Maclure et al., 2003). The remnants of the welfare-based philosophical approach underpinned the specific provision of community-based alternatives within the YOA. These alternatives are discussed in the following section.

### ***Alternative measures under the YOA***

In contrast to the JDA (1908), the legislative framework of the YOA (1985) enshrined in law, alternative measures—diversion—including practices such as police screenings and warnings to divert minor and first-time offenders out of the formal justice system (Davis-Barron, 2009; Hillian et al., 2004; Schissel, 2006). An offshoot of the informal diversionary measures that had emerged under the JDA, alternative measures as implemented by the YOA were premised on providing alternatives to the formal justice system given that such involvement comes with negative consequences, specifically, the stigma attached to having a criminal record (Hillian et al., 2004). As Alvi (2012) elaborates:

The assumption behind alternative measures was that when young people go through the process of arrest, detention, court and sentencing, the very act of

being labeled a 'young offender' greatly contributes to the potential for those individuals to see themselves as young offenders. Thus, alternative measures exist to divert certain individuals away from the criminal justice system so that they do not 'see themselves' as criminals and thus 'become' criminals (p. 12).

Diversion practices, and in particular, police screening, were found to have been exceedingly valuable under the JDA, and were thus retained and expanded under the YOA. To this end, the YOA's declaration principle provided that "where it is not inconsistent with the protection of society, taking no measures...should be considered for dealing with young persons" (section 3(1)(d)). Ultimately, that principle would enshrine in law both informal (e.g., police warnings) and formal (e.g., pre and post charge diversion programs) diversion (Corrado & Markwart, 1992).

Section 4 of the YOA (1985) established the legislative framework for formal alternatives measures and gave substance to the declaration principle. Specifically, section 4 clarified that formal alternative measures programs are only available to youth in provinces where the Attorney General has established alternative measures programs; this optional implementation clause continued the operation of very different alternatives measures programs across the country, an issue that will be explored later in this section. Furthermore, section 4 specified that youths must consent to the alternative measures process and also take responsibility for the offence with which s/he has been accused of in order for alternative measures to commence. Importantly, section 4(1)(f) of the YOA emphasized the requirement that in order for alternative measures to take place, the Attorney General must be satisfied that there exists "sufficient evidence to succeed with the prosecution of the offence." The clause was designed to reduce instances of net widening—a process by which youth who would not have otherwise been charged would be subject to an alternative measure (Hillian et al., 2004).

In addition to the express intent to screen youth out of the formal youth justice system, the YOA's inclusion of alternative measures also emphasized the involvement of community members in responding to delinquent behaviour (Maclure et al., 2003). For some, the involvement of the community under the YOA was appropriate given the immense resources offered by communities under the JDA, however, for others, such an involvement signaled a more pragmatic intent: that cost control underpinned the involvement of the community given that the costs of non-intervention were significantly less costly overall, and would be shifted from the provinces to individual communities (Alvi, 2012; Maclure et al., 2003). According to Alvi

(2012) for example, “[w]hile it could be argued that this [diversion] strategy is designed to have the community more involved with their children, it could also be suggested that community emphasis places the burden on the public to deal with transgressions of their youth” (p. 13). This criticism centres on the idea that while the practices of diversion place the control and responsibility for a large number of delinquent youth in individual communities, the government fails to adequately re-allocate financial resources. As a result, communities may subsidize a public system into which they pay taxes. Although this critique is an important concern of the YOA, its successor, and community-based responses to crime in general, it is given only minimal attention throughout the literature (a discussion by Maclure et al., 2003, is a notable exception).

In addition to formal alternative measures, the YOA (1985) also set out the provisions for youth justice committees in section 69, permitting provinces to implement committees that would “assist without remuneration in any aspect of the administration of this Act or in any programs or services for young offenders and may specify the method of appointment of committee members and the functions of the committees.” In practice, youth justice committees drew together members of the community who had an interest in assisting young offenders. These committees tended to have as their focus the administration, monitoring, and support of youth undertaking alternative measures (Bala, 2003). Importantly, because of the requirement to accept no remuneration, committee membership excluded professionals such as social workers and police, and was instead made up of volunteers. As a result of the availability for each province to choose whether and how to implement (or not implement) committees, the extent to which committees existed, and the form that they took, varied widely across the country (Bala, 2003).

As stated, although the intent of the YOA’s (1985) drafters was that section 4(1)(f) might help alleviate instances of net widening, there is evidence that police charged youth under the YOA in instances where they would have used only a caution under the JDA (1908) (Bala, 2003). Further, there were concerns that diversion merely positioned the community as the site of social control and came with many of the same stigmatizing effects it had set out to avoid (Alvi, 2012). The result was that, compared to the JDA, the “net” of youth captured by the formal justice system widened under the YOA. Importantly, prior to the enactment of the YOA, “youth justice policy in Canada was not heavily influenced by partisan concerns or public opinion”

(Cesaroni & Bala, 2008, para. 475). This would begin to change in the late 1980s when “the emergence of public concern about the perceived level and seriousness of youth crime [became] a significant catalyst for change in the Canadian youth justice system” (para. 475), as opposed to its status as only one of many influencers of youth justice policy in the early 1980s (Bolton et al., 1993).

### ***Controversy and the YOA***

In addition to the concerns with the use of alternative measures as described above, controversy surrounding many more aspects of the YOA (1985) emerged (Corrado, 1992). On the one hand, and as described by Corrado (1992) and Bala (1992), some critics felt that the YOA’s treatment of young offenders was far too lenient as a result of providing violent young offenders with too many rights, and failing to adequately protect society. Others argued that while the YOA’s emphasis on rights and due process was a welcomed change, the shift away from rehabilitation and a concern with the development and needs of young offenders, and resulting shift towards an emphasis on social control, was problematic (Alvi, 2012). From the mid-1980s through the 1990s, legislators would introduce significant amendments into the YOA, attempting to address criticisms from both extremes.

The first of three revisions to the YOA (1985) took place in 1986 (Bill C-106), and was one in a series of changes that would move the YOA further towards a crime control approach (Corrado & Markwart, 1992). The 1986 revisions introduced charges for a breach of probation, and permitted the release of a young offender’s name in cases where the youth was in the community and was considered dangerous. The introduction of charges for breaching probation was particularly significant: prior to these revisions, youth who violated the conditions of their probation may have been subject to a revised probation order, but did not usually face new charges (Doob & Cesaroni, 2004).

Despite legislative amendments that strengthened the crime control provisions of the Act, throughout the 1990s under the YOA (1985), alternative measures became increasingly diverse in some parts of the country (what seem to be contrasting principles signaled the emergence of the mixed justice model as described by Corrado). These measures began to evolve alongside police developments into restorative justice—an informal, non-adversarial,

community-based approach to justice focused on repairing the harm caused by crime, rather than assigning blame and delivering punishment. For example, by 1995, police in Canada were heavily focused on restorative justice conferencing based on Australia's Wagga Wagga model (Chatterjee & Elliott, 2003).<sup>20</sup> In 1995, two police officers in Sparwood, British Columbia, began unofficially applying the Wagga Wagga model of restorative justice to their workload (including both youth and adults), and one year later, Canada's Department of Justice sent representatives to New Zealand and Australia to learn more about the approach. Both the Royal Canadian Mounted Police (RCMP) and the Ontario Provincial Police had placed a good deal of emphasis on community policing<sup>21</sup> throughout the 1990s. The philosophy and practice of restorative justice was seen to be quite compatible with that direction in Canadian policing (Shaw & Jane, 2000) and gave police important new tools for their community-approach. The role taken by police was to train community facilitators to employ its chosen restorative justice tool, the community justice forum. By 1998, 1,700 individuals across Canada had been trained by the RCMP to facilitate the forums (Chatterjee, 1999).

While diversion under the YOA (1985) was looked upon as a preferred method of dealing with youth charged with minor violations of the law, like other community-based social control responses including community policing, it was also understood as a cost-effective way to reduce the taxed youth court system (Maclure et al., 2003). In this way, the community provided justice responses alongside the government—a relationship that would become increasingly important during and after the federal government's deep funding cuts to social welfare programs in the 1990s (Maclure et al., 2003).

Under a Liberal government from 1993 to 2002, Canadians witnessed massive reductions in federal government spending on social services and programs, and also in federal transfer payments to the provinces (as discussed, federal transfer payments are used to fund

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<sup>20</sup> The Wagga Wagga model of conferencing is based on Maori justice and can be contrasted slightly with the practice originating with New Zealand's 1989 *Children, Young Offenders and Families Act* (Chatterjee & Elliott, 2003). That legislation provided for the majority of offences, including serious ones, to be referred to family group conferences where offenders, victims and their communities would work towards a restorative solution with the aid of a facilitator. Whereas the New Zealand model focused more heavily on reforming the offender, the Wagga Wagga model differed, in that restoring the victim was the central task.

<sup>21</sup> Community policing, a model of policing that continues to dominate Canadian policing today, refers to "localized problem solving grounded in close relationships with community members." In practice, community policing creates opportunities for community members to become involved in setting police priorities and also in addressing and preventing crime and disorder as opposed to incident-based "911 policing" (Bazemore & Griffiths, 2003, p. 2). Community policing sets out to make communities more resistant to crime and more resilient.

local youth justice programs among others) (Jackson, 2010). Under then-Prime Minister Jean Chrétien and his Minister of Finance, Paul Martin, the federal government engaged a program of decreased spending that was successful in reducing national debt following a recession. The debt was reduced almost primarily through spending cuts with only very minor increases in revenue (i.e., small tax increases) by 1997/98 (Eisler & Schissel, 2008). Social programs that were made to offer the same levels of services with less funding, however, burdened the consequences of the spending cuts. Arguably, community programs began to occupy an even more important place in the youth justice system (among other social systems) as a stopgap to help make up for the cuts to funding. In all, critics argued that the cuts had social in addition to financial outcomes and entrenched private and community-based solutions to social issues that had been once been perceived as public problems. In addition to the ideological shift in thinking away from welfare-based principles in the move from the JDA (1908) to the YOA (1985), fiscal restraint necessitated a more pronounced and pragmatic shift away from the welfare state (Morrow, Hankivsky, & Varcoe, 2004). For Alvi (2012), the actions signaled the presence of a “continued drift in Canadian social and economic policy towards governance strategies that explicitly reject the welfare model” (p. 15).

The undesirable effects of the YOA (1985) that were identified throughout its implementation were undoubtedly exacerbated by funding reductions at the national and provincial levels that left programs in individual communities severely underfunded. One of these effects was the uneven application of youth justice policy across the provinces (something that had also been a criticism of the JDA, 1908). Because, as mentioned above, the provinces are responsible for administering youth justice, differing views of the value and effectiveness of alternative measures saw some provinces offer widespread diversion (e.g., British Columbia and Québec) and others (e.g., Ontario) take an exceedingly narrow approach with limited creation of alternative measures programs. For example, under the first decade of the YOA, Ontario’s approach involved no new local policies or funding for alternative measures programs, with that province citing concerns around effectiveness, potential abuses of youths’ rights and net widening (Bala, 2003). Importantly, by 1988, Ontario’s approach was met by a section 15 Charter of Rights and Freedoms challenge (equality before and under the law), where it was argued that the refusal to provide a structure and specialized funding for alternative measures violated the right of “equality before and under the law” because youth in Ontario did not have the same access to programs as other Canadian youth (Bala, 2003).

Although in 1988 the Ontario Court of Appeal in *R. v. S.(S.)* held that Ontario's lack of alternative measures programs did indeed violate equality rights and, as a result, the province did introduce an alternative measures program, in 1990, the Supreme Court of Canada reversed the decision. The Supreme Court found that the YOA provided that alternative measures "may" be used—and were not mandatory. The Supreme Court's decision clarified that alternative measures under the YOA were an optional provision delegated to individual provinces (Bala, 2003). Despite the ruling, Ontario maintained the alternative measures program that it had developed after the Ontario Court of Appeal's ruling, at least in part due to the decision on another case before the court (*R. v. Askov*). In the 1990 *Askov* decision, the Supreme Court of Canada ruled that delays within the Ontario court system had violated the accused's section 11(b) Charter rights (the right to be tried within a reasonable time), and would be remedied with a stay of proceedings. The message the judgment sent to the province of Ontario was to find a way to reduce waiting times for court for both youth and adults. Alternative measures were seen as an integral way to reduce both financial pressures and delays on the courts (Bala, 2003).

In contrast to Ontario, British Columbia and Québec took a much more proactive approach to alternative measures under the YOA (1985). Policy-makers in both provinces attempted to avoid what they predicted would result in net-widening under the YOA with a continued focus on community-based alternatives that had been developed throughout the province under the JDA (Davis-Barron, 2009). The result was that Québec had the lowest rate of youth court use in Canada under the YOA. Eventually, successes seen in Québec would lead to that province's and the Bloc Québécois' reluctance to endorse an overhaul of the YOA, citing that the legislation was working in that province—implying that the problem was with individual provincial and territorial implementation rather than the federal legislation itself (Davis-Barron, 2009).

Although preventing involvement in the formal justice system was an intent clearly stated within the legislation (Maclure et al., 2003), on a national level, the YOA (1985) resulted in *more* youth dealt with by the formal youth justice system than had been the case under the JDA (1908). By 1991, Canada's youth crime rate was at its highest level since recording began (Carrington, 1999), generating concern that more youth were being dealt with by the formal youth justice system than under the JDA as a result of net widening. As discussed earlier in this

chapter, net widening, long a criticism of diversion, saw youth who would have been diverted informally under the JDA sent to new programs, while the youth court charge rates either did not change or increased. During the 1980s and 1990s, critics contended that, in practice, diversion was at least equally coercive in comparison to the formal youth justice system, because offenders were often *compelled* to take part in programs (Griffiths & Verdun-Jones, 1994) with the threat of court proceedings if they declined. Likewise, Alvi (2008) suggests that while the strong movement towards alternative measures to divert first time or minor young offenders from the formal justice system had potential, practice under the YOA continued to overemphasize imprisonment, punishment, and individual responsibility. In its implementation, the YOA had allowed youth crime to become de-contextualized from its associated structural factors—such as racism, inequality, poverty, and sexism—and had reconstructed youth in conflict with the law into two categories: those who have made minor transgressions, and those who are “bad, dangerous, superpredators” (Alvi, 2008, p. 248). Alvi pointed to the exceedingly low rate of diversion under the YOA coupled with the exceedingly high rate of incarceration as evidence of this view.

Similar to the 1986 revisions to the YOA discussed earlier, revisions in 1992 (Bill C-12) seemed driven by public dissatisfaction with the state of youth justice (Corrado & Markwart, 1995) and once again moved the legislation closer towards a crime control approach to youth justice. In particular, the amendments in 1992 responded to concern that under the YOA, the maximum sentence for first-degree murder was three years, whereas a youth transferred to adult court would face a life sentence (parole eligibility after 25 years). It was the case that neither end of the spectrum seemed appropriate: the low end of the spectrum was perceived as inadequate to deal with violent young offenders, whereas the severity of the penalties in adult court led to a reluctance of judges to transfer violent youth (Bala, 1992). The resulting changes to the YOA in the 1992 raised the maximum sentence for first and second-degree murder in youth court and revised parole eligibility for those youth transferred to adult court (parole eligibility set by judge at between five and ten years) (Bala, 1992). As a result, the YOA was once again brought closer towards embodying a crime control philosophy.

### ***A decade later: Post-1995 youth justice reform***

The first ten-years of the YOA (1985) were met with intense public dissatisfaction and the perception that the legislation was no better than the JDA (1908) in achieving public safety and the rehabilitation of youth (Bala, 1994; Corrado & Markwart, 1995), and had perhaps even worsened the youth crime problem. At least part of the dissatisfaction stemmed from the release of official statistics by Statistics Canada showing increases in both police-reported youth crime and the number of youth in court. To many members of the public, these statistics reflected the occurrence of an increase in actual youth crime, whereas to others, the data signified a decreasing tolerance of adolescent behaviour (Bala, 1994). Those of the latter opinion suggested that behaviour that may have been dealt with very informally under the JDA, and thus not captured by statistics, was being taken more seriously under the YOA. Further concern with the YOA occurred as a result of media sensationalism that seemed to promote the idea that youth were becoming more violent, and tended to depict the YOA as overly protective of youth rights at the expense of public safety (Corrado & Markwart, 1995). By the early-1990s, the belief that the YOA was not working was widespread, not only among the general public, but also among practitioners and young offenders themselves. This dissatisfaction would become important during the 1993 federal election campaign in the following way: while the economy was an important issue during campaigning as a result of a recent recession, the issue of youth justice was also a concern (Doob & Cesaroni, 2004)—one of the first times youth justice was positioned as a key political platform issue. The Liberal party won the next election foreshadowing important changes to youth justice policy. A keystone of Jean Chrétien's Liberal campaign had been a promise to get tough on crime, and youth crime in particular (Trépanier, 2004). In June 1994 after the Liberals had formed the government, the lack of public confidence in the youth justice system propelled then-Justice Minister Allan Rock's two-phase reform of youth justice (Rock, 1994).

The first phase in youth justice reform led by Allan Rock was contained in Bill C-37. The bill presented several key amendments to the YOA (Rock, 1994), including to the principles of the legislation. Bill C-37 encouraged punishment, and in particular, incarceration, to be viewed as a last resort; to achieve this, community-based sentences would become more important for non-violent offenders. The new principles would stress crime prevention—best achieved through attention to root causes of delinquency—as the key to long-term protection of society and that

protection of society is best achieved through rehabilitation. Secondly, Bill C-37 created tougher penalties for serious and violent young offenders, most notably by increasing the maximum sentence for first degree murder to 10 years (and also increased the maximum sentence for second degree murder to seven years) and revising transfer (to adult court) provisions for violent 16 and 17-year-olds (Bala, 2005; Rosen, 2000).

The second phase of youth justice reform was an overall review of the youth justice system and legislation to be undertaken by the House of Commons Standing Committee on Justice and Legal Affairs.<sup>22</sup> The review was to offer an objective, thorough, and critical examination of: (a) the nature of youth crime; (b) public knowledge of and attitudes towards the youth justice system and the YOA itself; (c) alternative measures; (d) culturally appropriate responses to youth crime and; (d) the connections between services provided to youth and the legislation itself (Doob & Cesaroni, 2004; Rock, 1994). In addition to the Standing Committee's review, the Federal-Provincial-Territorial (FPT) Task Force on Youth Justice<sup>23</sup> was to conduct its own review with a special focus on cross-jurisdictional responsibilities and concerns. Ultimately, the two-phase reform would come to fruition when, in December of 1995, Bill C-37 was passed. This was followed by the 1996 release of the FPT Task Force's report, "A Review of the Young Offenders Act and the Youth Justice System in Canada" (Department of Justice Canada, 2009) and by the 1997 Standing Committee report, "Renewing Youth Justice" (House of Commons Canada, 1997). The remainder of this chapter discusses the contents of these three documents—the precursors of the successor to the YOA, the YCJA (2002).

#### ***"A Review of the Young Offenders Act and the Youth Justice System in Canada"***

The FPT's report, "A Review of the Young Offenders Act and the Youth Justice System in Canada," consisted of a 650-page examination of the youth justice system and was presented to the House of Commons on November 21, 1996. Given the composition and mandate of the committee, the recommendations focused on the procedures of youth justice as administered by the provinces and territories, the structure of federal transfer funds, and also on legislative

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<sup>22</sup> A Standing Committee is a permanent subject-area committee established by the House of Commons to undertake special reviews. Reports by the Standing Committee can have important policy impacts.

<sup>23</sup> The FPT Task force on youth justice constitutes senior youth justice officials delegated by federal, provincial and territorial ministers responsible for youth justice and is led by one federal and one provincial co-chair (in 1996, the provincial co-chair was from the British Columbia). Québec did not participate in the task force.

changes that would enable further creation of alternative measures programs in the provinces and territories. The report addressed several key challenges respecting the youth justice system including: a lack of public confidence in the youth justice system; differing youth justice practices across the country resulting in very different rates of youth before the court and in custody across the provinces and; the need to address the complex and multi-disciplinary social issues faced by young offenders (Rivard & Markwart, 1996). In order to respond to these challenges, the task force offered several key considerations including the importance of crime prevention, community-alternatives and alternatives to custody, as well as the acknowledgement that youth justice issues are multi-disciplinary and thus require cooperation among service providers (e.g., mental health; youth in care).

Overall, a central area of discussion within the FPT report was the matter of community-based responses to youth crime (called “front-end measures” by the report’s authors). To this end, the task force recommended formalizing police-diversion by legislating the availability of cautions—formal police warnings designed to impress upon youth the seriousness of the offending behaviour to prevent recidivism and to divert youth from the system. The report also recommended increased attention within provinces and territories to developing their own alternative measures programs, like the one that had been developed by the RCMP in Sparwood, British Columbia in 1995. Such programs, the FPT task force acknowledged, require additional resources. The task force disagreed on whether such funding should come in the form of new monies directly from the federal government, or whether existing transfer funds should be re-directed to alternative measures programs. The task force also found that community-based responses to youth crime should be extended to pre-trial arrangements in order to reduce the youth incarceration rate (Rivard & Markwart, 1996).

The recommendations of the task force are considered to have been highly influential in reforming the youth justice system. It should be noted that while part of the impetus for both the FPT report and the Standing Committee Report was the public and political concern with high youth crime rates, by 1996, the official rates had decreased to below their rate in 1983 under the JDA (1908). This decrease received little public attention (Carrington, 1999). Instead, media honed in on several tragic episodes of youth violence that seemed a catalyst for youth justice

reform and signal that young offenders were getting worse.<sup>24</sup> The very few, but overwhelmingly serious cases of youth violence that dominated the consciousness of the Canadian public, depicted extremely violent incidents of youth crime as typical, and helped to maintain the idea of a youth crime crisis throughout the 1990s and into the 2000s. As a result of a combination of under-resourced community-based responses to youth crime, the proliferation of highly publicized violent youth crimes, and the increase of street-involved youth (a social rather than criminal issue), Schissel (1997), contended that Canada was “on the verge of an acute moral panic...” (p. 166) regarding youth crime. He argued that if the panic continued, it would result in a more punitive youth justice system with politicians “unable to resist” (p. 166) adding more punitive policies to their crime agendas.

### **“Renewing Youth Justice”**

The House of Commons Standing Committee’s 1997 report, “Renewing Youth Justice,”<sup>25</sup> was the culmination of the testimony of over 300 witnesses and 166 special groups, committee members’ visits to 23 youth justice sites (e.g., youth custody facilities; alternative measures programs), cross-country roundtables, and the National Forum on Youth Crime and Justice<sup>26</sup> (House of Commons Canada, 1997). As stated in the report, the work was completed to examine the youth justice system in light of a severe lack of public confidence in the system paired with declining resources, and was part of then-Justice Minister Allan Rock’s reform plan (as described above). The committee found that: (a) while most youth offending is minor in nature, Canada had a very high rate of youth incarceration; (b) most serious and violent young offenders suffer from multiple systemic challenges including child welfare system involvement and mental health issues; (c) punishment of youth convicted of serious, violent and repeat

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<sup>24</sup> For example, in the province of British Columbia, 16-year-old Jesse Cadman was murdered by a group of youth in a random act in 1992. In 1997, 14-year-old Reena Virk, was murdered by a group of peers known to her. Both murders dominated local and eventually national media as well as academic discussion for years. The trials surrounding Virk’s death were before the courts for over a decade.

<sup>25</sup> Québec authored a dissenting opinion on the report citing a preference for maintaining the status quo in Québec—a program largely centred on alternative measures that resulted in the lowest incarceration rate of youth in the country—and asked the Federal government to increase its transfer payments to the province so that it might increase its community-based programming (House of Commons Canada, 1997).

<sup>26</sup> The National Forum on Youth Crime and Justice took place on November 22, 1996 (the day following the release of the FPT report) in the House of Commons and brought together experts on youth justice from across the province. The three topics on the agenda were (1) early interventions and alternatives measures for first-time and minor offenders; (2) community-based alternative measures for youth involved in the youth justice system and; (3) responses for serious, violent and repeat offenders (*Hansard*, November 22, 1996).

offences is ineffective given these youth have little or no stake in conformity; and (d) community-based alternatives have the potential to be more effective than judicial responses in rehabilitating youth and promoting the development of healthy and socially competent beings (House of Commons Canada, 1997). A final and overarching finding of the committee was a persistent lack of knowledge and awareness of the legislation and of the youth justice system more generally, by the public, by youth themselves and by youth justice practitioners (e.g., probation officers; police). To correct these issues, and thereby improve the youth justice system, the Standing Committee articulated 14 recommendations.

The 14 recommendations, some of which were influenced by the FPT report, were wide-ranging, concerning everything from administrative issues (i.e., how youth justice was administered in the provinces and territories and funded by the Federal government), to public knowledge and awareness of the youth justice legislation, to specific changes to the legislation itself (House of Commons Canada, 1997). Six of the recommendations concerned alternative measures and other community-based alternatives to the formal justice system. Specifically, the report affirmed the new principles put into place by Bill C-37 in 1995 that had made long-term protection of the public via rehabilitation and alternatives measures a guiding principle of the YOA (1985). Additionally, in recognition of the under funding of community-based responses that had severely undercut the potential success of such programs, the Committee recommended that federal transfer funds be dedicated to crime prevention efforts, and that provinces and territories redirect federal funding away from custody and towards community crime prevention and other non-custodial options. The report also recommended that system-wide reform take place to advance community-based alternatives and also youth justice committees that were proven to be successful (e.g., police cautioning; circle sentencing) and recognized that legislative changes may be necessary in order for this to happen (House of Commons Canada, 1997). The sections of the report dedicated to discussions of community-based alternatives were heavily influenced by best practices identified internationally in New Zealand (family group conferencing), Australia (family group conferencing), and also provincially in British Columbia (family group conferencing modelled after the New Zealand program), Québec (alternative measures and police diversion system), and Yukon (circle sentencing).

In addition to those recommendations on community-responses, the Committee made several other recommendations including that a separate system for youth be maintained, and

that the legislation retain the maximum age. The report contained several procedural recommendations including that youth court be granted jurisdiction to deal with youth aged 10 to 11-years-old who were charged with serious and violent offences; a requirement for parents/guardians to attend youth court; the relaxation of publication bans on youth's names where there is a risk of serious harm or where public safety is at risk and; judicial discretion in determining whether statements made to persons in authority (e.g., police) are admissible in court. Finally, the recommendations included developing an education campaign to correct some of the misconceptions of youth crime (House of Commons Canada, 1997). In sum, the recommendations by the Standing Committee directed government to maintain the existing YOA (1985) and to work on the incorporation of key amendments that would strengthen rehabilitation and diversion, address key administrative challenges, and counterbalance the public perception that youth crime was becoming more severe. Despite this advice, as will be shown in the next section, the government responded to the recommendations of the FPT Committee and the House of Commons Standing Committee with a proposal for a complete overhaul of the youth justice system with their "Strategy for the Renewal of Youth Justice" in 1998.

### ***The "Strategy for the Renewal of Youth Justice"***

"The Strategy for the Renewal of Youth Justice," (Department of Justice Canada, 1998) was introduced on May 12, 1998, by then-Minister of Justice, Anne McLellan. A document that would eventually culminate in the introduction of new youth justice legislation, the strategy clearly articulated three broad criticisms of the YOA (1985) based on those recognized by the FPT Committee and the House of Commons Standing Committee. These criticisms included: (a) the lack of provisions within the youth justice system to prevent youth involved in the criminal justice system from entering into a "life of crime"; (b) a need for more attention to be placed on serious offenders; and (c) a need to respond to over-incarceration of Canadian youth compared to countries such as the United Kingdom and Australia through the use of community measures that can adequately impart responsibility and accountability onto young offenders (Department of Justice Canada, 1998).

The direction towards strengthening and reforming the youth justice system as outlined in the "Strategy for the Renewal of Youth Justice" was both multi-faceted and novel (Department of Justice Canada, 1998). Not surprisingly, with the strategy, the government promised that an

overhauled youth justice system, underpinned with new legislation, would take violent and repeat young offenders more seriously. The government outlined a variety of responses directed at this group of chronic offenders including enhanced legislative authority to publish the names of some young offenders and the expansion of adult sentencing for this group of youth. What was considered to be the most novel part of the strategy, however, was the clear direction on how to deal with the majority of young offenders, those who were first time and minor, non-violent offenders. In this vein, the government positioned restorative justice as a central element of the future of youth justice. The Strategy document, however, was criticized for its focus on ill-informed public opinion. For example, in 1998, the Canadian Criminal Justice Association wrote:

Merely creating new legislation is an attempt to cope with perceived negative public opinion. If no program resources are provided and no effective strategy to promote public understanding are put in place, it amounts to putting a fancy label on the same basic product. Inevitably, this will lead to further public disgruntlement when no miraculous improvement occurs, resulting in yet more pressures for more punitive measures. (Canadian Criminal Justice Association, 1998, n.p.)

It was clear to many that restorative justice would form a key part of new youth justice legislation and policy, but clear to others that the new system would neither represent a paradigm shift nor a restorative revolution. For example, while the case has been made by several scholars in the field (Bala, 2003; Hillian et al., 2004) as well as within policy-relevant documents, that the YCJA (2002) represents a move towards (or back to) restorative justice measures, others prefer to view the specific measures entrenched in the YCJA as permitting the integration of restorative justice measures—rather than mandating this philosophical change. In the following chapter I discuss these perspectives as well as the overhauled youth justice system and new legislation.

## **Conclusion**

The ways that Canadian policy-makers have responded to youth crime through legislation have evolved considerably from the absence of a separate youth justice system prior to the JDA (1908), to the provision of a highly complex model of youth justice nearly 100 years

later. Overall, the literature covering the historical and contemporary shifts in youth justice policy and practice covered in this chapter, documents a broad turn away from the welfare-based approach under the JDA and towards a mixed model incorporating philosophies of crime control and community justice. Further, the literature shows that the system of federalism permits a diverse range of provincially specific implementation and local practices that are not always uniform across the country. Additionally, the literature documents the politicization of youth justice in the 1990s and the resulting significant impacts on policy where policy beliefs and views are greatly influenced by current events. A key contextual feature of the shifts in youth justice has been identified as a fiscal shift in federal (and local) government where governments have been required to pursue cost-effective solutions to youth justice practice.

The near 100-year period between 1908 and 2003 saw instrumental shifts in the way that youth justice was regulated and delivered in this country. Throughout that time, community-based responses to youth offending evolved from a set of informal process that eventually appeared to be both the solution to avoiding the stigma of the formal system and a cost-effective solution under the JDA (1908). Under the YOA (1985), informal measures were formalized as alternative measures. The period began with the introduction of legislation that created a separate youth justice system, and ended under another piece of legislation that was found to be highly problematic. Practices under the JDA (1908) were criticized for their lack of uniformity, while rehabilitation programs were seen to be inadequate and ineffective. Furthermore, the paternalistic philosophy upon which the JDA was based saw widespread uses of indeterminate (and often unfair) sentencing practices based on the “best interests of the child” that began to lose support as the JDA aged. Though informal and community-based responses to youth crime are rooted in practices that began prior to the entrenchment of a specific youth justice system, they gained traction under the JDA because they were seen as tools to improve a system that was, by the 1960s and 1970s, plagued by professional criticism. In fact, owing to the emergence of labeling theory in the 1970s and coupled with increasing disenchantment with a problematic youth justice system that was seen as unfair and uneven (and in some cases, abusive) in its application, practices involving deinstitutionalization and diversion were looked to for their potential to treat youth informally outside of the juvenile justice system. Simultaneously, the dissatisfaction with the lack of recognition of individual and procedural rights—a marked distinction from the adult system—grew and was given particular significance in the rights-based period of the 1960s and 1970s.

By 1984, the youth justice system had been overhauled with the YOA (1985) replacing the JDA (1908). In contrast to the JDA, the YOA emphasized alternative measures and also due process and individual rights. While a welfare approach to youth justice was a key driver of the JDA, the introduction of the YOA and the later amendments to the legislation represented a turn towards a crime control approach to the problem of youth crime. Despite this shift, the practice of diversion seemingly gathered incrementally more attention as an important tool under both pieces of legislation. While community-based responses had some success under both the JDA and the YOA, advances were limited by a lack of funding. Further, youth justice had become politicized in the 1980s and public concern around a perceived increase in youth crime in the 1990s began a moral panic that called for more punitive youth justice policies.

In addition to the philosophical and theoretical shifts that had occurred from the JDA (1908) to the YOA (1985), diversion was also seen as a pragmatic youth justice response given decreased federal spending in the 1990s. Furthermore, alongside legislative developments, policing policy, most notably within the RCMP, emphasized the usefulness of community policing and subsequently restorative justice in the 1990s. The emergence of these two policing strategies again helped to increase the traction of community-based alternatives for youth crime throughout the country.

In the following chapter, I continue the review of youth justice legislation and the practices of community-based responses to youth crime, but with a focus on the YCJA (2002). That discussion examines youth justice policy as it is today, while situating the YCJA as a mixed model of youth justice and identifying the implications of policy with multiple philosophical directions.

## CHAPTER 3: The Youth Criminal Justice Act

*One of the things I really took [out of the creation of the YCJA (2002) is that] it's a recognition that the machine of youth justice chews people up and dismantles people and destroys people. Its ineffective and really not a favorite mechanism to pursue. And they [the drafters of the YCJA] threw in two key facets, I thought: one for the police and one for the judiciary. Either extrajudicial measures or extrajudicial sanctions...~ Daniel<sup>27</sup>*

### Chapter Overview

Community-based responses to youth crime continue to occupy an important part of youth justice policy and practice under the YCJA (2002), specifically owing to their mandatory consideration as set out by the legislation. In fact, “a major rationale for enacting the statute was to reduce Canada’s high rate of custody for adolescent offenders, based on the belief that community-based responses are more effective for dealing with most young offenders” (Bala & Roberts, 2006, p. 37). This chapter provides a detailed examination of the context and workings of the contemporary youth justice system under the YCJA and of youth justice practice in British Columbia, the province of interest to this dissertation. Each of these elements are important in setting the stage for the examination of the last decade of youth justice policy, and its connections to practice in British Columbia. The chapter is not only important in identifying the significant issues and shifts in youth justice policy under the YCJA that have set the stage for the current context, but also in some of the controversies explored throughout the literature. In it I identify the central policy objectives relating to community-based responses to youth crime and how these ideas are reflected in the provisions within the YCJA. I then examine how practice began to shift and change under the first few years of the legislation and the philosophical debates that garnered attention.

### Philosophy of the YCJA

As expected, new youth justice legislation followed the federal government’s “Strategy for the Renewal of Youth Justice” discussed in Chapter 2. The YCJA (2002), was the Liberal

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<sup>27</sup> Daniel was a participant in this research. All participant names have been substituted with pseudonyms.

federal government's response to public and political outcry regarding two disparate concerns: the perceived leniency of the YOA's (1985) response towards criminal behaviour of youth (Davis-Barron, 2009; Giles & Jackson, 2003) on the one hand, and what then-Justice Minister Anne McLellan described as "the highest youth incarceration rate in the western world" (in Davis-Barron, 2009, p. 65) on the other. As Bala and Roberts (2006) reported, the federal government was concerned that "Canada had made too much use of expensive and often ineffective court-based responses and custody for the majority of young offenders who are not committing serious violent offences" (p. 43). As a result, the proposed direction forward included a greater emphasis on community-based responses to youth crime (as alternatives to courts and custody) and the further development of preventative strategies. This section begins with a discussion of the philosophy of the YCJA and the key provisions that were crafted to correct the perceived shortcomings of the YOA with regard to community-based responses. It ends with an outline of the key controversies around the YCJA.

The preamble of the YCJA (2002) makes it clear that the intent of Parliament was to address the problems in the youth justice system and in doing so, to reserve custody for serious and repeat violent young offenders, and to provide community alternatives in the form of extrajudicial measures for minor offenders (Bala & Anand, 2004; Barnhorst, 2004). Specifically, the preamble set out the intent of the youth justice system as one that:

"fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons..." (YCJA, 2002)

A clear contrast from the YOA (1985), the preamble of the YCJA emphasizes restraint, limiting the availability of custody to violent and severe cases (Barnhorst, 2004). Further, not unlike the YOA, responsibility and accountability are once again underscored. In another clear contrast, however, the elements of rehabilitation and reintegration—from the JDA (1908)—are again featured as goals of the youth justice system under the YCJA. The declaration of principle (section 3(1)) sets out the overall intention of the YCJA as follows:

The youth criminal justice system is intended to:

- (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour;
- (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
- (iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public.

From this it would appear that the principles of crime prevention, rehabilitation and meaningful consequences would each share equal weight as key underpinnings of the YCJA, and that the long-term protection of the public would serve as the overall goal of the legislation.

In order to achieve these objectives, the YCJA (2002) outlines a trifurcated system: First, minor offenders who commit non-violent and first time offences are to be dealt with through no intervention at all (e.g., police screening) or in the community (e.g., extrajudicial measures and extrajudicial sanctions). Second, youth who are neither first time offenders on the one hand, nor serious/violent offenders on the other hand are to receive community-based sentences (e.g., probation; intensive support and supervision orders; other community sentences). Third, serious and/or violent offenders are to receive custodial sentences with the option for adult sentencing in especially severe cases (Kuehn & Corrado, 2011). Section 3(1)(c)(iii) of the Act clarifies meaningful consequences as those that are specifically tailored for the individual offender given their specific context, specifying that such consequences should:

- (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents the extended family, the community and social or other agencies in the young person's rehabilitation or reintegration.

In sum, and according to Barnhorst (2004), the ideas articulated throughout the preamble to the YCJA, the declaration of principle and the specific principles within the legislation set out a new youth justice philosophy that would incorporate restraint, accountability, proportionality, protection of the public, rehabilitation and would address needs and structured discretion.

Proposed as Bill C-7 in 1999, the YCJA (2002) underwent extensive Parliamentary debate and provincial and expert consultations, and was ultimately subject to several criticisms. Conservative politicians found the bill to be too “soft” on youth crime and not responsive enough to their desire to lower the age of criminal responsibility to 10 years old. Youth justice professionals (including judges) and academics found the bill to be overly punitive and inconsistent with the idea of treating youth differently than adults (Bala, 2003; Bala & Roberts, 2006). Those who found the bill overly punitive argued that the focus of Bill C-7 overemphasized accountability instead of welfare principles and did not adequately recognize that youth could not be expected to have the same level of moral culpability as adult offenders (Bala & Anand, 2004). Although critics on either side of the debate could be found across the country, the latter opinion was strongest in the province of Québec. Québec had long adhered to a more strict welfare-based policy for young offenders and had developed extensive alternative measures programs under the YOA (1985). For the most part, throughout the Parliamentary debate on Bill C-7, Bloc Québécois politicians suggested that the YOA did not need to be overhauled at all, as it was working in their province. Instead, they argued, provinces needed to more effectively develop their own community-based alternatives to fully implement the spirit of the YOA (Trépanier, 2004).<sup>28</sup> Where Québec’s politicians and professionals were concerned, Bill C-7 threatened to unravel the rehabilitative successes that had been developed in the province prior to and under the YOA. Similarly, in their 2003 policy review, Giles and Jackson (2003) characterized Bill C-7 as essentially the same as the YOA except with a lighter emphasis on due process in favour of a greater emphasis on crime control.

Like the YOA (1985), the YCJA (2002) was, arguably, a compromise, drafted to appease divergent groups with critically different philosophical views on the problems with youth justice policy and solutions to youth crime (Bala et al., 2009); it had also been prepared to respond to a decrease in the public’s confidence of the youth justice system under the YOA (Bala & Roberts, 2006) as was discussed in Chapter 2. After undergoing Parliamentary debate from 1999 through 2002, the YCJA came into force on April 1, 2003. Importantly, in addition to what was found to be an excessively high rate of incarceration under the YOA, Canada was found also to have one of the lowest youth diversion rates worldwide (Bala et al., 2009). To address this, along with the

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<sup>28</sup> As Trépanier (2004) elaborates, Québec viewed the YOA very differently than did the rest of Canada owing to a lesser degree of American-influenced perceptions of the youth crime problem and a belief that the proposed legislation was developed due to political rather than policy need.

coming into force of the YCJA, “[t]he federal government also committed a further \$200 million to provincial governments to be spent over 5 years, principally to increase community-based alternatives and over \$30 million for initiatives to prevent youth crime, mainly directed to local groups” (Bala & Roberts, 2006, p. 43).

As the following section will show, community-based alternatives to youth crime (including diversion from both judicial processing and correctional involvement) formed an integral part of the new legislation. Especially significant, and a contrast with the optional alternative measures legislated by the YOA (1985), many diversionary measures within the YCJA were accompanied by mandatory provisions.

### **The YCJA’s Community-based Responses to Youth Crime**

A central component of the YCJA (2002) was its emphasis on community-based responses to youth crime as the key to reducing the use of both youth court and custody. As would be expected, reducing the use of court and custody would be advantageous not only in treating young people in their communities, thus decreasing stigma and reducing the need for re-entry programs, but would also represent enormous cost savings to the government (Hogeveen, 2005). The annual cost to house a youth in a custodial facility is approximately \$215,000. A community-based sentence is about a tenth of the cost (BC Representative for Children and Youth & Office of the Provincial Health Officer, 2009). Police-led pre-charge diversion strategies would be a fraction of that.

In general, the spirit of community-based responses to youth crime in the YCJA (2002) is decidedly different than “alternative measures” in the YOA (1985) as a result of the earlier legislation indicating that only where it is not contrary to public safety, should alternative measures be considered (Doob & Spratt, 2004). Primarily in response to high rates of youth incarceration in Canada, the diversionary provisions in the YCJA set a requirement that police and Crown Counsel consider alternative measures prior to sending a youth through the court system in all cases (though police and Crown still retain their discretion to proceed formally under the YCJA). Extrajudicial measures and sanctions mandated in the YCJA (2002) include anything from a police warning to a conference between the youth and victim, and are typically used with first-time and non-violent offenders (Giles & Jackson, 2003; Kuehn & Corrado, 2011).

## ***Extrajudicial measures***

The emphasis on extrajudicial measures is a primary objective of the YCJA (2002) (Marinos & Innocente, 2008). In contrast to the YOA (1985) that included alternative measures as optional considerations, the YCJA makes the consideration of extra-judicial measures and sanctions mandatory. As set out in section 2 of the YCJA, extrajudicial measures, involve “measures other than judicial proceedings...used to deal with a young person alleged to have committed an offence and includes extrajudicial sanctions.” This body of provisions is three-fold and includes: (a) front-end measures such as police warnings and program referrals; (b) Crown referrals to community-based extrajudicial sanctions programs which may involve programs such as victim-offender reconciliation; and (c) community conferences (Bala, 2003).

Part 1 of the YCJA (2002) describes extrajudicial measures and in particular, the declaration of principles (section 4) which reads:

- (a) extrajudicial measures are often the most appropriate and effective way to address youth crime;
- (b) extrajudicial measures allow for effective and timely interventions focused on correcting offending behaviour;
- (c) extrajudicial measures are presumed to be adequate to hold a young person accountable for his or her offending behaviour if the young person has committed a non-violent offence and has not previously been found guilty of an offence; and
- (d) extrajudicial measures should be used if they are adequate to hold a young person accountable for his or her offending behaviour and, if the use of extrajudicial measures is consistent with the principles set out in this section, nothing in this Act precludes their use in respect of a young person who:
  - i. has previously been dealt with by the use of extrajudicial measures or
  - ii. has previously been found guilty of an offence.

The declaration of principles regarding extrajudicial measures contained in section 4 is illustrative of the emphasis placed on community-based alternatives within the YCJA, and sets it apart from the YOA (1985) where alternative measures were encouraged but not legislated. According to Bala, Carrington and Roberts (2009), the specification in section 4(c) that extrajudicial measures are “presumed adequate” reflect a clear intent of Parliament to reduce

the number of young offenders in court, especially those first-time, non-violent offenders. Furthermore, the wording in the YCJA makes it clear that extrajudicial measures may also be used with youth who have a history of extrajudicial measures or convictions. That is, decisions on whether an extrajudicial measure should be used should focus much more on whether the measure can hold the young person accountable for the specific offence they committed, than on a youth's previous offending behaviour (Marinos & Innocente, 2008). Thus, the YCJA "encourages police and prosecutors to avoid automatically escalating the degree of criminal justice intervention in response to subsequent offending" (Bala, Carrington & Roberts, 2009, p. 138).

### ***Warnings, cautions, and referrals***

Warnings, cautions and referrals constitute informal front-end extrajudicial measures administered by police prior to a charge being laid, and are outlined in sections 6 through 9 of the YCJA (2002). Section 6(1) sets out that:

A police officer shall, before starting judicial proceedings or taking any other measures under this Act against a young person alleged to have committed an offence, consider whether it would be sufficient, having regard to the principles set out in section 4, to take no further action, warn the young person, administer a caution, if a program has been established under section 7, or with the consent of the young person, refer the young person to a program or agency in the community that may assist the young person not to commit offences.

Because of the integral role police play in a youth's entry into the criminal justice system (i.e., they are typically a youth's first contact with the justice system and are responsible for recommending or laying a charge), they are seen as an important part of diversion and are encouraged to consider dealing with young offenders informally or through extrajudicial measures.<sup>29</sup> Warnings, cautions and referrals are specific types of police screening. As discussed in Chapter 2, these practices were exceptionally common under the JDA (1908) in dealing with cases involving children under 12 years of age that were considered not serious

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<sup>29</sup> In some provinces, police have exclusive power to lay charges, while in others—BC for example—Crown prosecutors must conduct initial screening of all cases police have recommended for a charge prior to charge approval.

enough as to warrant formal processing, and those cases where an informal chat with, or reprimand by, police was thought to be deterrent enough. Under the JDA, warnings and cautions in particular had been found to be both cost-effective and successful at preventing crime. Given the lack of formal diversion programs in existence, these practices were particularly useful (Bala, 2003). It should be noted, however, that despite mandatory consideration of diversion as set out in section 6(1), section 6(2) of the YCJA provides that in cases where police fail to consider warning, cautioning or referring an accused youth, subsequent charges are not invalidated—a provision that Giles and Jackson (2003) argue severely undermines the potential of diversion under the YCJA.

As stated, the YCJA (2002) does not specify which offences are eligible for police extrajudicial measures. For this reason, eligible offences vary across the country depending on provincial and territorial policy. In Québec, for example, police are permitted to use extrajudicial measures in any youth cases, while in British Columbia the use of extrajudicial measures are restricted to crimes other than major indictable offences (i.e., serious crimes like murder, sexual assault are excluded) (Vogt, Cohen, & Czeck, n.d.). Where police do decide to divert a youth for eligible offences, they may choose from a range of measures increasing in severity depending on the seriousness of the offence. At the very informal end, police may simply do nothing. In such a case, police may take or send a youth home without any further action. As the need for a more structured response increases (perhaps for a more serious offence), police may opt to formally caution a youth, which may involve notifying their guardians and/or having the youth prepare an apology to the victim(s). If a more formal response is deemed necessary to hold a youth accountable, police may choose to refer a youth to a particular community-based program that may or may not offer offence-specific treatment and/or reconciliations with, or apologies to, victims (Marinos & Innocente, 2008). In cases where police are not able to hold the youth to account through these available front-end measures, a charge may be recommended or laid. Police may also keep records of warnings and cautions; though not set out in the Act, in practice, if a youth who has already had one or more warnings/cautions is alleged to have committed an offence, police may use previous contacts in their decision of whether to divert again. It is acknowledged that due to the numerous police agencies across the country and some challenges in police information sharing, a youth's history with one police agency may not get shared with others (Bala, 2003).

In cases where police do decide to lay or recommend a charge, Crown Counsel may divert youth via Crown cautions. Crown cautions operate under provincial programs set up under section 8 of the YCJA (2002) and provincial screening measures set up under section 23 (Harris, Weagant, Cole, & Weinper, 2004). Provisions that act as an accountability mechanism to ensure police have acted within provincial directives, Crown cautions also allow prosecutors to divert youth in more serious cases where police choose not to do so (Bala, 2003). Although Crown prosecutors already have the authority to exercise discretion on whether to proceed with a case, Crown screening as provided for in the YCJA serves to actively encourage, rather than solely permit, this level of screening (Bala, 2003). Similar to police screening, prosecutors may choose to warn the youth not to commit future offences or may recommend that a youth attend a diversion program. Referrals to diversion programs as recommended by prosecutors take the form of extrajudicial sanctions as will be discussed in the next section.

When the YCJA (2002) was enacted, section 9 provided that information concerning whether police or Crown had warned or cautioned a youth was inadmissible in future court proceedings. This recognized that a youth's agreement to participate in diversion does not warrant a finding of guilt. Section 10 provides that where the severity of a youth's offence causes police to believe that a warning, caution or referral would not be adequate to hold a youth accountable, they may lay or recommend a charge. If a Crown prosecutor does not find cautioning to be a suitable response at the pre-charge stage, they may also elect to proceed with a charge. In both cases, extrajudicial sanctions described below may be appropriate.

### ***Extrajudicial sanctions***

In addition to the availability of the informal police and Crown measures described above, the YCJA (2002) created the availability for provinces to authorize extrajudicial sanctions programs under section 10. In practice, extrajudicial sanctions include a wide variety of programs depending on locale that focus on family group conferencing, victim-offender reconciliation, restitution, apologies, and community service (Bala, 2003). Section 10 gives Crown prosecutors the opportunity to divert youth into one of these more formal extrajudicial sanctions program in communities where they have been established and authorized by the Attorney General (section 10(2)). The Act sets out that extrajudicial sanctions are to be used

To deal with a young person alleged to have committed an offence only if the young person cannot be adequately dealt with by a warning, caution or referral...because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances. (section 10(1))

As such, extrajudicial sanctions are considered appropriate for youth who have committed more serious offences and those who may not be first-time offenders. According to the following conditions set out in section 10(2), an extrajudicial sanction may be used if:

- (a) it is part of a program of sanctions that may be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province;
- (b) the person who is considering whether to use the extrajudicial sanction is satisfied that it would be appropriate, having regard to the needs of the young person and the interests of society;
- (c) the young person, having been informed of the extrajudicial sanction, fully and freely consents to be subject to it;
- (d) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
- (e) the young person accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed;
- (f) there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence; and
- (g) the prosecution of the offence is not in any way barred at law.

While decisions around the appropriateness of extrajudicial measures are made in consideration of whether the measures can hold a youth accountable, decisions on extrajudicial sanctions take into consideration not only the individual offender, but also the best interests of

society. Accordingly, extrajudicial sanctions should only be used in cases where a youth admits responsibility and agrees to participate in the program. At this stage, if an accused fails to admit guilt and/or states his or her preference for a judicial process, the youth would be recommended to youth court (Bala, Carrington & Roberts, 2009). In order to reduce the potential use of such measures when a youth would not otherwise be subject to judicial proceedings, section 10 is clear that a prerequisite for extrajudicial sanctions is the sufficient evidence to prosecute. In contrast to informal warnings, cautions and referrals as described in the previous section, the record of participation in extrajudicial sanctions may be introduced at a future trial as an aggravating circumstance “if, in the two years following the imposition of the sanction, the youth *is* found guilty of an offence in youth court” (Bala, 2003; Bala et al., 2009, p. 138). However, statements of guilt or remorse expressed by youth in the context of an extrajudicial sanctions program are not admissible in future civil or criminal proceedings under section 10(4) of the YCJA (Bala, 2003).

Although the YCJA (2002) permits Crown prosecutors to refer youth to extrajudicial sanctions programs before or after a charge is laid, a study undertaken in British Columbia by Moyer and Basic (2005) found that in cases where Crown referred to extrajudicial sanctions, they predominantly did so only after a charge was formally laid. According to the authors, this procedure was used in order to impress upon the youth the seriousness of the crime. The authors found that Crown overwhelmingly utilized the Crown caution procedure to divert youth prior to a charge. When Crown prosecutors do use extrajudicial sanctions, they may also involve probation officers in order to assist in the assessment of whether an extrajudicial sanction can hold a youth to account, to help identify appropriate, and available local programs and/or to monitor a youth as s/he completes a program.

The type of crime a youth has committed also has some bearing on whether an extrajudicial sanction is selected. In British Columbia, for example, common assault is the only “offence against the person” that is eligible for diversion, while the availability for property offences is much greater (Moyer & Basic, 2005). While youth with prior records, and those who have been previously diverted, are eligible for extrajudicial sanctions, those who have breached probation or bail conditions are not. Furthermore, although youth having prior justice system contact are eligible, Moyer and Basic’s (2005) sample of cases from British Columbia and Saskatchewan found that “no B.C. case had prior system contact according to the records

available to the Crown” (p. 26). In the same study, a British Columbia Crown prosecutor cited a lack of “offence-specific [extrajudicial sanction] program” as a main reason for deciding not to divert an eligible youth, stating “If I know all they’re going to do is write a letter of apology and report, I’m not as likely [to refer a youth to EJS a second time]” (p. 27). Additionally, that study found that while all British Columbia Crown prosecutors were familiar with extrajudicial sanctions programs, only a few defense counsels were acquainted with the range of available services.

In addition to extrajudicial measures and sanctions, the YCJA (2002) also allows for the creation of youth justice committees and youth justice conferences in order to assist in selecting appropriate extrajudicial sanctions and in monitoring a youth’s compliance. While police and Crown prosecutors are the primary professionals involved in decision-making around extrajudicial measures and sanctions, as the next section will show, depending on how they are utilized in each community, committees and conferences involve a wider variety of community members with diverse expertise. The mandates of committees and conferences range widely from assisting in individual cases to assisting with the development of youth justice programs and/or policies.

### ***Youth justice committees***

Section 18 of the YCJA (2002) sets out the framework for youth justice committees and is similar to section 69 of the YOA (1985) as described in Chapter 2, except that the YCJA, allows committee participants to be reimbursed for their service. This change makes it possible for professionals employed in youth justice (e.g., police, probation officers, and prosecutors) to take part in youth justice committees—a marked change from the YOA (Bala, 2003). In recognition of the work that some provinces had done in establishing youth justice committees under the YOA, the YCJA permits the continuance of any such programs (Bala, 2003). It should be noted, like extrajudicial measures and extrajudicial sanctions, the provision of committees is delegated to the provinces and accordingly, varies across the country. Section 18(1) of the YCJA promotes the use of “committees of citizens...to assist in any aspect of the administration...or in any programs or services for young persons.” Actions of the youth justice committees involve advising on extrajudicial measures, supporting victims and reconciliation,

arranging mentoring for youth, coordinating between child protection agencies and the criminal justice system where necessary, and providing a conference under section 19 of the YCJA.

Section 18(2) of the YCJA sets out the role of the committee in cases where a youth is accused of an offence including:

- (i) giving advice on the appropriate extrajudicial measures to be used in respect of the young person;
- (ii) supporting any victim of the alleged offence by soliciting his or her concerns and facilitating the reconciliation of the victim and the young person;
- (iii) ensuring that community support is available to the young person by arranging for the use of services from within the community, and enlisting members of the community to provide short-term mentoring or supervision, and
- (iv) when the young person is also being dealt with by a child protection agency or a community group, helping to coordinate the interaction of the agency or group with the youth criminal justice system.

The inclusion of committees under the YCJA is considered broad enough that in practice, numerous very different activities are considered a part of this practice (Hillian et al., 2004).

“Youth Justice Committees in British Columbia and Ontario are not extensively involved in initiating and implementing diversion programs...and conferencing, unlike those in other provinces and territories” (Hillian et al., 2004, p. 349). Instead, across British Columbian municipalities for example, numerous community organizations hold section 18 designations and are used in an advisory capacity to better connect the justice system with the community, in monitoring youth court proceedings and legislation and also as an information hub for the public to gather facts about how the youth justice system works. Given the extensive expertise held by members of these committees, they are also looked upon to provide advice to municipal councils regarding resources and program development and to the Minister of Justice/Attorney General. Most committees in British Columbia began under the provincial legislation as family court committees and evolved in scope to include youth justice under the YOA (1985) (e.g.,

Hillian et al., 2004 reported that 25 youth justice committees were in operation in British Columbia under the YOA) and now operate as family court committees under provincial legislation and as youth just committees designated under section 18 of the YCJA. Committees across British Columbia predominantly adhere to an advisory role (e.g., Tri-Cities Joint Family Court and Youth Justice Committee; Vancouver Children, Youth and Families Advisory Committee) while few supplement their primarily function as an advisory committee by providing assistance in individual cases (e.g., North Shore Family Court and Youth Justice Committee). In contrast, in the province of Alberta, youth justice committees typically take on one or more of the following functions: as advisors to judges on youth sentences; administration of the extrajudicial sanctions program (e.g., the Edmonton Youth Justice Committee Society's primary role is to administer extrajudicial sanctions) and/or conducting crime prevention and public education activities. In that province, cases are streamed to committees by probation officers either at the pre-charge stage, the post-charge stage, or at the sentencing stage depending on the terms of reference of the particular organization (Department of Justice Canada, 2003). The broadness in scope of section 18 has designated committees with very different purposes to operation throughout the country prior to the YCJA to continue and has entrenched their existence into law.

### **Conferences**

Youth justice conferences, provided for in sections 19 and 41 of the YCJA (2002), are closely related to the committees described above, in that committee members may play direct roles in a conference. Section 19 allows people to convene over any decision that is required to be made in the course of administering the YCJA including decisions on extrajudicial sanctions, sentencing, release conditions and reintegration plans (e.g., a final decision within the community; a recommendation to a youth justice court judge in a more serious case). "While conferences were implicitly permitted, and were used, under the Young Offenders Act, they are explicitly authorized by the YCJA, and provision is made for their use at various stages of the youth justice process" (Carrington & Schulenberg, 2004, p. 222). In practice, conferences may include any of the following: "integrated case management conferences; family group conferences; community/ neighbourhood accountability panels or youth justice committees; victim offender mediation/ reconciliation; and Aboriginal sentencing and healing circles" (Hillian et al., 2004, p. 347). Like extrajudicial measures and extrajudicial sanctions, conferencing stems

from the practice of diversion as a result of an intent to screen youth out of formal judicial proceedings, and also finds links to restorative justice in attempting to repair the harm caused by the youth's actions (Hillian et al., 2004).

Bala (2003) indicates that youth justice conferences were modeled in part on the "family group conference" of New Zealand, and on the Aboriginal traditions of Canada and that these meetings that typically include offenders, various community members, and victims, usually follow a restorative justice direction (Bala, 2003). One example, the Calgary Community Conferencing Program, established in 1999, highlights the connection between conferences and restorative justice (Bala, 2003). The program, a collaboration between Calgary Youth Probation, Calgary Board of Education, Mennonite Central Committee, John Howard Society, and Calgary Family Services, is "committed to restorative practices as a way of repairing within the context of their community, the relationships among young people who have committed wrong doings, those they have harmed, and the community" (Calgary Community Conferencing Program, 2005). Because conferences tend to operate on restorative justice practices, recommendations and decisions are usually also community-based. For that reason, those who have taken part in a conference are less likely to be sentenced to custody (Bala, 2003).

Also like extrajudicial measures, extrajudicial sanctions, and youth justice committees, conferences existed under the YOA (1985) in varying capacities across the country. In British Columbia, for example, between 60 and 70 community accountability programs existed in the province prior to the implementation of the YCJA (Hillian et al., 2004). Prior to the implementation of the YCJA (2002), British Columbia developed intergovernmental processes to discuss and approve policy changes that would correspond to the power given by the Federal Government to individual provinces to implement their own community-based responses to youth offending. Provincial representatives from the Ministry of Attorney General and Public Safety and Solicitor General (the two ministries merged in 2010 to become the Ministry of Justice) and the Ministry of Children and Family Development made up a working group on conferencing, with specific subcommittees designed to develop conferencing policy for British Columbia (Hillian, et al., 2004). The working group drafted policy on several topics: (a) integrated case management conferences for high risk youth; family group restorative conferences, now known in British Columbia as "restorative conferencing" and based on restorative justice and diversion practices developed in New Zealand; (b) community

accountability programs, taking a restorative justice approach to dealing with minor offences; (c) Youth Justice Committees, allowing community members the opportunity to advise youth court; (d) victim/offender reconciliation programs operating to bring a resolution to an offence, either in place of or after the formal court process and; (e) Aboriginal sentencing circles, an extension of the formal court process designed to decide on a sentence with input from the community and presence of victims, offenders, and their supporters. Restorative family group conferencing and integrated case management were developed in order to respond to youth who exhibit chronic patterns of offending or who are convicted of a serious offence (Hillian, et al., 2004).

While policy provisions for these types of conferences exist in British Columbia,<sup>30</sup> as this chapter will demonstrate, funding has severely threatened and stifled conferencing development in this province—a weakness predicted throughout the literature during the implementation phase of the YCJA (2002) (Hillian, et al., 2004). Despite funding shortfalls, an estimated ninety restorative justice programs were operational in British Columbia by 2007—perhaps due to budgetary restraints, the vast majority of these are community-based rather than government-delegated (Moore, 2007). In 2012, in British Columbia, mediation, letters of apology, and community service have been the most prevalent diversion methods, although it is difficult to assess how many (or which) youth have been part of formal pre-charge police diversion, because police collect these statistics informally and do not submit them to Statistics Canada as they would other statistical information on crimes (e.g., number of reported Criminal Code violations; number of crimes cleared) (Moyer & Basic, 2005).

British Columbia Ministry of Justice policy directs Crown Counsel to refer all cases for conferences under extrajudicial sanctions to probation officers, and for probation officers to refrain from referring clients to community agencies for conferences except to specific Aboriginal programs where appropriate. In light of budgetary constraints, contracts cannot be maintained with community organizations, which undermines quality control and, as such, has resulted in the Attorney General's policy (Hillian, et al., 2004). Crown Counsel may also refer to community organizations for restorative justice programming (Ministry of Public Safety and Solicitor General, 2010). Likewise, while the sentencing stage has been identified as the most frequent

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<sup>30</sup> MCFD employs ten conferencing specialists throughout BC to convene restorative justice conferences for youth convicted of all types of offences, with limits around sexual offences (Ministry of Public Safety and Solicitor General, 2010).

venue for conferencing, Hillian et al. (2004) suggest that conferences in which judges preside (in contrast to a family conference or integrated case management conference) will remain unlikely in British Columbia, due to the possibility of substantial procedural difficulties and the time commitment.

### ***Sentencing and alternatives to custody***

In cases where youth cannot be diverted using extrajudicial measures or extrajudicial sanctions, they are processed through the judicial system, and upon a finding of guilt, they are sentenced. Like each of the facets of the YCJA (2002) described above, the purpose and principles of sentencing as set out in the Act also encourage community-based alternatives and place emphasis on repairing harm done to victims and the community, responsibility, accountability, and rehabilitation (Bala & Anand, 2004). Together, as stated in section 38, these aspects are intended to promote the long-term protection of the public. Earlier in this chapter, I discussed the intention of Parliament to reduce youth incarceration as evidenced by the extensive provisions around extrajudicial measures. Sentencing in the YCJA is likewise illustrative of Parliament's attempts to achieve this goal. To this end, section 38(2)(d) states:

All available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons with particular attention to the circumstances of aboriginal young persons.

Section 39 of the YCJA (2002) also includes a presumption against custody except in cases where a youth has been convicted of a serious or violent offence (e.g., aggravated assault) or where they have failed to comply with a community-based sentence (e.g., a breach of probation conditions). As such, it is the aim of Parliament that most youth are dealt with through community sanctions. In sentencing young offenders, judges may select from a variety of sanctions as described in section 42 of the YCJA. There are several less invasive sentences available including a reprimand, absolute discharge, conditional discharge, a fine of less than \$1000, payment or other restitution to the victim, and community service. More serious interventions include a sentence of probation not exceeding two years, participation in an intensive support and supervision program (one-on-one monitoring in the community with conditions with a breach of conditions resulting in custody) or not more than 240 hours of

attendance in a non-residential program over a period not exceeding six months. Custodial interventions for more serious crimes include custody and supervision orders, deferred custody and supervision orders for a period not exceeding six months (a community sentence with conditions with a breach of conditions resulting in custody), and intensive rehabilitative custody. In contrast to the YOA (1985), a period of community supervision accompanies all custodial sentences under the YCJA.

Section 42(2)(l) provides for intensive support and supervision programs, a new community-based sentence under the YCJA (2002) (Roberts & Bala, 2003) that acts as a diversion from prison by allowing more serious young offenders to be managed in the community rather than in custody. As the name would suggest, intensive support and supervision programs are more rigorous than probation and typically involve workers having extensive contact with fewer clients. The individual programs are designed to help connect youth to community resources and to develop a network of supports and pro-social relationships through collaboration between family, other social services and other criminal justice services (Mordell, 2014). Because, like the other community-based responses discussed thus far, the YCJA allows each province to implement intensive support and supervision programs in their own way, five jurisdictions have elected to have judges utilize the programs as a sentence (British Columbia, Alberta, Québec, Newfoundland and Labrador, and Yukon), while the others have developed programs where corrections and probation staff make referrals from their client base. In some provinces the programs are offered by specialized probation officers (e.g., Nova Scotia and New Brunswick), while in others, they are offered by community youth workers or some combination of both (De Gusti, MacRae, Vallee, Caputo, & Hornick, 2009). Throughout Canadian jurisdictions, British Columbia is the primary user of intensive support and supervision programs. In their analysis of such sentences across Canada in 2006/2007, Bala, Carrington and Roberts (2009) found that of the 347 court cases across the country where a youth was sentenced to an intensive support and supervision program, 301 cases were in British Columbia. The literature is unclear on why British Columbia is unique in this regard.

Intensive support and supervision programs are administered in British Columbia through provincial government contracts with non-profit community organizations. A youth court judge sentences a convicted youth to a local program where they are assigned a youth worker. The intensive support and supervision model allows a worker to focus on dealing with the

factors thought to be contributing to a youth's criminal behaviour (a rehabilitative focus) with less attention to monitoring compliance and supervising behaviour (Mordell, 2014). In practice, this means that youth who are ordered to cooperate with intensive support and supervision program workers still have probation officers who monitor their compliance with the conditions of their court order (e.g., many youth on intensive support and supervision program orders and probation orders have court ordered curfews and specific areas and/or individuals that they are forbidden from having contact with). In British Columbia, intensive support and supervision services are also provided within the custody setting as part of the reintegration programs delivered by youth corrections (Ministry of Children and Family Development, 2013). Youth who are paired up with workers prior to their release from custody can begin engaging in pre-release planning (e.g., workers often help identify community-based services that a youth may take part in upon their release) to assist with their reintegration.

Overall, like front and back end diversion, sentencing under the YCJA (2002) is consistent with legislators' aims to reduce the use of custody for non-serious and violent young offenders and has given specific tools to youth court judges to deliver community-based sentences even in difficult cases where youth require significant resources and assistance. Given the extensive provisions for pre-charge diversion, post-charge diversion, and post-adjudication diversion from custody as contained in the YCJA, it is imperative to examine the literature on how the philosophical direction underlying community-based responses has been interpreted throughout the literature. Accordingly, in the section that follows, I review some of the key understandings of the direction of youth justice policy under the YCJA.

## **The Challenges of a Mixed Model of Justice**

Community-based responses to youth crime have increased in scope and number under the YCJA (2002) (Bala et al., 2009) and, as shown in Chapter 1, the rate of young people incarcerated under the YCJA has decreased. Despite these trends, there is overwhelming literature on the concerns, challenges and criticisms surrounding the shifts in attitudes towards youth justice, divergent ideologies expressed in the Act itself, and resulting youth justice practice. As introduced in Chapter 2, the most widely accepted way to conceptualize complicated and often unwieldy laws, especially those regarding youth justice, is by comparing legislation to youth justice models—archetypes that “reduce laws to an essential set of legal,

philosophical and procedural themes” (Corrado, Gronsdahl, MacAlister, & Cohen, 2010, p. 399). In this way, the cultural, social, political and philosophical influences of laws as well as key practices set out by legislators can be synthesized and compared over time (and also across space internationally) (Corrado, Gronsdahl, & MacAlister, 2007). As a result, this is an important way to examine policy reform. In this section, I use the literature to establish the YCJA as an example of a mixed model of justice. I then set out the tensions associated with this blend in philosophies. The purpose of this section is to summarize the wide range of literature on the character of the YCJA with specific attention to the ideological implications of the inclusion of community-based responses to youth crime. An underlying theme is that there exist numerous competing understandings of the philosophy set out by the YCJA and the practices it designates. Mapping these understandings is critical in developing the context for the research undertaken in this dissertation.

Like the YOA (1985) (and many other contemporary youth justice systems around the world), the YCJA (2002) represents a mixed model of justice as a result of “an amalgam of different, complex, and sometimes conflicting principles and ideologies” (Kuehn & Corrado, 2011, p. 221). For instance, competing philosophies—a key characteristic of a mixed model of justice as described by Corrado (1992)—are seen in the Act’s Declaration of Principle. The Declaration of Principle emphasizes meaningful consequences and protection of the public, thus connecting offending behaviour to punishment, assuming a rational offender, and emphasizing public safety over concerns of the individual offender (Giles & Jackson, 2003). This philosophical approach is akin to what Corrado (1992) describes as the crime control model. Policies built on crime control philosophies typically emphasize the development and administration of criminal sanctions to deter offending behaviour both by individual offenders and the general public (Corrado, 1992). At the same time, the YCJA’s Declaration of Principle includes the goals of reintegration and rehabilitation, both remnants of welfare-based ideals seen in the JDA (1908). As explained in Chapter 2, welfare-based ideals are grounded in the belief that offending behaviour is the result of deficiencies that can be corrected through appropriate treatment. Finally, the elements of fair and proportionate accountability and procedural protection as emphasized in the YCJA signal the presence of the justice model, a model based on due process, individual rights and fair treatment under the law (Giles & Jackson, 2003), similar to the YOA. While like the crime control model, the justice model

emphasizes punishment; practices under the justice model are characteristically far more focused on procedural fairness.

In addition to the traditional models of youth justice that have been sufficient in conceptualizing the JDA (1908) and the YOA (1985), some theoretical work has been completed more recently to apply other complementary models to the Canadian youth justice system (Reid-MacNevin, 2001). As described by Reid-MacNevin, the community change model accepts the influence of social structure (e.g., poverty, homelessness) on deviant behaviour, and positions delinquency as a response to lower class life. In the face of a complete overhaul of the present capitalist society, proponents of this model depict short-term policy solutions to structural issues as encompassing decreases in centralized power in conjunction with greater community-involvement. The associated policy responses focus on reducing state intervention and incarceration and emphasizing reintegration and reliance on community supports. Given the tendencies for modern youth justice systems to focus much more heavily on community involvement, minimal formal intervention, and restorative processes, the community change model appears to be a useful theoretical model (Reid-MacNevin, 2001). Clearly, community-based responses to youth crime are not completely novel under the YCJA; they have a long history in the delivery of youth justice in this country. However, according to some writers, the ideological adherence to community-based responses as set out in the YCJA is much more concentrated and would more appropriately be conceptualized with a new model (though others have found the traditional models to be sufficient). In this case, owing to its focus on diversion and non-incarcerating sanctions, in addition to being a blend of the crime control, justice and welfare models, the YCJA can also be said to represent aspects of the community change model of youth justice.

Conceptualizing the YCJA (2002) as a mixed model of justice, reflective of elements of the welfare, crime control, justice and community change models, gives rise to three important themes for understanding the Act. First, despite a shift away from the welfare-based policies of the JDA (1908), the YCJA cannot be said to represent a clear direction towards a punitive, crime and punishment approach, and thus there is some debate on whether the legislation can appropriately be described as punitive or not. For some, the divergent philosophies as described above more accurately signal a bifurcated approach—a twin-track system where minor offenders would be diverted and more serious offenders would be punished—framing practices

around both diversion and incarceration (Smandych, 2012). The second theme arising from the differing philosophies of the legislation is the unavoidable problem of implementation. The most common criticism leveled at the YCJA is that it is far too complex, lengthy and contradictory to appropriately apply in practice (Trépanier, 2004). The third theme rests on whether the legislation has legitimately opened a door for more restorative approaches to youth justice (Smandych, 2006). These three themes are taken up in what follows.

### ***The punitive turn debate***

Many academics who have commented on the YCJA (2002), have focused on the Act's inherent ambiguity and the lack of consensus among scholars and professionals as to the kind of reform legislators intended to implement via the legislation (Smandych, 2012). As discussed, the direction of the YCJA is particularly contentious given its moderate departure from the welfare model, and ambiguous move towards a punitive, crime control model (the ambiguity arising as a result of the emphasis of community-based alternatives throughout the legislation) (Smandych, 2012). For this reason, academics are consistently divided on whether the YCJA is expressly punitive, representing a toughening up of youth justice through increased measures that would emphasize responsibility and accountability and treat youth as adults, or whether the policy emerged as a result of competing values (e.g., policy as compromise), or even whether the illusion of change was included only for political popularity instead of directing action and change (e.g., policy as politics) (Smandych, 2012). The following section considers this debate.

In their 2001 analysis of six years of political speeches and debates from Hansard records of 1994 to 2000, Hogeveen and Smandych (2001) found evidence of a "two directional movement" (p. 166) in youth justice reform. Their data pointed to an emphasis on the management of less serious offenders in the community concurrent with attention to managing more serious and violent offenders via processes similar to the adult justice system. This two-tiered or twin-track policy represents the "bifurcation" of youth justice, a concept first discussed by British criminologist Anthony Bottoms in relation to criminal justice policy in 1977 (Charbonneau, 2003). Several new sections were introduced in the YCJA (2002) that assist with the bifurcation that, incidentally, is now common to many Western countries, including: allowing older youths to be sentenced as adults if accused of violent crimes; holding youth in adult custody; and on the other hand, legislating access to diversionary alternatives in the form of

extrajudicial sanctions and measures (Bala & Anand, 2004). Despite the introduction of community-based measures, the YCJA, according to Hogeveen and Smandych (2001) is potentially reflective of a toughening of youth justice policy. Likewise, in their policy analysis, Giles and Jackson (2003) speculated “the YCJA (2002) potentially embodies a much more punitive model of youth justice in Canada, evidenced by its focus on the protection of society” (p. 19). They also argued that due process rights are much more circumscribed under the YCJA (2002) as compared to the YOA, making the legislation more punitive.

On the other hand, numerous writers, most notably Anthony Doob, Jane Sprott, Nicholas Bala, Peter Carrington and Julian Roberts have argued that the intention of legislators was not genuinely to make the youth justice system harsher and more adult-like, but rather to make it appear more punitive as a way to gain the political approval of tough on crime lobbyists and victims’ rights supporters. For instance, in their legal policy analysis, Doob and Sprott (2006) argued that for the most part, tough-on-crime initiatives were largely symbolic and did not have the effect of actually affecting change towards more punitive practices, as evidenced by sentencing data. Sentencing data examined by the authors during the early years of the YCJA (2002) showed a decrease in punitive sentences, a trend that had begun in the 1990s. For this reason, they argued, “the law as written and administered is quite different from the way it has been described...The Government of Canada was able to have its cake and eat it, too” (p. 223). That is, according to Doob and Sprott, the government secured credit from tough on crime supporters, while simultaneously introducing community-based responses. The authors went as far as to dub the legislation a “sheep in wolf’s clothing” (p. 224) owing to the Government’s portrayal of the legislation through media releases as punitive in contrast to the multiple community-based options that for Doob and Sprott seemed to indicate that translated into practice, the Act would not necessarily be punitive.

Likewise, in several legal analyses during the early years of the YCJA (2002), Bala focused on the Act as one that would make greater use of community-based responses to youth crime (Bala, 2003), rather than one that would result in a tougher youth justice system. Bala and Roberts (2006) found that while the most publicized aspects of the YCJA were indeed the punitive measures it contained, the legislation was not necessarily actually tougher given the attention to community-based responses. For these authors, the resulting reduction in youth incarceration subsequent to the introduction of the YCJA has also signaled its character as not

necessarily a tough approach. Bala, Carrington and Roberts (2009) have found that the YCJA's focus on reducing the use of courts and custody has indeed been realized and that it was not until reforms introduced in 2007 (these will be discussed in Chapter 4) that the federal government truly signaled a tough on crime approach.

For scholars like Doob and Sprott, the intention of the legislation is best ascertained through an analysis of how the law has been administered, rather than how the law has been presented politically. In contrast, scholars like Hogeveen—who focus on the toughness of the legislation—place an equal if not greater, emphasis on the discursive elements of the legislation itself, and how politicians constructed the problem of, and responses to, youth crime. These contrasting assessments of the YCJA are probably best explained by differing philosophical approaches to the analysis of policy, and the nature of the legislation as a mixed model. Taking differing approaches to the study of policy means that some researchers attend more closely to the rhetoric of policy as signals of how a particular issue is constructed, while others attend more closely to the effects of policy in determining what a policy means. This theme will be taken up in more detail in Chapter 5. The mixed model interpretation allows the perspective that because the legislation offered elements of the crime control, due process, welfare and community change models, it could indeed have been interpreted as all of these and none of these at once, depending on which model was emphasized and which sections of the legislation were analyzed.

### ***Implementation***

Although there were doubts that the YCJA (2002) could deliver on the promise of increased and more meaningful community-based responses to youth justice (as offered above), within the first five years of the Act, decreases in the use of courts and custody were already being seen. These measureable decreases particularly affected minor non-violent offenders (Bala et al., 2009). As examined in Chapter 1, instead of formal measures, offenders who committed minor or first offences were increasingly being dealt with by extrajudicial measures in the community (Carrington & Schulenberg, 2008). Furthermore, when custody was being used, it was predominantly reserved for serious and violent offenders (Bala & Roberts, 2006). Overall, the changes illustrated by official crime statistics reflected an increased use of extrajudicial measures, warnings and cautions by police and Crown and the increased reliance

by judges and Crown on community-based supervision, rather than custody, where possible (Bala & Roberts, 2006). Together, findings arrived at by Bala and Roberts (2006) and Carrington and Schulenberg (2008) through analyses of Statistics Canada data, pointed towards a youth justice system under the YCJA that was working in reducing Canada's youth incarceration rate and that showed promise in transforming the way youth justice was delivered throughout the country. As Carrington and Schulenberg (2008) clarify, however, simply because official statistical data showed a decrease in the use of courts and custody, and an increase in diversion around the time the YCJA was implemented, does not necessarily affirm that the YCJA caused these critical shifts. Instead, there is evidence that changes in youth justice were beginning to occur as early as 1999. It is for this reason that the shifts in practice, and the accompanying acceptance of community-based responses that preceded the YCJA must be acknowledged as a contributing factor to the early success of the Act itself. Furthermore, these statistical trends are not able to reflect how the community-based responses are being implemented.

Commonsense would dictate that social policy at the federal or provincial/territorial level could not, on its own, reasonably be expected to motivate social change, nor completely structure local action. Implementation very much depends upon the actions and behaviours of justice system professionals, the discretion exercised, and the constraints posed by resources and program availability in local venues (Bala & Roberts, 2006; Jamrozik & Nocella, 1998). Notwithstanding the improvements seen in youth justice practices in the early 2000s, research has also identified some pressing inconsistencies among local practices and particularly across provinces (De Gusti et al., 2009). Some jurisdictions, for instance, have different policies on whether repeat offenders can be diverted (Moyer & Basic, 2005), and as discussed earlier in this chapter, the form and function of conferences and committees vary widely across the country. There are further variations across jurisdictions respecting rates of incarceration, availability of programs and accessibility of community partnerships (Milligan, 2008). As discussed earlier, jurisdictional differences in Canada have also long been a concern. These differences remain significant under the YCJA (2002).

Under the YCJA (2002) police—the first contact for young offenders—have been found to have some resistance to extrajudicial measures. For example, Marinos and Innocente (2008) surveyed 70 police officers in Ontario and concluded that although the YCJA stresses the

importance of seriousness of the offence when deciding whether to divert, police are often unduly influenced by the youth's attitude (e.g., whether they were remorseful) and prior police contact. The researchers were unable to attribute the inconsistencies to police dissatisfaction with extrajudicial measures, specifically, since participants generally agreed that the extrajudicial measures were adequate in meeting the goals they were designed to achieve. However, the police practices identified in the study led to evidence of "progressive discipline" (the escalation of a penalty, akin to three-strikes mentality), which are beyond the scope of the YCJA. In this case, the authors suggested that, as measured a few years into the new legislation, a change in attitude among police had not accompanied youth justice reform.

In a more recent evaluation study undertaken in British Columbia, police were found to avoid referring youth to community-based programs if the youth was perceived as having a negative attitude. Because police did not believe the local community programs could hold a difficult youth to account, they cited a preference for more formal processing in these cases (Vogt et al., n.d.). Similarly, a study on the experiences of Ontario judges in the first six months of the YCJA (2002) found that police refer youth to extra-judicial measures based on program availability in their localities rather than the merits of the case (Harris et al., 2004). As a result Aboriginal youth were not being given the same chance at extrajudicial sanctions as their non-Aboriginal peers, a problem that was exacerbated by the lack of provision requiring Crown Counsel to identify reasons why extrajudicial sanctions are not given.

Although some variation in implementation is very appropriate in order to account for regional differences on a large scale and professional discretion on a local scale, at its worst and as these studies demonstrate, implementation challenges can disconnect practice from policy aims and present threats to equality. Illustrative of this concern is Bala's (2003) discussion of police and prosecutorial discretion in diverting youth. He argued that the two-tiered youth justice system presents the concern that visible minorities are less likely to be diverted, and that youth from "good families" may be "given a break," thus perpetuating systemic discrimination. In contrast, however, Carrington and Shulenberg (2008) found that though regional variations were present in charge ratios (i.e., youth charged as a proportion of all chargeable youth), variations in 2005 were considerably less than those in 1986. Their analysis of UCR data between 1987 and 2005, signaled that less variation occurred under the YCJA (2002) than had occurred under the YOA (1985).

Kuehn and Corrado (2011) surveyed virtually all youth probation officers in British Columbia in 2004 and then again in 2007 regarding the level of difficulty in applying and understanding specific sections of the YCJA (2002) that they regularly worked with. They found that “despite the YCJA’s length, complexity, and potentially conflicting objectives, [youth probation officers] appeared to be provided with clear, detailed sets of guidelines for applying the YCJA” (p. 233). For the most part, probation officers did not report difficulty in interpreting the underlying philosophical directions of the YCJA. However, they reported insufficient access (more prominent in some regions of the province over others) to community programs for both Aboriginal and female young offenders, impeding their ability to fully implement the aims of the legislation.

In their examination of the implementation of the YCJA (2002) by judges in Ontario, Harris et al. (2004) found that three values compete to make judges less likely to follow Parliamentary law. “Judicial conservatism” means that in the presence of “vague phraseology,” such as in the YCJA, judges are most likely to interpret the intentions of Parliament as consistent with their own existing interpretations. “Avoidance of organizational costs,” another challenging value, indicates that criminal justice organizations may ignore revisions to law if those revisions may result in burdensome costs to the organization. Lastly, “divided authority” refers to the separation of powers between the provinces and federal government wherein the responsibility for the administration of justice is left up to the provinces. To complicate this value, judges—as a specific arm of the criminal justice process—are set up to be independent from the administrative arm of their respective provinces. This division may complicate the implementation of new law, particularly if it relates to administration of justice. Because Harris et al. (2004) investigated judicial practice in Ontario at the very beginning of the YCJA, they admit that a severe limit to their inquiry is that their conclusions are based primarily on anecdotal evidence. Nevertheless, the value of their research should not be understated because their model provides some provisional reasons why one particularly difficult to access stream of practitioners, judges, may act contrary to the YCJA identifying the “competing values that are in tension with...the legality principle” (p. 370).

In 2007 research on the assumptions, experiences, and knowledge of Canadian judges regarding sentencing and restorative justice under the YCJA (2002), Stephens (2007) found that judges agreed that the implementation of the YCJA broadened the scope of restorative justice

responses through the inclusion of diversion and conferences, and by making legislative changes whereby fewer offences could be punished with custody. The judges described conferences as particularly restorative due to their wide mandate and potential to restore harmony. Within the study, however, some concern was expressed that due to restorative justice's difficult to define nature, sentencing can be challenging. One judge posed doubts about some attempts to sentence restoratively while in the confines of the courtroom and while retaining mainstream legal elements, such as court transcripts and specific legal roles. This judge suggested "I don't think we'll ever have restorative justice in the youth system as long as courts don't understand that what's really meant by restorative justice is to truly get the community involved...to use the process as a means of advising the judges...without the judges being involved in the process particularly" (Judge "L" in Stephens, 2007, p. 62).

A common theme across the literature is that in addition to policy change, professionals must 'buy-in' to new strategies before they will employ them in practice. Harris et al. (2004) argue that

Common orthodoxy has it that what the legislature proclaims as law is in fact carried out by those charged with administering it. The YCJA holds out the promise of substantial reform in the ways we treat young persons in conflict with the criminal law. Paradoxically, rather than the dawn of a new age, the early days under the new youth law have been marked by changes that are inconsequential for the majority of youth facing charges. There is a gap – at times small and at times large – between the discourse of entitlements under the YCJA and the practice (p. 368).

With respect to the implementation of the YCJA (2002), Maclure, Campbell and Dufresne (2003) argued that in addition to federal and provincial/territorial policy direction, policy implementation at the local level is an equally political task. Implementation of policy at the local/community level necessarily entails interpretation, which reflects politically relevant facets of power relations and the understandings of bureaucrats, probation officers, police, community workers, and court officials. Given the current move towards degovernmentalization (invoking the community as the primary site of intervention and decreasing the state's involvement) this is particularly relevant to Canadian youth justice.

Comparably, Ross Hastings (2006) has argued that youth crime prevention (and one might extend his argument to include youth crime policy more generally) is highly influenced by the social and political context in which it is situated. In this vein, Hastings carried out qualitative research designed to access the content and context of youth justice reforms as well as local responses, perceptions and resistance to the new initiatives via interviews with practitioners and youth clients. Hastings' (2006) work adds exponentially to the body of work on the reform brought about by the YCJA (2002), with attention to what he argues is a disjuncture between policies as they are written and policies as they are delivered. Though his research team did not set out to investigate resistance to change, "the challenge of change was a recurring subtext to much of what" (p. 3) the researchers found in their fieldwork from 2001 to 2003—a period encompassing that just prior to the implementation of the YCJA, and the first year under the Act. By addressing front-line resistance and perceptions of the policy by practitioners and youth, Hastings' work introduced several practical reasons (budgetary restraints, complex cases and long waiting lists) as to why delivered policy may differ so much from government-produced policy. He found that youth workers sensed that their client base was changing and becoming more complex to serve given increased volume of youth on caseloads, more complex and multi-issue cases, and the sense that youth workers in the justice system must now respond to issues that were once in the purview of other nets of support including education, family and community. The analysis also embarked on a discussion of the challenges presented by "competing discourses" in youth justice that may serve to take "things in a different direction" (p. 11), and thus present additional challenges to implementation. In Hastings' research, though a lack of resources proved to be a challenge in the delivery of youth justice services, the competing discourses of administration (emphasis on value for money), control (emphasis on immediate and appropriate sentences for young offenders) and treatment (emphasis on needs of young offenders) combined to produce additional constraints, particularly because the tendency to focus on administrative and control ideologies combined to outweigh the treatment discourse. As a result, less support was given to long-term interventions.

Undoubtedly, the numerous divergent philosophies contained in the YCJA (2002) as well as the Act's complex nature contribute at least partially to some divergent practices across localities. Implementation challenges appear to be exacerbated by insufficient resources to structure community-based responses to youth crime.

## ***Restorative justice***

As described in Chapter 2, the use of alternative measures under the YOA (1985) evolved alongside diversion and restorative justice practices in many Canadian communities. While both diversion and restorative justice are linked to community-oriented practices, they do differ from one another. Community-based responses to youth crime that are based on diversion theory tend to address the individual offender and their rehabilitation and reintegration, with a deep concern for avoiding the stigmatizing effects of the justice system on that offender. On the other hand, restorative justice is rooted in a concern beyond the individual offender that focuses on repairing relationships harmed as a result of criminal behaviour, and addressing the needs of the victim and community in addition to the individual offender with an aim in transforming the community (Archibald & Llewellyn, 2006; Hillian et al., 2004).

This connection between community-based responses and restorative justice was apt given the diversionary underpinnings of alternative measures that in some locales seemed well coordinated with the goals of restorative justice. Additionally, the direction of police in Canada (notably the Royal Canadian Mounted Police and the Ontario Provincial Police) throughout the 1990s towards a policing model that emphasized community and restorative justice made this connection in youth justice particularly fitting. Despite these approaches, it is widely agreed that local practice and policy, rather than legislation, directed outcomes that combined restorative and community justice. It is also the case that in at least some jurisdictions across the country (e.g., Nova Scotia), alternative measures under the YOA were philosophically rooted exclusively in diversion theory rather than restorative justice (Archibald & Llewellyn, 2006). As mentioned, the provincial responsibility for implementation and the openness of the legislation permitted a variety of practices. With respect to the YCJA (2002), however, many academics have argued that restorative justice is embedded within the Act itself (Charbonneau, 2005). For Morrison (2013) as an example, the principles outlined within the Preamble to the YCJA (2002) “reflect the acceptance of an approach that is consistent with restorative justice” (p. 201). They include:

- A focus on needs and developmental challenges of youth;
- The use of multidisciplinary approaches to addressing youth crime with an emphasis on underlying causes and community involvement;
- The recognition of the rights of youths;
- The emphasis on meaningful consequences, reintegration and rehabilitation; and

- The reservation of custody for the most serious young offenders

Despite the fact that the term “restorative justice” is not mentioned explicitly in the legislation, numerous experts agree that as a result of these five principles, the YCJA “does seem to open the door to the development of initiatives generally associated with restorative justice” (Charbonneau, 2005, p. 75). Specifically, with the availability of extrajudicial measures, extrajudicial sanctions, youth justice committees, and youth justice conferences, in practice settings the YCJA was quickly recognized as having provided the framework to allow police across the country to “become more extensively involved in restorative policing practices” (Bazemore & Griffiths, 2003, p. 341). Such an emphasis was consistent with the direction of restorative justice and community policing being advanced by the RCMP in Canada throughout the 1990s as discussed in Chapter 2. Further, provisions that include the victim in extrajudicial measures are outlined in section 5(d) whereas, “extrajudicial measures should be designed to provide an opportunity for victims to participate in decisions related to the measures selected and to receive reparation”—are also thought to denote practices based on a restorative philosophy. Like alternative measures under the YOA, the elements of extrajudicial measures that encourage youth to take responsibility, repair harm to victims and participate with communities evoke restorative ideals (Bala, 2003).

In addition to the specific practices outlined in the YCJA (2002) that appear connected with restorative justice ideals, the argument can also be made that the practice of restorative justice was rooted in the federal government’s exposition of the philosophical vision of the YCJA, “A Strategy for the Renewal of Youth Justice” (Department of Justice Canada, 1998) well before the legislation was drafted. Although the “Strategy” contained several mentions of “community justice” rather than “restorative justice,” the majority of the specific program examples identified within the document emphasize the restorative principles of community involvement and repairing harm (e.g., family-group conferencing, resolution conferences, and restitution programs).<sup>31</sup> This seems to affirm that, while the legislation does not explicitly mention “restorative justice,” the intention and foundational documents to some degree do. Given the

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<sup>31</sup> Although a detailed discussion is beyond the scope of this dissertation, it is worth mentioning, that the relationship between community justice and restorative justice as outlined within the restorative justice literature is an uneasy one. For some writers, restorative justice and community justice are separate and different owing to the focus of community justice on maintaining adversarial criminal justice goals, but with the community as a new locale (Clear, 2008). For others, restorative justice and community justice are either closely linked (Pavlich, 2005) or one in the same as a result of their shared emphasis on participatory practice (Mitchell Miller, Gibson, & Byrd, 2008).

measures included in the YCJA that encourage community involvement in the delivery and administration of youth justice, the title of Charbonneau's (2003) article asks the question of whether or not the YCJA is "a step forward for the advocates of restorative justice?" (p. 1). The answer, "yes, but..." is the central theme of his article and indeed is at the centre of a good deal of critical literature on the topic, focusing mainly on the uncertainty around the implications of the numerous, seemingly competing philosophies included in the mixed model approach.

Despite the widely agreed upon connection between the YCJA (2002) and restorative justice, for some authors the connection between the two has been more uncomfortable than clear as a result of the mixed model of justice underpinning the legislation. Specifically, given the divergent (and, arguably contradictory) philosophies underlying the mixed model of the YCJA—that encourage both punishment and restoration—and the vagueness with which restorative justice has been included within the legislation, some writers have argued that the restorative values were added merely as a symbolic gesture, rather than to effect real policy change (Clear, 2008; Hillian et al., 2004). Furthermore, there has been deep concern that the transformative potential of restorative processes could not be realized if inadequate funding is dedicated to these practices. One of the most accomplished academics holding this perspective is Andrew Woolford (2009), who has argued that the inclusion of restorative justice alongside the more punitive measures for repeat and violent young offenders is not only inconsistent, but dilutes and potentially co-opts restorative justice practices. Those who find the connection between restorative justice and the YCJA to be especially problematic typically offer two key intertwined arguments that foreground the concerns with the mixed model of justice offered by the Act. First, the bifurcated system is argued to be especially problematic and inconsistent with restorative principles and second, the place of restorative justice at the periphery of the adversarial system is problematic. These arguments will be examined in what follows.

Several writers find the bifurcated youth justice system where youth convicted of minor offences (likely not eligible for incarceration anyways) are grouped in the *diversion-appropriate* category, while those riskier youth convicted of more serious offences are likely to receive much harsher carceral treatment especially unsettling (Alvi, 2008; Giles & Jackson, 2003; Hogeveen, 2006). The overall approach, according to these authors is inconsistent with restorative justice, because it positions restorative justice as a method through which to deal with low level, non-serious offenders, rather than part of a process of community change. In this way, restorative

justice is made to look more like diversion and to be a supplemental branch to the adversarial system rather than a philosophical approach and transformative process that works in place of the adversarial system. For Hogeveen (2005), this narrow vision of restorative justice justifies more severe, non-integrative, and non-restorative responses for repeat and violent young offenders—those who may have the greatest need for intervention—and inappropriately downgrades restorative justice to a process to deal only with minor offenders.

Several writers provide a classification of restorative justice programs and supporters, and one classification in particular is helpful in more deeply understanding the juxtaposition of restorative and adversarial justice. For the most part, authors identify some variation of administrative restorative justice where programs address individual low-level offenders with cost-efficient alternatives in contrast with those proponents/programs that are transformative and emphasize social justice/social change (Braithwaite, 2002). In their examination of the Canadian setting, Woolford and Ratner (2008) make a similar classification and suggest that restorative justice proponents typically fall into one of two categories: governmentalist or communitarian. Governmentalist restorativists, according to Woolford and Ratner, see restorative justice as “merely another tool within the criminal justice toolbox and as a means to assist and support rather than transform the criminal justice system” (p. 147). On the other hand, restorativists committed to a communitarian ideal seek transformative social change through community relationships. In practice, those who hold a governmentalist or administrative approach to restorative justice emphasize success in reducing recidivism, whereas transformative or communitarian restorativists would instead address a particular social problem that contributed to an offence as well as the harm caused to parties involved and the wider community. As such, the former frames restorative justice as much narrower in scope, and as part of the retributive system whereas the latter positions restorative justice as operating outside of and beyond the retributive system. Critical scholars find that restorative justice programs based on the YCJA tend to be governmentalist/administrative in nature.

With respect to youth conferencing, for example, White (2008) argued that minor offenders are screened out of the formal justice system, highlighting the need for a formal system (with notions of retribution and punishment placed in concert with justice) for those who are not able to be screened out. This *legitimizes* rather than challenges the formal retributive system through a “braiding of restorative and retributive sanctions” (Woolford, 2009, p. 147) and

limits the transformative potential of restorative justice. Using the YCJA (2002) as an example in his critical analysis of the politics of restorative justice, Woolford argued that as a result of the bifurcation of youth justice:

Restorative justice becomes a diluted and co-opted form of justice because it is limited to offences that might otherwise have been ignored by the criminal justice system. Thus, restorative justice supplements and supports the dominant criminal justice system, playing no more than a marginal role within this system by offering a more cost-effective approach for dealing with the 'small stuff.' From this marginalized position, restorative justice has little power to call into question the gendered, class-based, or racialized dimension of the criminal justice system (Woolford, 2009, p. 147)

For these authors, incorporating restorative processes in this manner suggests that there has been no evident shift in focus concerning youth justice (Charbonneau, 2003), but instead only the introduction of new language and terminology. Most concerning, the theoretical and philosophical inconsistencies identified by these authors have also been shown to translate into operational challenges where in some cases, programs being called restorative justice are deeply embedded in the adversarial system rather than offering new and transformative methods of justice.

This is not to say that administrative/governmentalist restorative justice programs have no place in youth justice or that they are inherently problematic. Instead, this type of analysis focuses on the fact that the term restorative justice does not necessarily mean only one thing. It is this nuanced understanding and its implications for practice that make for an important take away in exploring the link between restorative justice and the YCJA (2002). In some cases, this conceptualization helps in understanding how restorative justice programs may not always provide restorative results. Along these lines, Hillian et al. (2004), found evidence of inconsistencies between restorative justice philosophy and operation in their study on practice under British Columbia's conferencing policy under the YCJA (2002). While their analysis during the early days of the YCJA revealed that the province's conferencing program was overly constrained by budgets and lack of resources, and not focused heavily enough on community resources—a contradiction in itself, given the community-based nature of the legislation—they also found concerns as a result of too much discretion given to individual provinces in

supporting youth justice reform. Hillian et al. argued that one result of this permissive attitude towards implementation is that the practice of conferencing—irrespective of the notion that the *idea* of conferencing is widely agreed to have derived from restorative justice—is not always employed in a restorative manner.

It is important to recognize the findings of some researchers that suggest the leeway granted under the YCJA (2002) has shaped divergent practices that may undermine the goal of crime prevention. Hillian et al. (2004) briefly identified problematic scenarios in British Columbia resulting from power given to judges under the YCJA to compel “a reluctant youth to take part” (p. 353) in a conference, signaling an important disjoint between policy and practice. The institutional constraints of situating restorative justice as a complement to the mainstream justice system, while indicating its support by schools, courts, and police, may also place unbearable burdens on the practice. The latitude persists within the practice of policing as well: Chatterjee and Elliott (2003) point to the vagueness of the YCJA and the Department of Justice in specifying exactly what the role of the police should be beyond recommending a conference take place.

In 2006, Archibald and Llewellyn investigated restorative justice programs in the province of Nova Scotia. The programs had operated as alternative measures programs during the YOA until 1999 when that province piloted—and later more widely adopted—a province-led restorative justice strategy for young offenders with the help of community partnerships. Archibald and Llewellyn’s research showed that a transformation from diversion-based programming to restorative justice programs had not taken place during year one of the strategy and that instead, community agencies continued to offer the programs that had become familiar to them, yet called these programs “restorative justice.” Despite being trained in restorative justice, agency directors reported insufficient resources and support to help them translate these lessons into practice, exacerbated by overwhelming caseloads. They reported “vast differences...Some [agencies] had embraced the theory and practice of restorative justice in a holistic fashion, while others were still operating from the paradigm of diversion, or at best, moving towards or including some victim-offender mediation” (p. 330).

The YCJA’s (2002) internal contradictions may be evidence that legislators tried to be pragmatic and create an Act that would be all things to all people, resulting in a compromise that is none of these things. Along these lines, Maclure et al. (2003) wrote,

In contexts where perceived social problems have generated acute political and ideological discord...social policies are forms of discursive governance that engage different actors across diverse social and institutional contexts. A key interest of government policy makers, therefore, is to mediate opposing discourses and to attempt to foster consensus or compromise. Accordingly, the language of legislated policy is likely to be deliberately obtuse and inherently contradictory. (p. 136)

The YCJA, then, “represents an astute political compromise” (Bala et al., 2009, p. 133). Policy-makers simultaneously endeavoured to appease the public as a result of several high-profile cases (appearing tough) and professionals, given the high rate of youth incarceration (being sensible) (Doob & Spratt, 2004). Furthermore, and discussed earlier in this chapter, another pragmatic concern was with the variety of community-based practices that were in place across the country (depending on locale) prior to the YCJA. With the new law, legislators not only encouraged the creation of new practices and programs, but also entrenched into law programs that were already working. To do this, the legislation could not be so specific so as to preclude any current practices.

## **Conclusion**

The YCJA (2002) ushered in a complex mixed model of youth justice especially owing to the emphasis on community-based responses to youth offending throughout the Act. Widely accepted as the key to addressing the excessive use of the formal youth justice system under the YOA (1985), opportunities including extrajudicial measures and sanctions, youth justice committees and conferences, and non-incarcerating sentencing options were established in both philosophy and practice under the new legislation. Importantly, despite the acceptance of these practices across the country, and encouraging statistical evidence showing decreases in youth charge rates and incarceration rates, implementation has been challenging at best. As this chapter demonstrates, in addition to understanding the legal content of community-based responses to youth crime under the YCJA, it is critical to examine the historical, sociological, legal, and technical contexts of expanding diversionary measures.

While front-end diversion and new community-based sentences as introduced by the YCJA (2002) brought about some instrumental changes to the way youth justice was understood in Canada, as the next chapter will show, new youth justice reforms were proposed within five years of the YCJA receiving Royal Assent. “[D]espite the success of the YCJA in achieving its principal objective” (Bala et al., 2009, p. 159) of reducing the overreliance on incarceration and increasing the availability of community-based responses to youth crime that could promote reintegration and rehabilitation, as Chapter 4 will show, reform remained an important concern of the public, professionals, and politicians alike.

## CHAPTER 4: Youth Justice Reform from 2007 to 2012

*Public policies are not designed ex nihilo. The perception that policy changes are needed arises from perceived inadequacies in, lack of and limits on existing policies ~ Trépanier, 2004, p. 274.*

### Chapter Overview

From 2007 through 2012 the issue of youth justice reform was again a topic of consideration. As this chapter will show, that reform would come to fruition with the first-ever amendments to the YCJA (2002) proposed initially with Bill C-25 in 2007, again in 2010 with Bill C-4, and finally passed when Bill C-10, the *Safe Streets and Communities Act* (2012) received Royal Assent in 2012. The *Safe Streets and Communities Act* contains the contents of nine bills that are, for the most part, crime and justice-related (including one bill specific to youth justice) that had failed to pass within the previous few years. Like the changes to youth justice policy discussed in Chapters 2 and 3, the 2012 reforms were preceded by key policy documents (the 2006 Nunn Commission of Inquiry Report and the cross-country roundtables that took place in 2007 to 2008) and a highly-publicized act of youth violence (the murder of Québec teen Sébastien Lacasse in 2004) (Mann, 2014). Each of these events played integral roles, not only in how they shaped the direction of youth justice policy, but also, as this chapter will show, in how they were pointed to by the government to justify highly contested amendments to youth justice policy.

This chapter begins with an examination of the key youth justice-related policy and consultative documents and bills introduced to Parliament from 2007 to 2012. I then discuss the amendments to the YCJA (2002) that occurred in 2012, and the resulting changes to youth justice policy.

### ***Nunn Commission Report***

The Report of the Nunn Commission of Inquiry, “Spiralling out of control: Lessons learned from a boy in trouble,” authored by former justice of the Supreme Court of Nova Scotia, D. Merlin Nunn, and submitted to the Province of Nova Scotia on December 5, 2006 (Nunn,

2006) is a key precursor to the 2012 youth justice amendments contained in the *Safe Streets and Communities Act* (2012). In 2005, the province of Nova Scotia convened a public inquiry to decipher whether or not the case of Archie Billard—a young offender who, while on bail in 2004, had struck and killed Theresa McEvoy in the stolen car he was driving—had been mishandled. Central to the inquiry was the question of why Billard had been granted pre-trial release in the days before McEvoy's death, despite having 38 outstanding charges (Valiquet, 2007). The aspect of Billard's crime and death of McEvoy that seemed most devastating to the Nova Scotia Department of Justice and to the public, was that at the time of McEvoy's death, the youth was on pre-trial release, having been allowed out of custody two days prior, despite facing numerous charges (Nunn, 2006).

The provincial inquiry was set to consider the circumstances around this offender in particular, and also to make recommendations for system-wide changes where they may be appropriate (Nunn, 2006). As a result, Nunn detailed the history of the young offender, Billard, at length in his report.<sup>32</sup> The life circumstances of Billard seemed to speak to Nova Scotians, the Canadian public, youth justice professionals, and politicians, and became representative of what many claimed were systematic shortfalls in the system: pre-trial detention was complicated and insufficient to protect public safety. The Nunn Commission Report provided 34 recommendations ranging widely from specialized training, increased communication between justice and social service sectors, minimizing delays and also changing the definition of a violent offence (for bail hearings) such that it includes those offences likely to cause bodily harm (Nunn, 2006).

It should be noted that inquiries called by a province are designed to address public issues of which the provincial legislature has jurisdiction (Nunn, 2006). While there is no question that responsibility for the administration of youth justice lies with the provinces, the responsibility for the creation and amendment of statutes including the YCJA (2002) and the *Criminal Code* lies with Parliament. To this end, while Commissioner Nunn considered the YCJA and potential amendments to it in his report, he directed all of his recommendations at provincial

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<sup>32</sup> The report (Nunn, 2006) detailed the educational, familial and social challenges as well as cognitive deficits Billard faced. Given frequent school suspensions and his mother's refusal to allow him in the house during the day when she was not present, Billard often roamed the streets without supervision. Eventually as a result of Billard's drug use, his mother asked for his removal from their home. Billard was placed in a group home. Until age 15, Billard had no criminal record, however, between January and October 12, 2004, he had accumulated 38 charges, had been arrested six times, and had appeared in court 11 times. By 16 years of age, Billard was one of the Halifax area's top two most prolific auto thieves. He attended restorative justice programming with little effect.

officials with a recommendation that the province lobby the federal government, and that Parliament consider his recommendations (though they would not be bound by them).

Commissioner Nunn (2006) made a series of six recommendations (numbered 20 to 25 of the 34 recommendations), mostly related to foregrounding public safety and expanding the availability of pre-trial detention for serious and repeat offenders (as was the case of Billard). The next several pages of this dissertation deal with the recommendations Nunn wrote for federal policy. He stated, “[t]he Province [of Nova Scotia] should advocate that the federal government amend” (p. 289) various aspects of the YCJA (2002). Specifically,

Aside from the misunderstandings and missteps that occurred in relation to A.B.,<sup>33</sup> many of which were procedural in nature, the real culprit, which failed to provide an adequate response to A.B.’s behaviour and, indeed, to society’s rightful expectations, was the *Youth Criminal Justice Act* itself. (p. 227)

Commissioner Nunn (2006) began his analysis of the deficits of the YCJA by stating categorically that, “the Youth Criminal Justice Act is legislation that provides an intelligent, modern, and advanced approach to dealing with youths involved in criminal activities. Canada is now far ahead of other countries in its treatment of youth in conflict with the law...” (p. 228). Accordingly, it seemed that the amendments he outlined were intended to enhance—rather than instrumentally or philosophically change—the YCJA.

With recommendation 20, Commissioner Nunn (2006) sought the inclusion of public safety as a primary goal of the YCJA (2002). As stated, the Declaration of Principle (YCJA, 2002, section 3) mentions long-term protection of the public, a goal that would presumably be met through rehabilitation with the aim of preventing future criminal behaviour. Emphasizing protection of the public more generally would conceivably include short-term protection of the public—the sort that would be achieved through more immediate restrictions like pre-trial remand on a small number of dangerous and violent young persons (Valiquet, 2007).

Relatedly, Nunn (2006) advised amending the presumptions in the YCJA (2002) around pre-trial detention that presumed release for non-violent offenders and those offenders without a

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<sup>33</sup> Note: Archie Billard was not named in the Nunn Report and was instead referred to by his initials, A.B., as is typical of young offenders.

pattern of findings of guilt. Nunn suggested expanding the definition of a violent offence to encompass “conduct that endangers or is likely to endanger the life or safety of another person” (p. 289). In the case of Billard, a prolific history of auto theft had not constituted a pattern of violent offences, nor had they constituted a pattern of offending at all, given that the charges had not yet been heard in court. Aiming to widen what Nunn called, “gateways to custody” that had been, according to him, overly restricted under the YCJA, in recommendation 21, he proposed to expand the definition of violent offence to include offences that *may* endanger the public, and in recommendation 22, he sought to allow pre-trial custody in cases where a pattern of offending (i.e., a pattern of charges) rather than a pattern of findings of guilt were present.

In recommendation 23, Commissioner Nunn (2006) asked that pre-trial detention be separated from provisions within the YCJA (2002) regarding custody more generally. He elaborated that in contrast to sentenced custody, pre-trial detention is more closely linked to principles of early intervention and as such, is an important mechanism to address behaviours of serious and repeat offenders and to initiate rehabilitation. Such a goal, he argued, dovetails with protection of the public.

Lastly, recommendations 24 and 25 related to responsible person undertakings provided for in section 31 of the YCJA (2002) allowing for the placement of a young offender in the care of a responsible adult rather than custody (Nunn, 2006). Such orders typically involved an agreement by the youth to comply with the placement and also abide by any other judicial conditions (e.g., keep the peace and be of good behaviour). In the event a responsible person is relieved of their duties to care for, and exercise control over, the young person, section 31(5)(a) (YCJA) held that an order would be made “relieving the person and the young person of the obligations undertaken” (including the extra conditions). At this time, a warrant for the arrest of the young person was to be issued and a new bail hearing would be called. Together, these provisions meant that once a responsible person was relieved of their obligations, the young person had no judicial conditions until such time as they were arrested and again brought before a judge. Further, Nunn recognized that a new bail hearing could mean the involvement of a new set of professionals, potentially unfamiliar with the youth and his/her specific circumstances, thus increasing the chance of inconsistent results. To this end, Commissioner Nunn recommended that any other conditions of the undertaking remain in force even if the

responsible person is relieved of their duties and that the requirement for a new bail hearing be removed (Nunn, 2006).

Without question, Commissioner Nunn's recommendations relating to the YCJA (2002) were intended to advocate for specific and pointed amendments in what he argued was already a largely successful and novel legislative approach to youth justice. This qualification to his recommendations is especially important given the federal government would eventually identify the inquiry as an important precursor to their amendments to the legislation—an aspect of the reform process that will be detailed later in this chapter.

In addition to the Nunn Commission Report, a consultative process set in motion by the federal government a year later in 2007, was another critical precursor to the eventual legislative amendments. As the next section will show, there was a desire within the federal government to engage in an evaluative process five-years after the YCJA had come into force as a way to assess its value and effectiveness.

### ***The Roundtable Report***

Ten months after the release of the Nunn Commission Report in Nova Scotia, in October of 2007, then-Minister of Justice Rob Nicholson announced his comprehensive five-year review of the YCJA (2002) involving provincial and territorial consultations. The review was framed as critically important because of the significant differences between the YOA (1985) and the YCJA and thus, a need to examine how and whether the new provisions had impacted youth justice. Consultations held from February through August 2008 were designed to gather information on what was working and what needed to be changed in the YCJA, and engaged an array of participants including: members of the judiciary, prosecution, researchers, academics, non-governmental organizations, child advocates, youth justice programs and, government officials (Nicholson, December 9, 2010). It is unclear how these participants were chosen and whether a systematic or transparent process was used. The result was a document titled, "Comprehensive Review of the Youth Criminal Justice Act: Cross Country Roundtable Report" ("The Roundtable Report" Department of Justice Canada, 2010). Though not published formally by the federal

government,<sup>34</sup> the Roundtable Report was eventually given limited release under the *Access to Information Act*<sup>35</sup> and would be referred to by the Minister of Justice in his submissions to the House of Commons in 2010, as will be discussed in this section.

The Roundtable Report (Department of Justice Canada, 2010) contained five key conclusions in addition to several provincial/territorial-specific points. First, there was consensus around the fact that the YCJA (2002) should not undergo a complete overhaul; given that the legislation was still in its infancy at five years old, participants agreed that it should be given time to take hold—the provinces were still only beginning to build the infrastructure to administer it, and professionals had only just been trained on the complexities of the legislation.

Second, the Roundtable Report (Department of Justice Canada, 2010) showed agreement across the country that neither the support nor the resources (directed at early intervention and prevention measures) required for the YCJA (2002) to work well, existed. As a result of the community-based measures introduced under the YCJA having reduced the number of youth in custody, roundtable consultations found that other systems such as child welfare and mental health were now overburdened, and lacked sufficient resources to address the flood of youth who required these services. Accordingly, the implementation of community-based responses to youth crime and multidisciplinary approaches to youth crime under the YCJA was identified as a key challenge that had not been met by 2008.

A third area identified in the Roundtable Report (Department of Justice Canada, 2010) was that the provisions around pre-trial need to be redeveloped. Fourth, “less than 1% of roundtable participants supported the concept of deterrence for sentencing” (n. p.). Participants argued that deterrence would not be an effective measure for youth—that it wrongly assumes youth *plan* the consequences of their behaviour. Because participants felt that it would send the wrong message to youth—that they are disposable—participants submitted that deterrence should be kept out of sentencing principles for youth. A final point outlined in the Roundtable Report was the need for culturally sensitive and evidence-based programming for youth at all

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<sup>34</sup> The federal government’s choice not to publish the results of the Roundtable was puzzling to those who participated in the Roundtables. For example, in her submission to the House of Commons Standing Committee on Justice and Human Rights respecting Bill C-4, British Columbia’s Representative for Children and Youth, Mary Ellen Turpel-Lafond wrote, “I am perplexed as to why the results of this and other Roundtables have never been shared with the participants or public” (2010, p. 16).

<sup>35</sup> The report was not formally released, however, a copy obtained through an FOI request by an unnamed party is viewable here: <http://www.scribd.com/doc/52284978/Youth-Criminal-Justice-Act-review-roundtable-report>

stages. This idea highlighted the fact that programs differ across jurisdictions and that many Aboriginal communities, for example, lack programming available in other communities.

In addition to the five key conclusions described, the Roundtable Report (Department of Justice Canada, 2010) also detailed provincial and territorial-specific concerns, an especially important facet given the known regional variations in youth justice implementation. With respect to British Columbia, participants in this province expressed frustration with a small number of chronic—mostly property—offenders and the need to be able to distinguish between those youth who commit the bulk of youth crime and those youth whose offending behaviour could be more accurately described as a short-sighted, immature mistake. Consultations across British Columbia additionally found that the delivery of extrajudicial measures by police is not systematic in its application, and that there is an appearance that youth in custody are offered superior resources than those who are diverted into the community. Concerning the complex make up of offenders, participants of the roundtables in British Columbia also recognized that youth diagnosed with cognitive and neurodevelopmental disorders, most notably fetal alcohol spectrum disorder (FASD), make up over half of all youth involved in the justice system. This recognition was met with a desire from participants for more integrated programming in this province, as well as enhanced methods of information delivery to youth justice personnel such that they may access available programs for their clients who carry FASD diagnoses.

Presumably due to the breadth of issues considered, the diversity and expertise of participants in the roundtables, and the fact that the consultations had occurred at the request of the federal government, the meetings and the resulting documentation would have been an integral part of the government's action in addressing the identified shortcomings of the YCJA (2002). However, the important inconsistencies between the government's plan and the findings of the roundtables, and the fact that the Roundtable Report (Department of Justice Canada, 2010) was never published by the government, made for further controversy during reform discussions. This will be elaborated upon later in this chapter. It should be noted that then-Minister of Justice, Rob Nicholson informed the House of Commons that the advice of the roundtables and the resulting report was designed to be an advisory document for the government, rather than a published document. Despite this acknowledgement, it remains unclear why the resulting reform, proposed in 2007 with Bill C-25 would differ so egregiously from a document that was created to advise the government (Mann, 2014).

## **Bill C-25**

Shortly after the announcement that began the cross-country roundtables, on November 19, 2007, the minority Conservative federal government tabled the first of three bills with far-reaching amendments intended to shift the YCJA (2002) closer towards a “get tough on crime” philosophy (Mann, 2014). The bill brought to life a key campaign promise from their 2006 election platform: the Conservative Party of Canada’s vow to toughen criminal justice legislation (Cesaroni & Bala, 2008). The amendments contained in Bill C-25, “An Act to amend the Youth Criminal Justice Act” included what were the most extensive revisions to the philosophy of the YCJA to date, with the addition of deterrence and denunciation into youth sentencing principles, and the expansion of the availability of pre-trial remand (Valiquet, 2007). The government framed the two-part bill as their response to the Nunn Report (but perhaps not in relation to their own commissioned roundtables).

Clause one of the bill proposed an amendment that would retain the YCJA’s (2002) presumption against pre-trial detention, but would add an exception in cases where a youth committed a violent offence or an offence that otherwise endangered the public by creating a substantial likelihood of serious bodily harm to another person—a mirror of Commissioner Nunn’s recommendation 21; or failure to comply; or indictable offence. This would also apply when considering danger to the public with the bill clarifying that pre-trial detention would be permissible in cases where there is a substantial likelihood that the offender would offend violently or with an act that endangers the public (Bill C-25, 2007; Mann, 2014). Clause two of the bill included amendments to section 39(2) of the YCJA (2002) with the addition of two sentencing principles: denunciation and deterrence (Valiquet, 2007). These principles had long been included in the adult justice system, and had been contentious omissions to the YCJA (Cesaroni & Bala, 2008) as reported in Chapter 3.

According to federal government, the crime control measures introduced by the bill were crafted in response to two inter-related issues: requests from the provinces, notably Nova Scotia, to ensure that “society is effectively protected from violent and dangerous offenders” (Nicholson, 2007, Nov. 21) and also as a mechanism to improve fairness for victims. Although Bill C-25 was presented by the federal government as having wide public support in a time when “[m]any Canadians are concerned about youth crime [seeking] to stem the reported recent increase in violent youth crime and restore respect for law” (Nicholson, 2007, Nov. 21), in reality,

and unsurprisingly, opinion was mixed. Those in favour of the bill appreciated the measures being directed at the small group of serious and violent young offenders and the attention given to victims—representatives from the province of Nova Scotia, for example supported the bill (Valiquet, 2007). On the other hand, those who opposed it (e.g., community workers who feared that the amendments would cause more youth to be incarcerated) were concerned that the advancements made under the YCJA (2002) that had resulted in a reduction in custody, would be reversed. They also feared that principles such as deterrence and denunciation, that contradict the aims of rehabilitation under the YCJA, and fail to acknowledge the numerous offenders facing mental health concerns, would undermine the positive strides that had been made under the current Act. Others disagreed with the bill stating that its crime control measures did not go far enough in making amendments from the Nunn Report (Valiquet, 2007).

Amid widespread criticism, then-Minister of Justice, Rob Nicholson defended the bill by emphasizing the government's dedication to addressing the concerns of victims through amendments to the youth justice system. In a November 21, 2007 speech to the House of Commons, Nicholson asserted:

Most of us, when we came to government, we asked who was in charge, who looked after the rights of victims? Everybody else seemed to have somebody else lobbying or campaigning on behalf of their rights, but there was very little in the way of spokespeople who concentrated on the rights of victims. Therefore, it is very appropriate that the Government of Canada has initiated that new response to something very fair, which is looking after the victims of crime.  
(Nicholson, 2007, Nov. 21, col. 1550)

According to Mann (2014), the federal government's deference to victims and lay law-abiding citizens over expert stakeholders to rationalize their proposed modifications to the YCJA (2002) was used as an excuse for not considering what had been learned during the roundtables as they drafted their proposed amendments. Eventually, during the campaign leading up to the 2008 election, Prime Minister Harper "blamed the unmitigated failure of youth justice, in part, on the influence of 'ivory tower experts'" (Mann, 2014, p. 408).

The issue of increased attention towards the rights of victims was key for the federal government, signaled not only by the more punitive direction taken in its proposed amendments to the YCJA (2002), but more clearly by the creation of the Office of the Federal Ombudsman for Victims of Crime in 2007 (Government of Canada, 2007). The first such position, the office of the ombudsman was explained as an independent check on the government's efforts to address the needs of victims.

After being debated during a second reading, Bill C-25 was terminated when Parliament ended in 2008. Like their 2006 election campaign, the Conservative Party of Canada's 2008 election campaign once again saw promises to introduce more punitive measures into youth justice policy including deterrence in sentencing and the expansion of pre-trial detention—those amendments that had made up Bill C-25. The platform went further, with the Conservative Party of Canada's promise to include automatic sentences for serious and violent offenders and the publication of the names of young people in an attempt to further protection of the public (Cesaroni & Bala, 2008). The Conservatives won the election on October 14, 2008, signaling that more punitive measures would once again be brought before the House of Commons.

### ***Bill C-4: Sébastien's Law***

On March 16, 2010, within a year-and-a-half following the election, Rob Nicholson, then-Minister of Justice, introduced Bill C-4, "Sébastien's Law (protecting the public from violent young offenders)" on behalf of the minority Conservative government. The bill was the expected youth justice policy-related outcome of the 2008 election and, as this section will show, was similar in content to Bill C-25. Named for Sébastien Lacasse, a 19-year-old youth murdered in 2004 by a 17-year-old gang member later sentenced as an adult, the bill was described as a measure to promote public safety. This goal was to be achieved by focusing on accountability for serious and repeat young offenders and was, once again, presented as the government's response to the Nunn Report (Canadian Criminal Justice Association, 2010).

Bill C-4 (2010) contained 28 clauses, the most significant of which echoed Bill C-25 with the introduction of deterrence and denunciation into youth sentencing principles and the expansion of pre-trial detention. C-4, however, went further and included measures emphasizing safety of the public and accountability of young offenders with the following:

- Clause 3: Protection of the public to be included in principles of the YCJA;
- Clause 4: The simplification of pre-sentence detention to allow detention for violent offence charges, youth who have previously failed to comply with non-custodial sentences and youth who have committed an indictable offence for which an adult would be eligible for a period of incarceration greater than five years with a history of guilty findings;
- Clause 7: Addition of specific deterrence and denunciation to sentencing principles;
- Clause 8: Allows custody in cases where a youth has been found guilty of an indictable offence and has a pattern of extrajudicial sanctions;
- Clause 11 and 18: Mandatory consideration of adult sentences for specific offences;
- Clause 21: Requires that youth under 18 years must serve their sentence in a youth facility;
- Clause 20 and 24: Publication of the names of violent offenders and the prohibition of youth in adult correctional facilities; and
- Clause 25: Requires a police agency to record extrajudicial measures that will be added to a youth's record if they are convicted.

Two clauses of the bill address community-based responses to crime, specifically diversion: Clause 25 would require police to keep records of any extrajudicial measures—a discretionary provision under the YCJA (2002). The clause held that should a young person be convicted, the record of extrajudicial measures would be added to their criminal history. Clause 8 would permit a custodial sentence for youth convicted of specific offences if they have received extrajudicial sanctions in the past (Casavant & Valiquet, 2011). Clause 8 was found particularly problematic by the bill's opponents, given that accepting responsibility in order to receive an extrajudicial sanction is quite different from being found guilty in a court of law, the former not permitting a full defiance. Under Bill C-4, however, these would be given equal weight (Casavant & Valiquet, 2011).

Broadly, and according to its legislative summary, the bill was designed “to facilitate the detention of young persons who reoffend or who pose a threat to public safety” (Casavant &

Valiquet, 2011, p. 1). Like Bill C-25, the bill offered amendments to the YCJA (2002) that proposed to shift the approach to youth justice policy in a more punitive direction. For this reason, the bill was highly contentious and like Bill C-25, many non-governmental organizations (e.g., the Canadian Criminal Justice Association), advocacy groups (e.g., UNICEF; the Canadian Coalition for the Rights of Children), independent offices of government (e.g., the BC Representative for Children and Youth), professional associations (e.g., the Canadian Bar Association), professionals, and academics (e.g., Nicholas Bala) opposed it. For the most part, “[o]pponents tended to be service providers, senior police personnel, victims’ services representatives, legal professionals, established academic and Liberal provincial politicians” (Mann, 2014, p. 406). Critics of the bill argued that deterrence was inappropriate for youth given their immaturity and that rehabilitation and reintegration should be the primary aims of sentencing for youth (Casavant & Valiquet, 2011). With respect to the amendment that would allow judges to consider a youth’s prior extrajudicial sanctions in crafting a sentence, those who opposed the provision argued that it could undermine the success of extrajudicial sanctions. On the threat of the measure being used against them in future court proceedings, youth would be more reluctant to choose that option. Together, the provisions set out to increase the use of youth courts and incarceration (Casavant & Valiquet, 2011).

Alternatively, the bill—specifically its dedication to public safety and protection of victims—was supported by “victims’ rights advocates but also included front line police officers, academics and legal professionals who situated themselves outside the mainstream, and Conservative provincial politicians” (Mann, 2014, p. 406). The only clauses to receive meaningful support across political perspectives were those providing for detention of young offenders exclusively in youth correctional facilities (Casavant & Valiquet, 2011) and the recognition of the diminished moral blameworthiness of young persons (Mann, 2014).

Due to its second reading and subsequent discussion in the House of Commons Standing Committee on Justice and Human Rights, there exists a good deal of Parliamentary dialogue and debate on the bill. Largely the debate vacillated between two poles: The government argued that the revisions were arrived at through extensive public consultation that yielded overall dissatisfaction with restrictions to the use of custody and an inability to deal with serious and violent repeat young offenders (Canada. Parliament. House of Commons, 2010, Apr. 22). On the other hand, external experts argued that the amendments were shortsighted

and would threaten the success that had followed community-based response to youth crime under the YCJA (2002). For the government, the bill would achieve the two-fold goal of public protection and upholding the rights of victims. For instance, Conservative Member of Parliament Harold Albrecht stated,

Sébastien's law will make the protection of society a primary goal of our youth criminal justice system. It will give Canadians greater confidence that violent and repeat young offenders will be held accountable through sentences that are proportionate to the severity of their crimes. (Albrecht, 2010, Apr. 22, col. 1545)

Similarly, the needs of victims were framed as being best met through punitive legislative amendments that could be delivered with the enactment of the bill. Conservative Member of Parliament Ed Fast argued:

Our government believes that the law should place the highest priority on victims. This week we are celebrating and honouring National Victims of Crime Awareness Week, when we make the statement that victims have been forgotten for far too long. Our Conservative government is taking notice. We have implemented many new initiatives that address the needs of victims, including establishing a national awareness day. We have also established the Office of the Federal Ombudsman for Victims of Crime. We have enhanced the funding for victims. In fact, even in this year's budget, we added another \$6.6 million to provide services to victims. Indeed, it is our goal to significantly reduce the number of Canadians who are victimized by violent youth crime. We cannot do that without having a tool chest that has the legislative tools to address youth crime, especially when it is violent. (Fast, 2010, Apr. 22, col. 1635)

In contrast, other legislators found the provisions to be overly focused on a specific group of young offenders at the expense of considering prevention and a balanced approach to youth justice. Judy Sgro, a Liberal Member of Parliament considered the following:

The question for all of us legislators is: What kind of help do they need and what do we do that best befits the crime but best protects society and also opens the

door so that young person gets rehabilitated in a positive way? (Sgro, 2010, Apr. 22, col. 1535)

Despite these very different approaches, both the NDP and the Liberal parties supported the bill, at least in part, in order to have it debated further in the House of Commons Standing Committee on Justice and Human Rights. By allowing the bill to be debated by the committee, Parliamentarians invited witnesses—subject matter experts, youth justice professionals and special interest groups—to be heard and have the chance to shape revisions to the bill.

Witnesses who were invited to prepare submissions and attend the Parliamentary committee reported that the bill was especially problematic predominantly because the amendments were “contrary to evidence-based research and stakeholder experience on what works to reduce and prevent future offending, unnecessary given the sustained decline in Canada’s crime and homicide rates and heedless of provincial concerns over the mounting costs of administering criminal justice” (Mann, 2014, p. 406). As the following sections will show, the criticisms of the bill presented by opposition parliamentarians and witnesses addressed four broad areas: (a) the bill was based on a “tough on crime” rhetoric which fell short of addressing the actual causes of crime and complex needs of youth; instead paid too much attention to the public perception of youth crime; (b) the amendments overly restrict discretion by police, prosecutors and the judiciary; (c) the bill goes further than the amendments suggested by Commissioner Nunn and does not address the contents of the cross country roundtables and; (d) the amendments contradict Canada’s commitment to the United Nations Convention on the Rights of the Child. These criticisms will be discussed in turn.

One writer likened the introduction of a host of criminal justice reform bills since 2006 as an effort at fear mongering stating, “The provisions of Sébastien’s Law will roll back the considerable advances achieved by the [YCJA (2002)] since 2003 (Mallea, 2011, p. 76). Furthermore, throughout the committee hearings, the goals of rehabilitation and reintegration were identified as deliberately and inappropriately missing from the bill with opponents typically framing rehabilitation as a means to protect the public (Turpel-Lafond, 2010; White, 2011, Mar. 9). Mary-ellen Turpel Lafond, the Representative for Children and Youth in British Columbia included a lengthy discussion in her submission to the parliamentary committee respecting the complex needs of young offenders, particularly those with developmental disabilities, those children who are in the care of the government and those with complex mental health needs.

Consideration of these needs and how they uniquely affect individual youth, she argued, must be included in youth justice legislation. According to Turpel-Lafond, in drafting Bill C-4, the government had mistakenly associated public safety with more severe sentencing. As a result, the bill would mean missed opportunities to intervene with youth prior to more serious entrenchment into the criminal justice system. Similarly, a submission from the St. Leonard's Society to the House of Commons Standing Committee (White, 2011, Mar. 9) advised that the amendments were not grounded in the evidence on what works in addressing youth criminal behaviour. With respect to the proposed changes around diversion—those that would see extrajudicial sanctions introduced at the sentencing stage justifying a more severe sentence—opponents suggested that the amendments would have an overall chilling effect on efforts to keep youth out of formal court processing (Turpel-Lafond, 2010). It was suggested that youth would not agree to extrajudicial sanctions if their admissions of guilt could be used to rationalize tougher sentencing in future (Vandergrift, 2010).

Proponents of the bill, on the other hand, pointed to increased incapacitation as a means in itself to protect the public and provide the opportunity for rehabilitation (within the custodial environment). The debate seemed to hinge upon the difference between the acquisition of immediate public safety (through incarceration) in contrast to long-term public safety (through meaningful consequences, rehabilitation and treatment) (Canada. Parliament. House of Commons, 2010, Apr. 22).

The amendments proposed introduced three requirements that would limit police, prosecutorial and judicial discretion in very important ways (Casavant & Valiquet, 2011), and was a contentious issue among critics. Together, the requirement that police keep records of extrajudicial measures that would be added to a youth's criminal history in they event they were convicted, the requirement that Crown consider adult sentences in certain cases, and the requirement that judges consider a youth's extrajudicial sanctions history as a gateway to custody during the sentencing stage, placed serious restrictions on youth justice professionals according to the Canadian Criminal Justice Association (2010). It was argued that these restrictions would overly constrain discretion by youth justice experts, and would make responses to youth crime overly rigid.

Further to the opposition regarding the content of the bill, critics also pointed to the weaknesses in the foundation upon which the government had presented the amendments.

Specifically, concern arose over the government's stated links to the Nunn Report, the Roundtable Report, the case of the murder of Sébastien Lacasse, the rights of victims and an increasing youth crime rate (Canadian Bar Association, 2010).

With respect to the Nunn report, Commissioner Nunn himself submitted that the bill went much further than his recommendations. The ideas contained within the Bill were so contrary to his own conclusions that Nunn publically denounced the bill saying, "They have gone beyond what I did, and beyond the philosophy I accepted...I don't think it's wise" (Canada. Parliament, 2010, Jun. 3). Likewise, in their submission, the Canadian Bar Association (2010) argued that the revisions greatly overshoot the recommendations offered by Nunn. The submission stated, "it is Parliament's prerogative to determine policies and enact legislation, subject to constitutional scrutiny. However, it is troubling for legislative proposals to be held out as based on a respected judge's findings when that judge has publicly stated that the proposals are contrary to his views" (p. 3). Though it is not within the federal government's purview to implement recommendations from a provincial commission, one of Justice Nunn's recommendations was that the province of Nova Scotia lobby the federal government to make changes to the YCJA (2002). The reforms put forth by the federal government were framed as their response to lobbying from the province of Nova Scotia on the recommendation of the Nunn Report. The proposed amendments, it was suggested, were intended to help ensure that violent/repeat young offenders could be held to account through sentences proportionate to the severity of their crimes, and that the protection of society is considered the paramount goal of the YCJA. Opponents argued that instead of implementing the reforms Nunn had proposed, the bill instead edged far closer towards crime control, punishment and shaming of young offenders.

In addition to the absence of the Nunn Commission report, opponents pointed out that the Roundtable Report (2010) was also missing from the contents of Bill C-4. During the course of their attempt to reform the YCJA (2002), the Conservative party often acknowledged the 2007-2008 cross-country roundtables as evidence of broad consultation and affirmation of widespread support for the reform agenda (Mann, 2014). Importantly, as Mann found in her analysis of Hansard transcripts from 2007 to 2012, participants to the consultation exercise began to speak out about what they had heard throughout the consultation process—that they felt YCJA was working—a very different account of what had transpired during the roundtables as compared to what the government had stated. Due to the lack of confidence expressed with

the government's discussion of the contents of the roundtables, the Justice Minister was asked to provide a copy to the House of Commons.

Eventually, excerpts of the document—though not the document itself—were introduced to the House of Commons late in 2010 amid Bill C-4 debate (Canada. Parliament, 2010, Dec. 9). When the government did introduce the report, Minister Nicholson was questioned as to why the report had never been distributed, why it took so long to be introduced into the House and additionally, why he had not provided a complete list of participants and their submissions to the consultation process. Most importantly, he was questioned on why the reforms to the YCJA (2002) that the Conservatives had introduced into the House did not appear to be aligned with the perspectives gathered in the consultation process. For example, Bloc Québécois Member of Parliament, Serge Ménard stated, “You are justifying this bill based on the consultations you conducted on the street, where people told you how bad the law is. But the report specifically states that it is misunderstood because the public is poorly informed” (Canada. Parliament, 2010, Dec. 9, col. 1550). Perhaps the most problematic aspect of Bill C-4 lay with respect to deterrence as a sentencing principle. The Roundtable Report had revealed that “less than 1 per cent” of participants supported such a revision to YCJA sentencing principles (Department of Justice Canada, 2010).

In addition to disenchantment surrounding the lack of inclusion of judicial recommendations and expert opinion into the content of Bill C-4, the very naming of the bill was also a source of intense frustration. For example, Mary-Ellen Turpel-LaFond, British Columbia's Representative for Children and Youth included in her submission to the committee, her assessment that though the bill was named for Sébastien Lacasse, there was no discernable link between that case and the proposed amendments (Turpel-Lafond, 2010). Likewise, the Canadian Bar Association (2010) argued that the naming was especially inappropriate given the contents of the amendments would have neither prevented the death of Sébastien, nor provided a different criminal justice response to those convicted.

Bill C-4 was last discussed in the House of Commons Standing Committee on Justice and Human Rights on March 23, 2011, three days before the House of Commons was dissolved and an election was called. The election was called as a result of the government having been found in contempt of Parliament in its failure to address the costs of the YCJA (2002) and other reforms to justice policy (Mann, 2014). This led to a Liberal motion of non-confidence, a

subsequent 156-145 vote in favour of the motion, the collapse of the government and, the 2011 election. The 2011 election gave the Conservative Party of Canada a majority of seats in the House of Commons, and would see the introduction of Bill C-10, containing a duplicate of Bill C-4.

### ***Bill C-10: The Safe Streets and Communities Act***

Although neither Bills C-25 nor C-4 were passed as a result of federal elections, the verbatim contents of Bill C-4 as discussed above, became part 4 of a major omnibus crime bill initiated by the Federal Government once the Conservative Party of Canada had achieved a majority government in 2011 (Mann, 2014). Bill C-10, the *Safe Streets and Communities Act* was introduced into the House of Commons on September 20, 2011.

The youth justice section of the bill was made up of a set of measures designed to address the problem of serious and violent young offenders with an emphasis on accountability, proportionality and protection of society (Barnett et al., 2012). The result, part 4 of the *Safe Streets and Communities Act* proposed amendments to the YCJA (2002) including: changes to sentencing, revisions to record keeping for extrajudicial measures, new definitions for violent and serious offences, and relaxing the publication ban on names of young offenders ("Safe Streets and Communities Act," 2011). In 2012, the Act (Bill C-10) received Royal Assent and was passed into law. The Act presented an array of changes, not only to the YCJA, but also to the *Criminal Code*, the *Corrections and Conditional Release Act*, the *Controlled Drugs and Substances Act* and the *Immigration and Refugee Protection Act*, among others. It also enacted the *Justice for Victims of Terrorism Act*. Together, the amendments signaled a move to both strengthen the rights of victims, to decrease violent crime, and to promote public safety in the short and long-term (Bousfield, Cook & Roesch, 2014).

Bill C-10 was perhaps even more contentious than the YCJA (2002) itself, particularly because with it, the government seemed to propose changes that countered social science evidence. As a result, organizations including the Canadian Coalition for the Rights of Children, the Canadian Bar Association, Justice for Children and Youth, the John Howard Society, the Canadian Centre on Substance Abuse and the Canadian Psychological Association among others presented their disagreements with the changes to the Senate Committee on Legal and

Constitutional Affairs (Bousfield, Cook & Roesch, 2014). Furthermore, opponents criticized the Conservative Government for rushing debate on the bill (Cohen, 2012; Stoneman, 2011) presenting the process as a threat to democracy itself.

Similar to Bills C-25 and C-4, the government positioned the youth justice amendments in Bill C-10 as the best way to address the shortcomings of the YCJA (2002) including by clarifying the rules on pre-trial detention to address the inconsistent and insufficient application and by strengthening the youth justice system to hold violent and reckless youths in custody when they pose a danger to society (Barnett et al., 2012). The Bill addressed the need to simplify pre-trial detention rules to ensure that youths can be detained while awaiting trial if charged with a “serious offence” and substantial likelihood that youth will commit another serious offence if released. A key result was a new provision that would clarify the definition of a “serious offence” such that any indictable offence for which the maximum punishment for adults is imprisonment for five or more years, including violent offences, property offences (e.g., theft over \$5,000, which may include car theft), and offences that could endanger the public (for example, public mischief, unauthorized possession of a firearm, possession of a firearm, sexual exploitation, robbery and murder) would fall under the meaning (Barnett et al., 2012; Mann, 2014).

In order to advance the goal of protection of society from serious and violent young offenders, Bill C-10 offered several modifications, the broadest of which changed the guiding principles of the YCJA (2002) to highlight protection of society. Where section 3(1)(a) of the YCJA (2002) originally included crime prevention, rehabilitation and meaningful consequences “in order to promote the long-term protection of the public”, Bill C-10 removed “long-term,” and added a reference to public safety making it the central facet of the YCJA (2002). The interpretation of this amendment is that it enables judges to sentence repeat youth offenders more harshly and to longer custodial terms in order to protect the public (Bala, 2011). The following is a list of the other amendments:

- Defining serious violent offence;
- Removing the words “long-term” before “protection of the public”;
- Allowing the court to decide whether the publication ban on a youth convicted of a violent offence should be lifted. This differs from what was the status quo where the publication ban could only be lifted when a youth was given an adult

sentence, temporarily in special cases (e.g., when a dangerous youth escapes) or in special circumstances when a youth makes an application for their name to be published;

- “Serious” crimes defined as those for which the maximum sentence is 5 years or more;
- “Violent” offence defined as one in which bodily harm results or where bodily harm was threatened or attempted and also dangerous acts. This means that acts that do not result in bodily harm may be defined as violent; and
- Crown prosecutors must consider adult sentences in serious and violent cases and must inform the court of their reasons should they choose not to pursue an adult sentence.

Bill C-10 passed in 2012 after a vote of 154 to 129 in the House of Commons (Cohen, 2012). In the following section, I examine the coming into force of Bill C-10 in the context of the serious misgivings discussed thus far.

### ***The process of reform: dissatisfaction with Bill C-10***

In addition to the description of the key policy documents and events that preceded the reform to the YCJA (2002) as contained above, it is imperative to discuss the contexts in which these led to reform. Because of the recent timing of the events described throughout the following section, limited academic literature and research exists in documenting how these events transpired and, more importantly, in theorizing the significance of the process by which they occurred. An exception to this is the work undertaken by Ruth Mann as described in her 2014 publication on the dynamics of the reform of the YCJA (2002) evidenced by her analysis of Hansard transcripts from 2007 to 2012. The research I have undertaken in this dissertation also helps to fill the gap in literature with respect to community-based responses to youth crime.

If, as Bala, Carrington and Roberts (2010) and Cesaroni and Bala (2008) argue, youth justice in Canada was not a partisan issue until the 1990s, it reached new heights of party-line controversy throughout 2011 and 2012 as compared to a decade before. In addition to the content of the bill, a central aspect fueling the debate was that the bill was far too all-encompassing in scope. Importantly, the omnibus bill included a total of nine bills, many of

which had failed to pass during previous sessions of Parliament while the Conservatives had a minority government—and as such, particular sections could not be debated fully given its breadth. In fact, the Senate’s decision to restrict debate on the bill to six hours (the minimum number of hours required by law) was well publicized (Press, 2012). The government presented the bill as a response to the mandate given to them by voters who, in the recent election had given the Conservative party a clear majority; Bill C-10 and its hopeful passage within 100 days of a Conservative majority had been a key part of their election platform.

It has been argued that the provisions contained in Bill C-10 are contradictory in the position they outline respecting youth as distinct from adults (Bala, 2011). Specifically, while C-10 adds the principle of “diminished moral blameworthiness or culpability” and prohibits incarcerating youth under 18 years of age in adult prisons, it adds denunciation and specific deterrence to the list of principles judges may consider when sentencing young offenders. Historically, the principles of denunciation and specific deterrence have been reserved for adult sentencing because research shows that these measures do not affect youth given their developmental capacity (Cesaroni & Bala, 2008). Thus, while Bill C-10 presumes youth to have lesser responsibility for their actions as compared to adults, critics argued that the amendments in the bill signal that youth are expected to govern their actions like fully developed persons. As Bala, Carrington and Roberts (2010) maintained, the YCJA (2002) was largely a success and did achieve what it set out to do: lower youth custody rates without increasing the rate of youth crime. They suggest that despite what is clearly evident, the Conservative government adopted and retained a “get tough” stance with the introduction of the revisions to the YCJA. According to these authors, the Government’s stance has been maintained for two reasons: the public is fearful of youth crime—which may be partly due to increased media attention on youth criminal activity since the 1990s and there are specific changes in youth culture that some adults are dissatisfied with.

Given that a key concern of this dissertation is the set of provisions surrounding community-based responses to youth crime, it is important to note that Bill C-10 did make some changes to the administration of these measures. The Bill emphasized that police must record all extrajudicial/informal measures including warnings, cautions and/or program referrals; this enhanced record-keeping was designed to allow judges to refer to “patterns of offending” in their

sentencing decisions (Department of Justice Canada, 2011). In their submission to the House of Commons Committee on Justice and Human Rights “Justice for Children and Youth,” (2011) a legal clinic serving young people, expressed discontent over the fact that judges should take into account offences for which the youth has not been found guilty in a court of law. They predicted that the result where policing is concerned will be a chilling effect on extrajudicial measures as young people may be reluctant to take part in a measure that could be used to establish a pattern of offending. Representatives of Justice for Children and Youth (2011) offered the additional concern that youth who may not understand the consequences of accepting responsibility for their actions and who receive extrajudicial sanctions may be further penalized if that sanction is used to justify more severe punishment should that youth become subject of another offence later on.

Perhaps the most significant characteristic of the public and scholarly debate around Bill C-10 was that, by and large, many academics that were considered experts in the area of youth justice did not support the set of revisions that this bill introduced. Many special interest groups described the bill as having some positive aspects (provisions barring incarcerating youth with adults and the reaffirmation that youth have diminished moral blameworthiness) buried beneath other revisions that they could not support (Justice for Children and Youth, 2011; UNICEF Canada, 2011). The position submitted by the Canadian Bar Association (2011), to the House of Commons Standing Committee on Justice and Human Rights, for example, argued that together these amendments would serve to severely limit discretionary power of professionals. The Association also suggested that demanding that police keep records of extrajudicial measures and allowing judges to use resulting patterns in sentencing could cause police to rely to a lesser extent on diversion. Furthermore, youth convicted of less serious crimes could be given custodial sentences rather than extrajudicial sanctions or another non-custodial option because they will be understood to have engaged in a pattern of offending. The bill was decried by many youth serving organizations<sup>36</sup> for its perceived harsh approach to young offenders including UNICEF Canada (2011), who argued that the bill gave the misguided impression of young offenders as “mini criminals” rather than youth in need. The Canadian Coalition for the Rights of Children (2011) prepared a submission that argued that the amendments did not treat children in an age-appropriate way and that as such, the bill violated Canada’s commitment to the United

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<sup>36</sup> Including Justice for Children and Youth, UNICEF, the UN Committee on the Rights of the Child, the Canadian Coalition for the Rights of Children.

Nations Convention on the Rights of the Child (UNCRC), in particular, Article 40. Among other things, Article 40 of the UNCRC provides that young people are treated in a way that takes their age into account, and which promotes rehabilitation and reintegration. The Article also requires that alternatives to formal processing and incarceration be utilized whenever appropriate in a manner proportionate to the circumstances and offence (United Nations Convention on the Rights of the Child, 1989).

Additionally, 16 child rights and social service organizations<sup>37</sup> submitted a letter (Vandergrift, 2012) to the Prime Minister and the Senate Committee on Legal Affairs outlining their concerns over the bill, and specifically its non-compliance with the UNCRC. According to the letter, though the government had highlighted the bill's emphasis on youth crime as a mechanism to protect youth victims—who are often victimized by their peers—there is an important crossover between youth in conflict with the law and those who have experienced neglect. Finally, the United Nations Committee on the Rights of the Child critiqued Canada with respect to Bill C-10. As is typical, the Committee offers observations of each of the implementation of the UNCRC by each its member countries. Included in the observations following the Committee's 61<sup>st</sup> session was the following:

The Committee notes as positive that Bill C-10 (Safe Streets and Communities Act of 2012) prohibits the imprisonment of children in adult correctional facilities. Nevertheless, the Committee is deeply concerned at the fact that the 2003 Youth Criminal Justice Act, which was generally in conformity with the Convention, was in effect amended by the adoption of Bill C-10 and that the latter is excessively punitive for children and not sufficiently restorative in nature. The Committee also regrets there was no child rights assessment or mechanism to ensure that Bill C-10 complied with the provisions of the Convention. (Interagency Panel of Juvenile Justice, 2012, p. 23)

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<sup>37</sup> This included: Boys and Girls Clubs of Canada, Canadian Association of Social Workers, Canadian Coalition for the Rights of Children, Child Welfare League of Canada, Defence for Children International Canada, First Call: BC Child and Youth Advocacy Coalition, International Bureau for Children's Rights, International Institute for Children's Rights and Development, Justice for Children and Youth Foundation, Interdisciplinary Research Laboratory on the Rights of the Child, Oxfam Canada, Plan Canada, Pro Bono Law Ontario, Save the Children Canada, and Society for Children and Youth BC.

In sum, critics of the aspects of Bill C-10 that concerned youth justice cited a lack of attention to empirical evidence, an (over)emphasis on two high profile cases (the murder of Sébastien Lacasse and the death of Theresa McEvoy) and the lack of focus on high volume offences, as the failings of the legislation (Mann, 2014).

On the other hand, victims' organizations, some policing bodies and a few provinces (e.g., Alberta), "academics and legal professionals who situated themselves outside of the mainstream..." (Mann, 2014, p. 406) supported the wide-reaching legislation, as did the Federal Ombudsman for victims of crime. For the most part, supporters focused on sections other than those aspects that proposed amendments to the YCJA (2002). Their arguments, that offenders will be more fully held accountable by the amendments, and that victims will be more widely supported were tempered by comments that the bill would be difficult and costly to implement.

## **Conclusion**

Because of its recency, there have been few in-depth qualitative research studies on the period of policy, politics and practice around community-based responses to youth crime during the past 10 years, and even fewer in the province of British Columbia. For this reason, a good deal about the politics, policy and practices around community-based responses to youth crime is still unknown from this perspective. As a result, in conducting this research, I set out to gain a deeper understanding of this phenomenon. In the following chapter, I shift focus to the conceptual framework of this dissertation by considering competing models of the policy process, establishing the links between the policy setting and the selected methodological approach that is discussed in Chapter 5.

## **CHAPTER 5: Conceptual Framework: Bridging Theory and Methodology**

### **Chapter Overview**

In this chapter I present two overarching viewpoints accepted in this dissertation: (a) that the policy process is best understood as interactive rather than linear; and (b) that youth justice policy has rested, and continues to rest, on a foundation of competing, often divergent philosophical leanings, rather than one cohesive point of view. I then identify and collate the key shifts in community-based responses to youth crime and youth justice more generally, as outlined in previous chapters, and explore them more deeply. I argue that these are instances of themes identified in the literature on “governance” and social control. The purpose of this discussion is to bridge the content examined throughout Chapters 2 to 4 with the analysis that takes place in later chapters. This chapter also introduces the conceptual threads that will be used throughout the analysis to contextualize findings.

Doob and Sprott (2004) have observed that “the history of youth justice in Canada is the story of two parallel, but separate, youth justice systems: the political youth justice system (the system as it is seen and discussed in the political realm) and the operational youth justice system (the system as it operates on a daily basis)” (p. 186). Minkes (2007) elaborated with the notion that the political system must respond to the public’s belief that the system is not tough enough to appropriately address serious youth crime, while professionals who work within the operational system typically subscribe to the notion that an overly punitive system is not effective. The context of these differing perspectives helps illuminate the contrasts between these policy approaches and helps to substantiate a key argument in this dissertation to be examined in what follows: that policy is best studied with attention to multiple policy “levels.”

The argument has already been made that it is difficult to describe youth justice policy reform without attending to the apparent ambiguity in policy and legislation and the resulting dissonance in practice. This chapter begins by presenting the dominant policy process models that help conceptualize the activity of policy-making. Though, as Jones and Newburn (2006) acknowledge, a good deal of theoretical and empirical work has been completed on the policy process from within the discipline of political science, the body of work rarely considers crime as a policy area. On the other hand, those who do research crime only infrequently turn their

analyses towards that of the policy process (exceptions include Hogeveen & Smandych, 2001; Mann, 2014). For that reason, work that attends to the interplay between these spheres can be considered an important addition to the extant literature and current research. This chapter is organized in the following manner: (a) a discussion of the utility of an interactive policy model through which to understand an area of contemporary youth justice; (b) the identification of four key socio-cultural contextual features of policy; and (c) a brief discussion of the implications these features have for the study of policy and practice surrounding community-based responses to youth crime. The chapter helps to set the stage for how this dissertation research was developed in recognition of the fluid model of policy-making.

## **Public Policy**

In general, public policy provides a “guide to action, a plan, a framework, and a course of action or inaction designed to deal with [public] problems” (Pal, 2001, p. 5). As a result, public policy represents the output from governments on a particular choice of course of action given a particular problem (Maclure et al., 2003). While policy-makers tend to present policies as the most ideal solution given consensus on one or a set of social problems, Jamrozik and Nocella (1998) argue that it may be more accurate to describe policy solutions as “determined by what policy-makers see as ideologically appropriate, economically feasible, and politically expedient or necessary” (p. 53). This interpretation emphasizes the political nature of policy-making, as well as the necessary compromises involved in producing policy outcomes, and stresses the non-linear character of the policy process and reform over time. In addition, as Hankivsky, Grace, Hunting, and Ferlatte (2012) elaborate, the fact that policies provide answers to questions such as what governments “ought or ought not to do” (p. 9), means that policies have a normative quality. In this vein, the content of public policies and the debates surrounding them provide a window revealing answers—that may change over time—as to how we as a society wish to respond to one another, that is “what we want to do for each other collectively and what we want other members of society to do for us as individuals” (p. 9) given a particular socio-political context, and mediated by a set of policy actors.

Applied to youth justice policy and specifically to community-based responses to youth crime as examined in Chapters 2 through 4, it is clear that the past 100 years or so have seen broad shifts in the answer to what governments ought or ought not to do with respect to youth

crime, particularly the recent emphasis on community-based responses to youth crime. As discussed, resulting policies and practices have been as much about ideological change as socio-cultural shifts in the way we understand young people. Relatedly, public policy in action (i.e., practice) provides another set of normative ideas as practitioners make decisions about how to implement policy in their daily practice (Jamrozik & Nocella, 1998). Accordingly, as the next section will show, the framework accepted in this dissertation is that the study of policy must be much more than a study of policy as it is written (e.g., statutes and Acts)—a linear approach. Instead, it should be the study of the values, beliefs and ideas underlying the policy problem, policy process, the policy product and policy as it is implemented—an approach emphasizing the interactive aspects of policy. The following sections argue the case for this approach.

### ***Linear models of policy-making***

Traditionally, the starting place for policy analysis has been the study of decisions between alternative policy solutions arrived at through rational decision making and the uncomplicated use of the best evidence available (Goldson, 2010). This linear model of policy analysis depicts a series of stages engaged in by policy-makers: policy identification, goal and objective formulation, the arrival at policy solutions and the selection of policy solutions based on cost benefit analyses (Fischer, 2007). With the first such linear model Lasswell (1951) suggested that policy-making is the result of problem solving where the process is both objective and rational (see also, Hajer, 2003). Later, with his systems analysis approach, Easton (1965) similarly described policy-making as moving in a linear manner from defining the problem, to forming and weighing solutions, to implementation and evaluation. Both Lasswell's and Easton's linear models suggest that policy-makers arrive at decisions through a chain of consecutive steps or stages from identifying the problem, to proposing a solution, to solving that problem.

According to linear models, policy-making is achieved by governments making purposeful decisions (policies) based on the voices of the people, accessed through the constitutional process (Colebatch, 2009) including through consultation. Though the linear, rational (stages) model of policy-making is generally held to be the most popular explanatory model of the policy process, it is insufficient to account for the relative chaos of policy-making (Colebatch, 2006) evidenced by varying problem definitions, solutions driven by ideology rather

than evidence, and the pressures exerted by multiple and competing stakeholders. As discussed in the earlier chapters, policy-making in youth justice, particularly given the more recent politicization of youth justice (recall the discussions in Chapter 2 and Chapter 4), seems to embody the chaos that Colebatch refers to. The linear model thus lacks sufficient analytic attention on the subjective construction of the policy problem and the character of policy-making as interpretive rather than rational (Fischer, 1993, 2007) to be able to account for the process of policy-making in a highly politicized area such as youth justice. Instead, the linear model might better be understood as an ideal model not designed to be detailed enough to consider the messiness and disorder of policy-making in practice. It is for these reasons that, as Colebatch argues, the linear model is especially problematic when applied to highly partisan social policies such as those pertaining to (youth) crime.

More critically, linear/rational models of policy-making tend to position the use of evidence and consultation in policy-making as an unproblematic activity, thus underemphasizing the complexities of issues under study and the controversies across perspectives (Goldson, 2010). For example Goldson and Muncie (2006) identify the process by which policy-makers disregard evidence that may not be convenient, and instead emphasize evidence that may help to reinforce a particular ideology (e.g., political “spin”). An example of this was discussed in Chapter 4 with respect to the Federal Government’s Roundtable Report. While it remains to be seen whether the (now former) Conservative Government purposely withheld the consultation report based on the cross-country roundtables, the fact that the report was only released through a freedom of information request and that it, for the most part, contradicted the Government’s propositions in revising the YCJA (2002), is one example that highlights the complexity of policy-making that cannot be fully modelled by the linear/rational view of the process. For this reason, though evidence is seen as an underpinning of the rational project of policy-making, it may be involved in a much more complex phenomenon depending on which evidence is compatible with which policy-making narrative.

To amplify Colebatch’s (2009) argument and the critique of the conceptualization of policy-making as a rational activity offered by Goldson and Muncie (2006) and Goldson (2010), it is useful to consider the numerous complications in the real policy setting that lead to its “messiness.” These complications are especially applicable to the creation of youth justice policy in Canada: election platforms do not necessarily reflect the views of the majority, nor do they

necessarily direct political action; government is not a unitary body, but instead is made up of multiple institutional identities; institutional identities are made up of a multiplicity of actors; meaning in policy and practice is constructed rather than transferred; and “the state” is not a coherent, distinct actor. Taken together, these factors begin to frame policy-making as a multi-dimensional and highly complicated activity not easily unravelled; any such attempts at unravelling must be guided by a model of the policy-making process that emphasizes its interactive qualities.

### ***Interactive models of policy-making***

In contrast to linear models that tend to convey policy-making as detached from policy implementation, interactive models underscore the complex argumentation and deliberation involved in policy-making, how competing subjective interpretations of policy problems and resolutions are mediated, and the complex interplay between policy as conceived and policy as implemented (Ney, 2012; 2014).

In addition to recognizing the argumentative and deliberative nature of policy-making, interpretive models also emphasize that the process of implementation alters a policy; actions of professionals who implement policy, as guided by their values, must be also be understood as part of the policy-making process (Grindle & Thomas, 1991; Jamrozik & Nocella, 1998). According to Newburn and Jones (2007), “it is important not to over-estimate the degree of coherence of the policy making process” (p. 238). Interactive models have been developed to address this caution by situating front-line professionals as important players in the outcomes of policy. In this vein, front-line workers do not necessarily automatically implement policy ideas, but use their own discretion, informed by their own values and experiences, in doing so (Jamrozik & Nocella, 1998). The result is that the policy process is negotiated at the site of implementation, a characteristic that necessitates an “actor-oriented” approach over a structural approach “to the study of development and social change” (Long, 1992, p. 16).

One approach that considers the fluidity of the policy process as well as the engagement of multiple and various policy actors is Kingdon’s (1995) general theory of public policy-making, also called the “streams model.” The model identifies three interconnected settings of policy: the problem stream (what is the problem?); the policy stream (what can we do about the problem?);

and the political stream (what response has the best political value?). A convergence between the settings allows for a “window” to open in which policy can be made. This model of policy highlights the contested nature of policy-making as well as the various players and differing values involved, among which negotiations must take place. According to Colebatch (2006), this view of the policy process—as structured interaction—more appropriately reflects the experiences of policy participants in that “rather than a single actor called ‘the government’, there is an array of organized voices, inside and outside ‘government’, contending for attention and resources and the ability to define the question” (Colebatch, 2006, p. 314).

Similar to Kingdon’s streams model is Jones and Newburn’s (2002, 2006, 2007) conceptualization of the policy process that fits the characterization of policy as structured interaction. Their model has three modes linking the “policy ideas, symbols and rhetoric” at the first level, “policy content and instruments” at level two and then “implementation by practitioners and professionals” as level three (Jones & Newburn, 2007, p. 23). The approach taken by Jones and Newburn has exceedingly useful implications for the study of policy as a complex phenomenon negotiated both by the socio-political landscape in which it is situated, as well as the specific actions of individuals at various levels of the policy process.

A third way to understand policy—one that complements the second approach as described above—takes the view that policy results from the process of social construction (Colebatch, 2006). “This reflects the growing recognition that the concerns of policy are not pre-existing phenomena, but are generated in the policy process” (p. 314). In this vein, the construction of the problem and the targets of policy is not only a culturally specific representation of phenomenon (e.g., youth deviance) and policy targets (e.g., young offenders), but also presents specific solutions and remedies. For example, in Chapter 2 I discussed the evolution of youth justice given the JDA (1908). Under the JDA, youth were seen as misguided children in need of protection and treatment. As a result, policy contained remedies and incorporated awareness of the lesser culpability of youth coupled with a focus on the rehabilitation of delinquents (regardless of the weaknesses of this approach in practice). Alternatively, the process in crafting policy under the YOA (1985) not only responded to the unfair and sometimes dehumanizing treatment of delinquents under the YOA, but also the belief that young people were deserving of human rights and procedural fairness, and that youth crime

was a serious threat to public safety. Accordingly, the remedies under the YOA were grounded in the individual rights approach and provided measures to enhance public safety.

Through this lens, it seems clear that youth justice policies—at least in part—depend upon the ways in which policy-makers subjectively understand delinquency, and the delinquent subject. Likewise, the policy process will also depend upon how the victim is constructed. The framework of social construction positions policy as a reflection of the world-view of the policy-makers in power (Ney, 2012; 2014) rather than solely a tool of social control. In this perspective, in addition to attending to the manifest content of policies, researchers should also concern themselves with the values and beliefs that have shaped the policy product. The concept of discourse is particularly important in elaborating on this perspective. According to Hogeveen and Smandych (2001), discourse

refers to the inscriptive function of language; that is, language provides the lenses through which we view a social problem. Thus discourses generate agendas for acting on, narratives for constituting, and philosophical models for dealing with and rendering thinkable the problem of youth crime. (p. 146)

The construction of phenomenon then, is “social” because it occurs within a social context where dominant (accepted) discourses help to shape and reframe understandings. There is a good deal of literature on the policy process itself that suggests the act of making and debating policy is one shaped by the framing and re-framing of the social issues under question as well as the foregrounding of some concerns over others (Russell, Greenhalgh, Byrne, & McDonnell, 2008). For Russell and colleagues (2008), taking a rhetorical perspective on the nature of policy-making emphasizes “the struggle over ideas, the ‘naming and framing’ of policy problems, the centrality of audience and the rhetorical use of language in discussion to increase the audience’s adherence to particular framings and proposals” (p. 40).

The central theme in both the second and third conceptualizations of policy-making as described above, is the inclusion of “policy ideas,” and it is for this reason that the conceptualizations are compatible with one another. Specifically, while the second approach carries the assumption that policy ideas are located in the diverse contexts of the policy process, the third way speaks to the social construction of policy ideas. What is left then, is a consideration of what the literature says with regard to what forms and shapes these multiple

and complex policy ideas. The following section considers two key theoretical perspectives. The first, the structural perspective, works under the assumption that ideas are shaped by cultural and structural forces (Garland, 2001). The second asserts the idea that though structural forces may well form the context of policy, it is the decisions of individual people that mediate the policy solution—the agency-led perspective (Jones & Newburn, 2002). These perspectives are particularly important in the research undertaken for this dissertation given that both helped to frame my analysis.

As demonstrated in the historical and contemporary legislative/justice reform overviews provided in Chapters 2, 3 and 4, policy-making is an exceedingly complex and sometimes contradictory process that may well represent a series of compromises based on how the problem has been represented to be, rather than upon a rational decision on the best course of action given an objective problem definition and comprehensive evidence. The following section considers the shifts in political culture that have occurred over the past century that affect youth justice. I argue that, given the political context, policy models that have more in common with the structured interaction and social construction approaches of policy development are exceedingly useful.

## **Political Culture**

Throughout Chapters 2 to 4, I discussed the shifts that have taken place in the past century of youth justice policy and practice, and emphasized the debate and disagreement that has surrounded the task of characterizing youth justice policy. Although these shifts have been discussed in the context of youth justice specifically, it is clear that they emerged amid changes in overall correctional and penal policy in this country (Moore & Hannah-Moffat, 2005). For that reason, the task of cataloguing the key shifts in youth justice policy can be helped with attention to the literature on governance and social control more broadly. Prior to turning to the methodological approach utilized in this dissertation, it is illuminating to catalogue the key overarching shifts that help to contextualize youth justice reform and set the stage for the current use of community-based responses to youth crime. The following subsections consider, in turn, key changes to the policy context that have altered the policy-making landscape and the impact of those changes on policy production and action. I argue that these changes embody important

implications for the ways in which policy should be studied. Further, this discussion begins to set the stage for the subsequent analysis chapters.

Chapters 1 through 4 should make clear that although youth justice policy has undergone several overarching shifts over the past 100 years, the character of policy continues to be complex, contradictory and contested as evidenced by the ebb and flow of competing themes, constructs and discourses often occurring simultaneously over the century. It is for this reason that this dissertation identifies the mixed model of justice as the optimal explanatory framework upon which the YCJA lies. The following section discusses four overarching constructs demonstrated by contemporary youth justice policy in Canada: the shift away from penal welfarism towards more punitive policies; neo-liberalism; partnering strategies; and the role of expertise that help to contextualize some of these shifts.

### ***Punitive versus welfare-based policies***

As discussed, the character of the shifts seen throughout Canadian youth justice policy is contested within the literature. Specifically, the youth justice model approach introduced earlier in this dissertation depicts contemporary youth justice policy in Canada as embodying a mixed model where elements of justice, welfare, due process as well as also community-justice models each exist within the YCJA (2003) and related practice. At the end of Chapter 3, I discussed the disagreement over whether the creation of the YCJA could be said to illustrate a punitive turn in youth justice. In reviewing the work of several criminologists and legal scholars, I concluded that the perspective analysts have taken in examining the legislation explains a good deal of the discord surrounding it. For example, Hogeveen and Smandych (2001) argued that the YCJA did exemplify a more punitive approach given their emphasis on the discourse surrounding the legislation. Other scholars (e.g., Bala; Doob & Sprott) looked instead to resulting practice to substantiate the opposite claim, that the legislation was not more punitive as evidenced by decreasing rates of formal punishment in the youth justice system.

To elaborate on that discussion further, Moore and Hannah-Moffat (2005) suggest that in contrast to the United States and the United Kingdom, the punitive turn thesis may be overly simplistic when applied to the Canadian penal system for several reasons. First, penal practice in Canada is markedly different and less punishment-oriented than in the United States—a

country where the punitive turn label is more appropriately applied given the introduction of such practices as three strikes laws, boot camps and so-called “supermax” prisons (Garland, 2000). Second, “the punitive turn fails to capture the complexity and diversity of Canadian penality” (Moore & Hannah-Moffat, p. 85). According to Moore and Hannah-Moffat, the idea of the punitive turn suggests that welfarist correctional practices have been superseded by less desirable highly punitive practices. This supposed trend is not in fact the case under the YCJA, specifically owing to the entrenchment of community-based responses to youth crime and the retention of some welfarist themes. According to these authors, “the definition of punitiveness as it exists within the penal-turn literature is too narrow,” (p. 85) and fails to allow for a discussion of how welfare-based policies remain intact. Moore and Hannah-Moffat illustrate the complexity of the penal system in Canada drawing on both federally and provincially operated correctional environments. They argue that while the backdrop of punishment in Canada as of late is strikingly different than that in the 1960s and 1970s, given a move away from the rehabilitative ideal of that time period, we have not, for the most part, witnessed the type of punitive measures exemplified by United States correctional practice (boot camps, mega-jails). Instead, though there is a more punitive landscape in Canada today, the character of the Canadian penal system is much more complex and contradictory moving much further towards decreasing the size of correctional centres and privatizing community-based services—a seeming endorsement of the mixed model approach.

It appears as though the inclusion of community-based responses to youth crime within the YCJA (2002) has led to the characterization of contemporary Canadian youth justice policy as something more complicated than merely an example of the punitive turn. Nevertheless, the balance between punitiveness/crime control and welfarism has perhaps shifted since the JDA (1908) and again from the YOA (1985) to the YCJA (2003). As discussed in Chapters 2 and 3, youth justice policy leaned away from the welfare orientation under the JDA, which emphasized rehabilitation and a view of youth as having limited moral blameworthiness for their criminal behavior, and towards the justice model as evidence by the YOA’s focus on individual responsibility and accountability, specifically as a response to disillusionment with rehabilitative practices that seemed unable to be able to produce individual reform as hoped. Corrado and Markwart (1992) hypothesized that the move to the justice model under the YOA helped to usher in the more punitive policies of the crime control model:

The Justice Model advocates not only the principles of restraint of the criminal law, rights and due process, but also embraces punishment (albeit fair and proportionate). Once punishment is embraced, however, it takes little to move beyond this to the advocacy of public protection through, for example, general deterrence, “short, sharp, shocks” and incapacitation. (p. 156)

These authors also made the point that in the late 1970s and early 1980s economic difficulties highlighting the cost of the welfare state as well as the emergence of victim rights and a greater concern with youth misbehaviour characterized the socio-political environment in which the YOA (1985) was created. However, Corrado and Markwart (1992) also made it clear that while the socio-political context influenced by a changing social environment, may have provided the backdrop and political rhetoric for more punitive changes in youth justice legislation, these features likely did not directly affect the reform process. In contrast to the present day, the YOA was not as heavily influenced by an ideologically-based public and media outcry. Rather, these authors argue that reform was a much more private process led and influenced by politicians and special interest groups.

The kinds of socio-political influences described by Corrado and Markwart operated quite differently by the late 1990s and early 2000s, and may well have helped to establish a heavier emphasis on punitive policies. For example, David Garland (2000) advanced this argument:

In the UK and the USA at the present time, the field of crime control exhibits two new and distinct lines of government action: an adaptive strategy stressing prevention and partnership and a sovereign state strategy stressing enhanced control and expressive punishment. These strategies—which are quite different from the penal-welfare policies that preceded them—were formed in response to a new predicament faced by governments in many late-modern societies. This predicament arose because at a certain historical point high rates of crime became a normal social fact, penal-welfare solutions fell into disrepute, and the modern, differentiated, criminal justice state was perceived as failing to deliver adequate levels of security. (p. 348)

Given the move away from welfare-oriented policies, resultant adaptive strategies tend to emphasize the effects (e.g., fear of crime, victimization) of crime rather than the causes, and

also tend to relocate the responsibility for addressing crime to the individual community rather than the state (public-private partnerships). According to Garland (2000), almost paradoxically, the state then tends to administer more expressive and intensive responses to crime in the form of punishment and surveillance as a way of balancing the delegation of power to the community in the adaptive partnering strategies in order to emphasize the sovereignty of the state (e.g., harsher sentencing)—the sovereign state strategy. For Garland, sovereign state strategies tend to hand down punitive policies that are both expressive and instrumental: they are politicized in that the views of the public are foregrounded rather than research evidence. Similarly, “the victim” is a uniform, symbolic ideal crafted in order to support more punitive policies.

Quite apart from the YOA (1985) and the YCJA (2002), according to the literature, the greatest erosion of welfare principles is perhaps best seen in the amendments sought with Bill C-10. In fact, compared to the earlier Acts, Bill C-10 has been described as “a punitive approach to criminal behaviour, rather than one concentrated on how to prevent that behaviour in the first place, or rehabilitate those who do offend” (Canadian Bar Association, 2011, p. 3). The punitive turn consists of a punishment ethos, a disregard of the social science evidence, and a focus on the most dangerous offenders whilst creating policy that broadly applies to a spectrum of young offenders.

This corresponds with what David Garland (2001), in his seminal work *The Culture of Control*, refers to as the “re-emergence of punitive sanctions and expressive justice” in the late 20th century (p. 9). Garland proposes that we are currently witnessing a reversal in crime control from penal welfarism back to retributive modes of punishment. The forces that have contributed to these alterations of criminal policy include the state’s inability to meet the demands of welfarism, coupled with a decrease of the family-structure’s ability to act as a mechanism of control, alongside new conservative-based policies focusing on individual responsibility. In any event, community-based systems of control are a primary result of these societal shifts.

As outlined earlier, the justice model has as its focus the rights of young offenders and procedural fairness coupled with the responsibility of the young offender. The YCJA (2002), on the other hand, represents a mixed model of justice focusing on responsibility and rights as well as rehabilitation and community involvement. It has been argued that the dismantling of the welfare state has important impacts on the state of social policy, and particularly crime control

policies. A key signal is the shift from understanding social supports as entitlements towards individuality and individual responsibility for behaviour. This has led to the advocacy of private solutions to issues that were once understood as public social problems and also what Morrow et al. (2004) describe as “fiscalized social policy where financial considerations trump all others” (p. 360).

A good deal of the contradictory nature of the Canadian penal policy, according to O’Malley (1999), rests in the difference between rhetoric and practice in policymaking: rhetoric espouses a tougher approach, while practice depends much more importantly on individual professionals who often maintain a rehabilitative, welfare approach. For this reason, the youth penal culture of Canada might best be described as a mix between welfarist and punishment-oriented practices. In addition to these approaches to youth justice, there is a clear increase in an emphasis on the individual offender and individual community (especially given the emphasis on community-based responses). This is coupled with an emphasis on private responsibility in the delivery of youth justice services. These themes, along with neo-liberalism are discussed next.

### ***Neo-liberalism***

Neo-liberalism, in short, emphasizes individuality (Harvey, 2005, 2007; Moore & Hannah-Moffat, 2005). Harvey (2007) defines it as “a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade...” (p. 2). Neo-liberalism focuses on minimizing state intervention in commerce and privatizing public services. Applied to the area of criminal justice penal policy and practice and more specifically to youth justice community-based responses to offending, neo-liberalism translates into an emphasis on policies that trumpet individual responsibility (in contrast to welfarist policies) and focus on individual choice. Neo-liberal youth justice policies tend to foreground youth accountability (responsibilization), and decrease the size of the state through public-private partnerships and contracts (Campbell, 2005). This perspective has important implications for the treatment of offenders, as Moore and Hannah-Moffat (2005) argue: Despite the fact that social causes of crime (e.g., poverty) may be acknowledged, these are often treated as unchangeable and youth justice/criminal justice policies instead target the individual malleable offender.

In addition to locating responsibility for crime on the individual, neo-liberal policies tend to also locate responsibility for dealing with crime in the local community through programs involving non-government agencies. Like many others, Muncie (2006) has argued that neo-liberal (advanced liberal) governance has, over the past five decades or so, begun to replace penal-welfarism in youth justice policy. This change, he argues, is evidenced by several shifts including the decontextualization of crime problems, the growing emphasis on the individual rather than the social, an increase in participation of the populace, and the concept of governing at a distance. Applied to the Canadian setting, the shift away from rehabilitation and towards punishment, in the shadow of awareness of the costs associated with the welfare state as discussed earlier, signals the beginning of this change. The incorporation of community-based responses to youth offending and increases in partnerships with private organizations (e.g., including memoranda of understandings between government and non-profit and services provided in the community that are funded via government grants) is another signal. Unlike other influencers of penal policies discussed in previous chapters (e.g., welfarism, child savers, rehabilitation) neo-liberalism is rooted in an economic orientation, emphasizing the free market, individualism and non-interventionism. For this reason policies tend to emphasize efficiency and decentralization. Its specific origins and application to youth penal policy bear some explanation.

The concept of neo-liberal governance has particular implications for the study of youth justice policy in Canada because of recent policy changes (e.g., a strong push towards involving the community in delivering justice in the form of community and restorative justice). The de-governmentalization/privatization (what Rose, 2000, calls governing at a distance) and partnering strategies engaged within the youth justice policy field mean that the local understandings of social policy must be addressed because neither federal nor provincial policy can structure or motivate social change; locally constructed meanings held by individual practitioners are now an integral component to answer the question: What does this policy mean?

### ***Partnering strategies and decentralization***

As discussed earlier, partnering strategies refer to relationships between the government and private organizations to deliver services within the government's purview—typically welfare-based services (Garland, 2000). In practice, this may mean contracts or memorandums of

understanding between governments and non-profit community organizations that identify a specific set of social services that the community organization will deliver. Partnering strategies—public-private partnerships—are a key component of overarching neo-liberal policies based on the concept of responsabilization. Responsibilization emphasizes the individual's responsibility for behaviour, and encourages communities and the private sector to take charge of crime and disorder (Muncie, 2006). Baines, Cunningham, Campey, and Shields (2014) argue:

Contracting-out is part of a larger strategy of neoliberal governance and “right-sizing” the social state to minimalist and targeted provision. The neoliberal approach to governance is one that makes use of community as a policy instrument in an effort to minimize government support and funding for social needs. The goal is to download responsibility for services and care previously provided by the state onto local levels of government, nonprofit bodies, communities and families. (p. 77)

These partnerships, then, are drawn around goals of efficiency and managerialism and shift the responsibility for social issues from centralized government onto more localized bodies. Obviously a key benefit to these strategies is that they encourage government-community partnerships and have simultaneously been heralded for their ability to provide targeted, community-specific responses to social problems that reduce bureaucracy in service delivery. However, in contrast, an important consideration is the potential for social and justice services to come to reflect “market-like conditions and processes” (Muncie, 2006, p. 773) where services are increasingly privatized and delivered with an emphasis on efficiencies and cutting costs.

While partnering strategies include a wide variety of private organizations, those that play important roles in the delivery of community-based responses to youth crime are typically non-profit organizations (NPO). Woolford and Curran (2012) argue that in addition to the concentration of NPOs taking hold over the past decade or so in the Canadian setting, NPOs are being asked with more regularity to collaborate with the for-profit sector. Within the youth justice sphere, this was demonstrated when, under the YCJA (2002), youth justice professionals were mandated to consider extrajudicial measures and to seek community-based solutions. Many, though not all, agencies set up to receive referrals to diversion, whether based on restorative justice, therapeutic or crime prevention models are NPOs contracted by the government to provide services to a young offender caseload. According to Miller and Rose

(2008), the changing nature of government amid such a shift is based upon deregulation and the withdrawal of centralized service provision. In some ways, the result has been the withdrawal of government from many of the services for which it once held responsibility. For Rose (2000), the shift into the community has been a move away from citizens as objects of government towards citizens as active in their own governing and regulation—a shift that has materialized wherein the government facilitates and manages services that are ultimately delivered by localized bodies. While on the one hand, such strategies are seen as advantageous in their potential to empower communities and individuals and to provide community-specific responses, they are likewise understood as problematic given an assumption that offenders are rational and a focus on the impacts of deviance rather than on the social contexts or causes of crime (e.g., poverty; homelessness).

In the earlier chapters of this dissertation I discussed variations of partnering strategies that have existed since the JDA—where community agencies have taken on youth justice roles, particularly in the area of probation. As such, the inclusion of private partners in the delivery of youth justice under the YCJA (2002) is not new. However, these strategies were not specifically legislated in the past but instead represented grassroots initiatives where communities could decide on their own approaches to service delivery. Such strategies are more widespread now, and are generated as a result of federal policy.

Lauren Eisler (2006) examines the inability of community organizations to properly effect change and to adequately deliver the services promised in the YCJA (2002) as a result of funding cuts to social welfare programs. Eisler and Shissel (2008) argue that decentralization has occurred due to a move towards participatory democracy and the outcomes include a decrease in public care by the federal government through reduced transfer payments to the provinces. The provinces do not have enough capital capacity to assume the burden of the downloading and, as a result, remove services that they once provided. This is accompanied by the perception of an overly large (and generously compensated) public service, facilitating the provincial government's response of reducing it (particularly in the province of British Columbia). According to these authors, the government responds by highlighting a deficit that supposedly results from social programs and public services – and focusing instead on big business as a cure-all. In contrast to those who argue that the use of NPOs in youth justice service delivery provides a necessary and appropriate augmentation of the youth justice system, the concern of

many critical scholars is that as the helping professions and non-profits become better at and more accustomed to assuming a larger piece of the puzzle, the framework of shifting social problems from the state onto the individual and onto charity becomes legitimized, and social ills are increasingly reframed as individual failings. For example, Finn (2013) stated:

I wonder sometimes if most NGOs, especially the charities, have become – albeit unwillingly and perhaps unknowingly – integral cogs in the oligarchic machine. Would the corporations be able to keep ruling us, and their political minions keep ignoring us, if the charities did not inadvertently cushion and conceal their worst depredations? (para. 9)

While the 1990s saw all provinces and territories in Canada launch alternative measures programs, “their eligibility criteria and general admission policies varied, and continue to vary today” (Davis-Barron, 2009, p. 208). As a result, Canadian jurisdictions are made up of government-designated and non-designated (community-based) programs that respond to young offenders. Specifically, “committees have been established to work in partnership with the justice system and are founded on principles of restorative justice” (Moore, 2007, p. 183). Additional grassroots restorative programs that focus on local needs exist and often operate independently from the youth justice system. Moore (2007) further notes, “[g]enerally, there is considerable variation in program development, implementation, and services [that]...seems to reflect Canada’s vast cultural and regional diversity” (p. 186). Stephens (2007), however, found the divergent practices across Canada to be beneficial, indicating that provinces and territories are able to address local problems on a smaller scale rather than employing a one-size-fits-all approach—albeit in the absence of sustained funding.

As Anand (2002) speculates, an important consideration surrounding change in youth justice policy under the YCJA (2002) is whether provincial governments invest in community-based alternatives to support extrajudicial measures, sanctions, and sentence reform. If funding is not directed at these areas, a side effect will surface (often during sentencing) overpowering legislative intent. While during the introductory phase of the YCJA, the federal government promised \$400 million of youth justice transfer payments over a period of five to six years, this amount is still less than 50% of the cost for provinces and territories to implement appropriate community measures (Anand, 2002). This imbalance, argues Anand, undermines the seriousness with which the federal government regards the legislative direction of the YCJA,

since merely passing a statute is not nearly adequate to make fundamental changes to youth justice. Because the legislation gives power to the provinces to implement the provisions, it is not clear whether provincial prosecutors, police, or communities will administer them, nor is it clear that the rights of youth will be protected and upheld within the informal responses (Bala, 2003). One judge interviewed by Stephens (2007) suggested that the absence of political will in favour of restorative and community-based approaches is at the root of the funding problems that have persisted to the detriment of youth justice.

### ***The politicization of youth justice in Canada***

Alongside the neo-liberal governance structure, partnering strategies and decentralization, the presence and participation of experts in governing and policy-making pose another important contextual component within the policy setting (Fischer, 2009). Technocratic governance (the process of governing influenced heavily by objective expertise) asks citizens to trust that the elite policy-makers will make good decisions, and does not encourage citizen engagement in complex policy issues. Although experts have been part of the policy environment since the advent of the Enlightenment in 18th-century Europe, it is argued that we are witnessing an increasing disenchantment and decreasing confidence about expert opinions expressed by the populace. Given today's dependence on expertise, the fact that professionals and experts are increasingly being viewed as disconnected from everyday life and accused of supporting policy that does not mirror the ideals of a diverse society, is severely problematic (Fischer, 2009).

Garland (2000) has argued that from the 1950s to late 1990s, criminal justice policy has been informed by professional expertise, and that a key effect of this was that policy-making tended to be framed as a technical issue not appropriately informed by expressive or retributive concerns. Within the past decade, however, as evidenced by the shifts that have taken place concerning such adaptive strategies, as partnering strategies and such expressive policies as an emphasis on deterrence, denunciation and other punitive measures, a move away from professionalism and towards populism has taken place. In other words, crime policies are more typically crafted in response to politically highlighted public opinion (as shown in Chapter 4) as opposed to expert, professional evidence. Unlike expert evidence, this type of highlighted and politically shaped public opinion tends to overemphasize the risk of criminal victimization and the

resulting policies tend to focus on public protection and on reaffirming values that are expressive and punitive in nature.

The cause of this shift, according to Garland (2000), is the perceived failure of social welfarism coupled with a perception of an increase in violent crime. Garland argues that this is particularly impactful given that the middle class liberal voters who once supported welfarist social policies have of late become increasingly concerned about their own vulnerability to victimization. While this sector of the population had been most likely to understand the plight of the offender, once they perceived themselves to be at risk, that understanding shifted. According to Garland, this shift has largely occurred in response to media panic around offending behaviour and the depiction of extreme examples as ordinary, everyday occurrences highlighting the risk to all.

Accordingly, rather than evidence and expertise being utilized to inform policy decisions, the symbolic figure of the victim has become central in policy-making (e.g., Sébastien's Law). Both Bottoms (2003) and Garland (2000) suggest that in addition to becoming more integrally linked to policy activities, the depiction of the victim in policy-making landscapes has also undergone a shift. Rather than the victim as an atypical figure, the projected figure now represents us all. "The rhetoric of penal debate routinely invokes the figure of the victim—typically a child or a woman or a senior citizen—as a righteous figure who's suffering must be expressed and whose security must henceforth be guaranteed" (Garland, 2000, p. 351). Relatedly, Garland argues that supporting victims seems to automatically require being more punitive to offenders. "If the centerpiece of penal-welfarism was the expert projection of the individual offender and his or her needs, the center of contemporary penal discourse is a political projection of the individual victim and his or her feelings" (p. 352).

Although the disenchantment with the value of expertise and the perception of an increase in violent crime holds some explanatory power as to why the moral panics perpetuated by the media were able to take hold, Garland also poses some theories as to why contemporary society has become more receptive to these shifts as of late. Specifically, he suggests that while overall acceptance of punitive policies has increased, it is the professional middle class that has most widely altered its acceptance of punitive policies since the 1970s. He argues that the professional middle class itself had the most to gain from redistributive social policies from the 1950s to 1970s, as they could take advantage of the upward mobility provided by such social

services as state-funded education and national health care strategies. Second, he argues that collectively, the professional middle class favoured an emphasis on rehabilitation and the social causes of crime as a way to signal their educated approach to issues and distinguish themselves from the more reactionary views of the upper class whom they perceived as overly concerned with capital over compassion. And finally, Garland suggests that the middle class were once separated from social disorder by both physical distance and by class: “This class’s experience of crime, which was highly influential in shaping penal policy, was thus shaped by its social distance from the problem, its low levels of victimization, and the expert knowledge and welfare-state ideologies through which it made sense of this ‘poor people’s problem’” (p. 357).

Garland further suggests that there are two reasons for the shift in the attitudes of the professionalized middle class: the process of criminal justice policies has become more politicized, coupled with a disenchantment with the ability of expert advice to correct crime problems. An emphasis on business and market solutions and managerial expertise rather than the advice of professionals in the social sector has accompanied this trend. Notably, the “nothing works” perspective applied to rehabilitative efforts that emerged throughout the 1960s and 1970s (as discussed in Chapter 2) also laid the groundwork for increasing doubt in the expertise of the social sector. Thus, according to Garland, the shift in ideology paired with an increased receptivity to punitive policies by the middle class combined to usher in tougher policies on crime and less emphasis on expertise.

Several researchers suggest that there is some evidence to suggest that Garland’s theoretical framework is indeed applicable to the Canadian setting, though in a diluted manner. Cesaroni and Doob (2003), for example, examined national victimization surveys administered in Canada in 1988, 1993 and 1999. Their analysis showed that in the first two surveys, members of the liberal elite—public service professionals and the educated middle class—were more likely to view crime in their own neighbourhoods as lower than in other areas of the country. This trend had disappeared by 1999 with no statistically significant difference found between the elite group and the rest of those surveyed as to whether crime in their neighbourhood was lower than elsewhere. Likewise, in the 1988 and 1993 surveys, the elite group was also less likely to agree with a statement indicating that sentences are typically not severe enough. In their examination of the results from the 1999 survey, they found that in example cases where a youth had re-

offended, there was no statistically significant difference between the elite group and the rest of those surveyed, signalling a shift in attitudes towards crime control policies among the middle class from the 1980s to the late 1990s, accompanied by a sense that they were not insulated from crime. The authors argue, however, that these findings do not necessarily support an increasingly punitive Canadian public, but rather a public who “are not provided with an attractive alternative that meets their emotional response to crime” (Cesaroni & Doob, 2003, p. 440).

Given these interrelated contextual features of punitiveness, neo-liberalism, partnering strategies and the politicization of youth justice, policy analysis cannot simply focus on the effects of policy, nor can policy analysts assume that policies have equal impacts on all citizens. According to Hankivsky et al. (2012), “There is growing recognition that governments need to be measured by their ability to deliver policy that can advance social justice and equity (Marmot, 2012) correct power imbalances, and address damaging stereotypes and social constructions among stakeholders (Ingram & Schneider, 2006, p. 184).” (p. 11). Furthermore, Goldson states:

Many considerations other than (social) scientific rationality might impact on policymaking processes including: economic and financial factors, tactical and strategic factors; subject experience and judgment; habit, tradition and bureaucratic logic; emotion; and specific political imperatives (for which ‘evidence’ might even be perceived as a complicating inconvenience). (Goldson, 2010, p. 170)

The following section begins the discussion of how best to conduct policy analysis given the key factors addressed above.

### **Policy as Structurally Embedded? Or Agency-led?**

As explored above, policy-making is a complex process governed as much by structurally and culturally embedded themes as by social constructions of policy problems. Accordingly, it is imperative to consider the argument that the above discussion on where such structural or cultural themes of the policy-making processes are situated unwisely underestimates the role of individual agency in the policymaking process. Although structural factors may identify the broad cultural contexts that help to make certain reforms more possible,

structural forces do not make changes—people do (Jones & Newburn, 2002). This view suggests that individual people and their particular decisions are the intervening forces between structure and policy.

For instance, in their study of criminal justice policy transfer (the transference of policy ideas from one country to another), Jones and Newburn (2006) argued that “if we put too much weight upon the cultural embeddedness of penal systems and the legacy of historical path-dependencies, then we risk suggesting that national criminal justice systems are almost impervious to radical change” (p. 5). Their argument sits in contrast to the works of several other crime policy analysts that tend to locate contemporary policy as a result of structural and cultural forces. For instance, David Garland (2001) incorporates a structural analysis in his examination of the development of a “culture of control” throughout late modern capitalist countries (i.e., in the United States and United Kingdom), arguing that an understanding of major cultural and structural developments in these societies makes clear their acceptance of and allowance for such an approach to crime control. Specifically, though Garland accepts that within the arenas of policy-making there is ample room for individual decision-making and the chance of acting in a way not determined by structural and cultural pre-dispositions, he is criticized (c.f., Jones and Newburn, 2006) for what is characterized as a severe under appreciation of political agency as a contributor to policy outcomes.

Crawford and Newburn (2003) suggest researchers have not adequately examined the connections between policy, politics, and practice, such that researchers tend to equate policy intentions with resulting practice. Accordingly, analysis often uses government documents to provide accounts of contemporary practice, or focuses exclusively on practice without “examining the dissonance between the two” (Crawford & Newburn, 2003, p. 14). What is left are two key considerations in the study of social policy that have specific implications for this dissertation: (a) social policy “arise[s] from the interaction of broader structural *and* cultural forces and the decisions of key actors” (Jones and Newburn, 2002, p. 182; emphasis added) (i.e., people are the intervening force between structure and policy); and (b) policy is not solely the substantive policy outcomes found in legal statutes and Acts and the like, but more broadly, includes the processes engaged and negotiated in each of the policy stages.

## Conclusion

There are several lessons to be taken from the literature and theory discussed in this chapter. The shrinking welfare state has, arguably, made space not only for fiscalized social policy and the inclusion of private partners, but also a turn towards more punitive policies (though the degree of punitive-ness is contentious among researchers and should be understood as highly complex). Policy-making has created the necessity for interpretive policy analysis. Pal (2006) submits that the new policy climate has, to a large extent, changed the nature of policy analysis. While traditional social science and the rational model still apply to evaluation research, Pal states that most policy work now acknowledges the “value-laden character of policy choice, design, and implementation” (p. 379). Wagenaar (2006) explains the interpretive nature of social interactions in his argument that “data of the social and policy sciences, are not hardwired into social reality, but require interpretation to make them ‘visible’ at all” (Wagenaar, 2006, p. 431). He acknowledges that many will argue that this makes interpretive research subjective, a label that is extremely misleading. Wagenaar further argues that we often confuse intent as something that can only occur within the mind of someone that is therefore, inaccessible by the outsider. In fact, he asserts, “actions are meaningful because they signify something” (p. 423). This means that data (interview transcripts, observational notes) contain registrations of behaviours, which we understand to be expressions of social meaning. Interpretive (and narrative) policy analysis recognizes the fractures between stakeholders and allows for interpretive stories about experience and meaning to be told as a way of expanding the analysis setting (Marshall, 1997).

Chapter 6 describes how the methodological framework that provides the foundation for this dissertation was devised and is supported by these theories on policy-making. The chapter provides the technical details of the method employed with a careful delineation of research decisions.

## CHAPTER 6: Methodology and Methods

*I want to understand the world from your point of view. I want to know what you know in the way you know it. I want to understand the meaning of your experience, to walk in your shoes, to feel things as you feel them, to explain things as you explain them. Will you become my teacher and help me understand? ~James P. Spradley, on research interviews, 1979*

### Chapter Overview

The purpose of this study was to understand politics, policy and practice around diversion and community-based responses to youth crime in Canada, and in British Columbia more specifically. For the purposes of this research, and as described in Chapter 1, diversion and community-based responses to youth crime include informal processes and non-incarcerating sanctions utilized for youth offenders for the purposes of diverting youth away from the formal justice system at any juncture, and/or reintegrating that offender within the community.

At the outset of this project, I developed three questions in order to focus my research:

1. What beliefs, meanings, intentions, assumptions and values undergird policy aims and action at each of the policy rhetoric/ideas level, policy instruments/content level and implementation level?
2. In the context of Canadian youth justice policy over the past decade—specifically concerning diversion and community-based responses to youth crime—how does policy reform work across the rhetorical level, through the codification levels and the local implementation levels?
3. Are there disconnects and/or inconsistencies within and across policy contexts? Where do disconnects emerge? Why are there disconnects? What are the impacts for youth justice practice?

To gain an understanding of the phenomenon of community-based responses to youth crime, I utilized a two phase study design where phase 1 involved document analysis of a ten-year period of Hansard transcripts from the House of Commons and the Senate and phase 2

involved a narrative approach to interviews with 14 professionals who have worked in diverse areas involving diversion and community-based responses to youth crime.

Fergusson (2007) suggests that an understanding of the *process* of policy is often missing from policy analyses and that more commonly, the focus tends to be placed on policy outcomes. An examination of process requires a close look at the sources of policy as well as the process of policy delivery and practice to capture and understand negotiations, changes, modifications, inconsistencies and contradictions that are inherent in social policies. In employing document analysis and narrative interviews to access data on youth justice in Canada since 2001, I emphasize the value in exploring and identifying shifts in ideas over time and across contexts—the modes of the policy process.<sup>38</sup> In recognition of Jones' and Newburn's (2007) interactive model of the policy process, as discussed in Chapter 4, and to begin the work of addressing the “gaps between rhetoric, policy and practice” (Fergusson, 2007, p. 180), I systematically examined the texts of Parliamentary debates, the texts of Federal Bills, Governmental press releases and the publicly available records of activities undertaken by House of Commons and Senate Standing Committees from March 11, 1999 through March 13, 2012<sup>39</sup> to investigate the levels of policy rhetoric and ideas and policy codification. Fergusson (2007) puts forth the idea that to understand disconnects between practice and policy, we must first understand how policy is presented rhetorically and codified. Because, as Crawford and Newburn (2003) propose, these aspects of the policy process uniquely begin the work of shaping local practice, this is a crucial first step in the endeavor. This constituted Phase 1 of the research. Secondly, throughout the 2012 and 2013 calendar years, I conducted semi-structured interviews with youth justice professionals to examine beliefs, meanings, intentions, assumptions and values demonstrated at the implementation level. This constituted Phase 2 of the research.

Overall, this research illustrates how the ideas surrounding youth justice help to frame the issues, and how they change, stay the same or are transformed into new ideas—an area

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<sup>38</sup> As Chapter 2 discussed, Tim Newburn identifies three modes of the policy process: political rhetoric, policy codification and policy implementation. This policy model can be taken to mean that acts of planning policy, policy documents and practice at both managerial and front-line levels and across the contexts (e.g. police, courts, corrections, community partners) would each be important arenas for inquiry.

<sup>39</sup> Though the research period is a decade, because natural breaks in the data fell slightly outside of the bounds of a decade, a slightly larger period of time was selected including the time from March 11, 1999 when the first iteration of the YCJA (2002) was introduced as Bill C-68 to March 13, 2012 when Bill C-10 received Royal Assent.

that has not yet been adequately examined. Accordingly, this avenue of inquiry involves investigating these facets as well as how politics and policy are (dis)connected. What follows in this chapter is detailed summary of key decisions, techniques and processes that helped form the analytical framework for this project. Specifically, I outline the strategies I undertook to ensure the research adhered to a systematic process including appropriate technological aids; the congruency and evolution of the research; the theoretical location; the use of narrative analysis; the two-phase research process—archival and interview based; and the approach to coding and analysis.

## **Framing the Research Process**

I carried out a qualitative research approach to achieve the purpose of this research. “Qualitative research is a naturalistic, interpretive approach concerned with understanding the meanings which people attach to phenomena (actions, decisions, beliefs, values etc.) within their social worlds” (Snape & Spencer, 2003, p. 3). Accordingly, qualitative methods offer the opportunity to gather rich, thick description about social worlds with the added benefit of highlighting the context from which the data emerge. These aspects of qualitative research are particularly valuable to the research at hand because I needed to gather detailed and complex views and to foreground contextual features in order to answer my research questions. In both the archival and interview data phases, context is exceedingly important. Additionally, a qualitative approach allows flexibility within design such that unanticipated issues can be examined as they emerge (Lewis, 2004). The function of this research can be described as contextual (or descriptive) (Ritchie, 2004) such that it unpacked how policy is presented and also how practitioners understand and employ policy. Thus, the decision to use a qualitative approach to this research was one made iteratively with the development of the research purpose and research questions.

I selected the time period from 2001 to 2011 because it includes the period immediately before the YCJA (2002) came into force and ends at the period of time in which we have seen the most comprehensive changes to the YCJA (2002) arise with the introduction of the *Safe Streets and Communities Act* (2012). It should be noted that this research was proposed in November 2011, four months prior to the *Safe Streets and Communities Act* (2012) receiving Royal Assent; the Act had only been introduced into the House of Commons two months prior to

the date I proposed my research and research plan. At that time, I recognized that there was a potential for the Act to become law, and ensured that my research plan would be flexible enough to incorporate such an eventuality.

The time frame is bookended by two contemporary policy transformations in youth justice that provide theoretical and conceptual utility. A tremendous amount of work has accumulated on the period between the YOA and the YCJA (2002), but much less (as would be expected) looking at the YCJA (2002) as a point of change and inquiring as to what happened afterwards, making this period an significant one for research. Because provinces and territories have the responsibility of implementing Federal youth justice policy, the scope of this project is two-fold: the archival analysis examined data created at the national level, but which also has significance in influencing action at the local level, while the interview data examined policy in action at the local level.

## **The Narrative Approach**

I took a narrative methodological approach to this research. “A narrative is understood as a spoken or written text giving an account of an event/action or a series of events/actions, chronologically connected” (Czarniawska, 2004, p. 17). Patton (2002) suggests that narrative analysis proceeds with two foundational questions: “what does this narrative or story reveal about the person and world from which it came?” and “how can this narrative be interpreted so that it provides an understanding of and illuminates the life and culture that created it?” (p. 115). “The central idea of narrative analysis is that stories and narratives offer especially translucent windows into cultural and social meanings” (Patton, 2002, p. 116). Along these lines, narrative analysis allows researchers to explore ways in which people make meaning of their lives (and work). In addition to the manifest content within narratives, the “why” behind human actions is illuminated via narrative analysis such that participants and texts reveal latent meanings behind actions and assertions.

Analyzing policy data (texts, interviews) using narrative analysis can provide insights into beliefs, meanings, intention and values behind policy actions and assertions (process of policy/action) as well as the content of policy/action (Feldman, Skoldberg, Brown, & Horner, 2004). Narrative analysis assumes people create stories that mesh with their own

understandings of the world and contexts in which they live. Accordingly, narrative analysis is useful in providing insights into individual assumptions and in illuminating values and beliefs that frame world-views—grand narratives. The practice of using stories to analyze and make sense of public policy is not new to the field (Feldman et al., 2004). “Narratives are useful data because individuals often make sense of the world and their place in it through narrative form. Through telling their stories, people distill and reflect a particular understanding of social and political relations” (Feldman et al., 2004, p. 148).

Narrative analysis<sup>40</sup> covers a wide variety of approaches and potential data sources. Likewise, the definition of a “story” to be used in narrative analysis is equally broad with techniques representing opposite sides of the broader narrative continuum (Riessman, 2003). For example, some researchers pay close attention to the life story of a participant, gathered by analyzing documents, interview and the like, in efforts to draw out and knit together a life history. My research, however, looked to discrete pieces of data, for example, single answers to an interview question to reflect stories and contribute to narratives.<sup>41</sup> For Riessman, the key forms of narrative analysis can be distilled into four types: “thematic, structural, dialogic-performative, and visual narrative” (p. 539). While thematic analysis identifies the content of stories and structural analysis identifies the function of the narrative, dialogic-performative analysis examines the interactive composition of stories where speakers and the researcher co-create stories. Finally, visual analysis allows the researcher to construct a narrative from images as data. “In all four analytic approaches, study is grounded in the particular: how a speaker or writer assembles and sequences events and uses language...to communicate meaning, that is, to make particular points to an audience” (p. 540). Integral to the narrative analysis is in what way, for what purpose and for whom events are storied. Additionally, Riessman suggests that

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<sup>40</sup> Narrative as a methodological and theoretical approach is mainly discussed as an approach in psychology and also sociology. Where psychology is concerned, the narrative is assumed to reflect the individual psyche and, more completely, to provide an illustration of personality. In sociological approaches, however, the aim of narrative is to provide an examination of social and human interactions (Lieblich et al., 1998) and as such, was a useful framework from which to approach this research.

<sup>41</sup> The study of narrative as a social science endeavor has several methodological strands. A key assumption of this strand of narrative is that stories narrate our lives and help to make and display individual meaning of subjective experience. For example, hermeneutic or interpretive theory is but one strand of the narrative approach. The hermeneutic approach allows for the examination and identification of grand narratives (long-standing, culturally produced stories) that may be woven within and across individual stories (small stories) and sources. By studying individual stories—whether they emerge from texts or interview data—researchers can gain an understanding of how the grand narratives are understood and invoked and also their function and form.

narrative analysis discovers the cultural artifacts drawn on or taken for granted, the inconsistencies and gaps that draw together into counter-narratives. In this research, thematic narrative analysis presented an opportunity to analyze the content of narratives elicited from the data across both the archives and the interviews. Thematic narrative analysis is particularly well aligned with this project because it allows for an emphasis on what is being said (rather than the linguistic and performative questions around how things are said) within the texts and interviews, drawing together data that is thematically similar. This process allowed the representational strategy of arranging narratives by theme such that together, the many stories link conceptually to give depth, context and richness to complex policy narratives with data excerpts providing illustration.<sup>42</sup>

The following section details the technical approach to, and research decisions within, each of the two phases of data collection. Phase 1, the archival data began in 2011 when the archival sources were examined to make the determination of what kinds of data could be gathered. It was at this point that I began to envision phase two as a way to complement and enrich phase one data.

## **PHASE 1: Discovering Stories Through Archival Data**

Phase 1 of the research involved gathering and analyzing archival data with the aim of uncovering narratives. More generally, document analysis, a class of unobtrusive measures, allows researchers to examine “what people do, how they behave...and even how humans are affected by certain ideological stances...” (Berg, 2007, p. 239) through the careful and systematic reading of documents and texts to access data. Ritchie (2004) identifies a dual purpose for document analysis: to examine the substantive content of documents and to “illuminate deeper meanings” (p. 35). Archival or document analysis, is an important technique

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<sup>42</sup> Aligning one’s perspective with the hermeneutic tradition has several implications for the research process, but most importantly in the analysis stage. One such implication is Bakhtin’s requirement of dialogic listening; the need to interpret the narrative text by listening to the narrator, the larger cultural discourse that speaks through the individual narrative and the reflexive monitoring that questions how interpretations are made. In addition to respect for dialogic listening, the approach implies an emphasis on situated meaning as opposed to replication. Though researchers must highlight rigor, a reliable study is better determined with attention to the researcher’s self awareness in interpreting the data, the justification of the application of themes and concepts and the continual checking and re-checking of the data against the researcher’s interpretation (Lieblich, Tuval-Mashiach, & Zilber, 1998).

allowing policy researchers to examine “legislative records, bills and their marked up drafts, notes on meetings, personal diaries, daily calendars, agency memos, annual reports, correspondence...newspapers” (Yanow, 2006, p. 411). A facet of archival analysis particularly valuable to policy research is the opportunity to examine how the values and ideas about the policy topic carried by those who authored the documents serve to shape reform and policy. Because the philosophies and values underscoring government bills and legislative acts do not arise at the same time as each other, nor are they imminent to the publication of the policy, the history of parliamentary and public debates, special reports and societal opinion are important as they add to, reverse and entrench ideas, which eventually become the substance of social policy through policy language or historical artifacts (Hogeveen & Smandych, 2001).

To achieve these purposes, the dataset in this study was drawn from publicly available material generated from discussions and Bills produced by policy makers and politicians and published by the Government of Canada. In addition to the analytic utility and appropriateness in answering the questions of this dissertation, document analysis is a useful tool owing to the potential for a large amount of data to be collected efficiently and at low cost, and the added benefit of data that is non-reactive to data analysis and the researcher (Berg, 2007). Despite the strengths of document sources, because documents are pre-existing data, they may not directly address each query the researcher has, and there is no ability to manipulate the texts. Such potential weaknesses can be addressed by triangulation (Berg, 2007) with other sources of data. In the case of this dissertation research, my rationale for conducting the document analysis prior to the interviews was three-fold: it provided data for analysis of policy at the rhetorical and policy codification stages; it enabled the researcher to become expertly familiar with the archival domain which was instrumental in preparing for later interviews and; it allowed preliminary coding prior to interviews, meaning that analysis could be confirmed and expanded with interview data. The next section provides a backdrop of the archives and defines key document types and their significance for the research.

### ***Backdrop of the archives***

Numerous types of policy documents made up the body of work examined in phase 1: legislative bills, Hansard debates (complete transcripts of Parliamentary proceedings),

transcripts from House of Commons and Senate Committee studies<sup>43</sup> and reports, and the YCJA (2002) itself. This section describes each type of document in the dataset and the important features unique to them as well as the context in which they were produced. To start, bills are proposed laws either in the form of brand new legislation, complete replacements of existing legislation or revisions to existing legislation and may be one of three types: government bills, private members' bills or private bills. Though bills are typically introduced by cabinet members and thus sponsored by the government, the legislative process that allows Members of Parliament who are not Ministers to introduce a bill is an important one. Each day when the House of Commons sits, private members (those Members of Parliament who are not members of the cabinet, including Senators) have an opportunity to discuss and introduce bills and other issues during a one-hour period. Though these bills are not likely to receive Royal Assent, they cover important issues that may be re-introduced by a later Parliament, thus they may foreshadow future bills (Marleau & Montpetit, 2000). Similarly, bills introduced by Ministers that "die on the order paper" can hold symbolic meaning by identifying emerging issues that may help to characterize some of the values, beliefs and sentiments of the opposition party. A Member of Parliament or Senator has the opportunity to introduce a bill, in either the House of Commons or the Senate, respectively. Each bill is given a number preceded by the letter "C" or the letter "S" to designate its origin in the House of Commons or the Senate (Booth, Booth, & Rowley, 2013).

According to the Library of Parliament (2011) a workday for the House of Commons consists of the following:

- Members' statements—a period dedicated to hearing statements of up to one minute in length from non-cabinet members.
- Oral questions—a 45-minute period for members of the opposition or non-cabinet members of the governing party to ask questions of ministers.
- Private members' business—a period for non-cabinet members to introduce motions and bills and for debate on these by the House.
- Government orders—items of business added to the agenda by the government including bills and motions.

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<sup>43</sup> A committee "study" is undertaken at the request of the House of Commons. Information provided for each study includes: a list of meetings, reports/responses, witnesses, news releases and/or other documents used in the study.

- Routine proceedings—a wide variety of topics may occur during routine proceedings including responses to and tabling of committee reports, statements about government policy, the introduction of bills.
- Adjournment proceedings—questions raised during the oral questions may be revisited during adjournment proceedings upon a Member's request.

The proceedings of Parliament are highly regulated by rules of order and decorum adopted by the House which outline who may speak when, and give power to the Speaker (of the House and of the Senate) to maintain order and address breaches in varying fashions (O'Brien & Bosc, 2009) in their respective Houses. The full proceedings of Parliament (including each of the phases listed above) are captured in the Hansard Report (Hansard), a complete verbatim record of parliamentary proceedings created via transcription of the taped sessions (Marleau & Montpetit, 2000; Whissell, 2012). These transcripts are then provided to the public electronically.

Though Hansard is intended to provide a complete record of the proceedings of Parliament, one can expect that some of the emotion and detail of communication may be lost once the (often lively) proceedings are transcribed (Whissell, 2012). For example, intonation, body language and emphasis will not make it into the written record. However, as Palys and Atchison (2014) assert, Hansard does capture political messaging that was prepared “for public consumption in a political context” (p. 221). It is this content designed for public consumption (not linguistic cues) that was instrumental to the research questions at hand and helped to identify narratives in the level of analysis used in this research. For this reason, it is not concerning that minute, linguistic and physical means of communication may be lost; these data are considered reliable for the purposes of this research.

At the “first reading,” the bill is read in the House in which it originated, and printed. The bill is then debated in detail at second reading, a process that involves a discussion of the soundness of the principles of the bill and whether it meets established needs of the public (Library of Parliament, 2011). After passing the second reading, a bill may be referred for special consideration to a committee (Booth et al., 2013) to undertake a “study.” Two such committees are in place to study justice-related issues. First, within the House of Commons, the “Standing Committee on Justice and Human Rights” has a mandate to study the programs, legislation and policies of the Department of Justice, Courts Administration Service, Public Prosecution Service

of Canada and the Supreme Court of Canada as well as Human Rights agencies.

The second committee operates within the Senate: the “Standing Senate Committee on Legal and Constitutional Affairs” studies justice related issues alike. At the committee level, subject-area experts may be called to give evidence that might be informative and/or critical and may give insights as to how the bill could be improved; members may also consult with the public and may travel across Canada to access the opinions and perspectives of the populace. It is here that members are given an opportunity to examine bills more closely. Once the committee is satisfied, it makes a report to the House with a detailed list of its recommendations including proposed amendments (Library of Parliament, 2011). The House then considers, and subsequently votes on, the proposed amendments during their routine proceedings described above. During the “report stage,” all members of the House are entitled to participate in the debate and to suggest additional revisions. Once the bill is amended, it is brought into a third reading where it is once again debated and finally voted upon. The bill is then sent to the other House to go through the same process. Once (and if) both Chambers approve the bill, it is given Royal Assent and passed into law (Booth et al., 2013).

Given the numerous steps that a bill must undergo, the process can be time consuming. As would be expected, the laborious process is intensified when the subject matter of the bill is contentious, when the bill proposes a complete overhaul of legislation (or new legislation as in the case of the YCJA, 2002), and when the governing party does not hold the majority of seats in the House of Commons. For these reasons, a bill may be introduced during one Parliament and then re-introduced verbatim (or with revisions as the government decides) with a different bill number in one or more subsequent Parliaments. The following section identifies the sources accessed, the availability of data, the parameters used to restrict data for this research and exactly how the databases were scoured for appropriate data.

### ***Access to the archives and drawing a sample***

The relevant documentary materials as described above, were gathered through a purposive sampling strategy. Generally, non-probability samples (of which purposive samples are one type) are most appropriate for a qualitative design because they allow the researcher to carefully select the data on the basis of characteristics relevant to the research question (Ritchie, Lewis, & Elam, 2003). According to Berg (2007), researchers build a purposive sample

by using their knowledge of the field to decide what data best represents the population. Though not without limitations (e.g., this technique does not allow for wide generalizability), I utilized purposive sampling because it allowed the targeting of all relevant material. The initial aim within this study was to examine *all* documentary material that met the criteria in a preliminary phase.

As mentioned above, Hansard can be publicly accessed through Federal government websites, providing a rich source of data. I accessed the following data sources through a combination of the Parliament of Canada's LEGISinfo database<sup>44</sup> and the Department of Justice's website.<sup>45</sup>

- Legislative bills,
- Hansard Reports,
- House of Commons and Senate Committee study<sup>46</sup> transcripts and reports,
- The YCJA (2002).

Because a preliminary query of LEGISinfo returned a wide-ranging and overwhelming amount of data, several systematic techniques were utilized to quickly narrow down the relevant data. The most important techniques included using the "advanced search" function to search for material relevant to youth justice within Hansard. This provided the ability to sift through the more than 1200 days that Parliament was in session during the study period, and helped identify only those Bills relevant to youth justice and helped isolate only those House of Commons and Senate committees that considered youth justice Bills during the study period including the Standing Committee on Justice and Human Rights and the Standing Senate Committee on Legal and Constitutional Affairs.

The subsequent query of LEGISinfo guided by bills specific to youth justice during the study period yielded a list of 12 Bills that had been introduced and re-introduced, two of which had received Royal Assent. Using the "quick search by bill number or title" function on the LEGISinfo homepage, I was able to access details about each Bill including its status as well as lists of all House of Commons, Senate and committee meetings related to each bill. I engaged

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<sup>44</sup> Available at: <http://www.parl.gc.ca/LEGISInfo/Home.aspx?language=E&ParliamentSession=41-2>

<sup>45</sup> <http://www.justice.gc.ca/eng/>

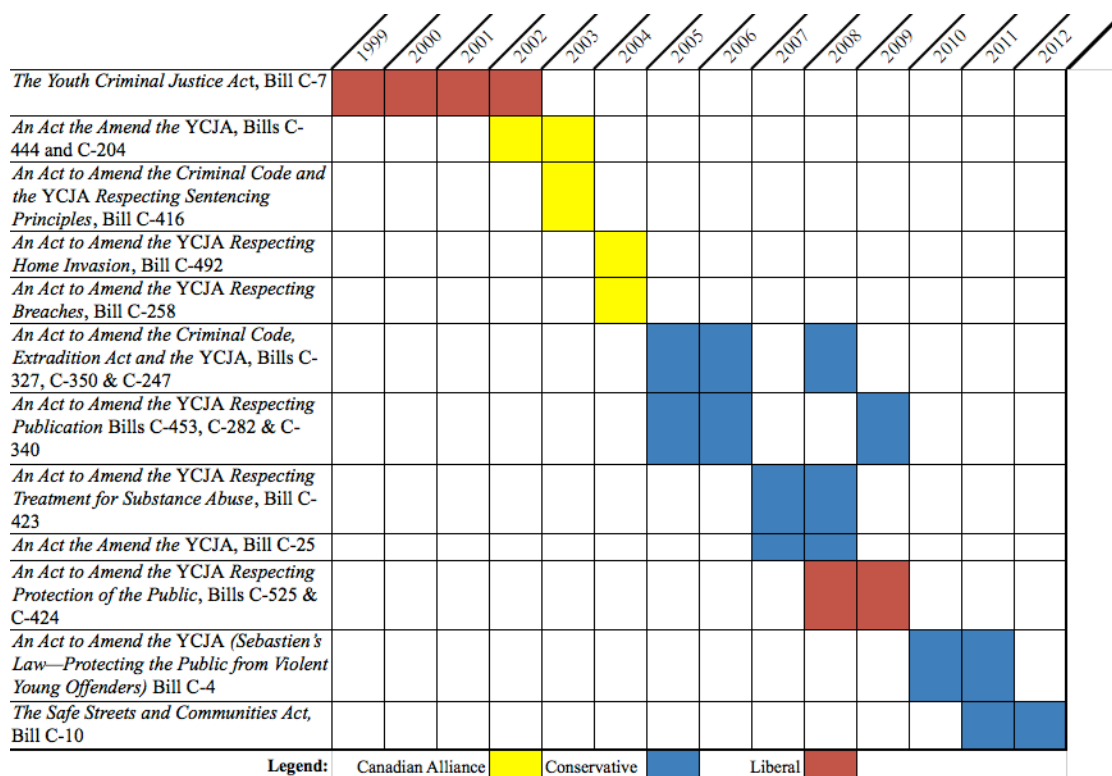
this process for each bill and subsequently downloaded and saved transcripts of each sitting and meeting on each list generated by my LEGISinfo search. I saved each electronic transcript in electronic folders sorted by bill number and in chronological order until I had 12 folders containing the complete records of all transcripts for the bills during my study period. This included 160 transcripts (“cases”) as follows:

- 20 documents for the texts of bills (see Figure 7 for a complete list of Bills);
- 20 transcripts with 1<sup>st</sup> readings in the House of Commons or Senate;
- 34 transcripts with 2<sup>nd</sup> readings in the House of Commons or Senate;
- 10 transcripts with 3<sup>rd</sup> readings in the House of Commons or Senate;
- 34 transcripts from House of Commons “Standing Committee on Justice and Human Rights” meetings;
- 17 transcripts from “Standing Senate Committee on Legal and Constitutional Affairs” meetings;
- 11 transcripts from the Senate’s consideration of committee reports;
- 5 transcripts around the delivery of House of Commons Committee Reports;
- 2 transcripts around the delivery of Senate Committee Reports and;
- 7 transcripts from the House of Commons’ consideration of proposed amendments from the Senate.

With respect to the first, second and third readings, these discussions happen during the course of many other Parliamentary and Senate activities as described above. For this reason, the transcripts contain a record of the entire day. In order to gather only data related to the research, a manual vetting process was carried out to exclude portions relating to matters other than the bill in question. This process was conducted for each record by using the table of contents feature (for House of Commons sittings) and the headings within each transcript (for Senate sitting) in each document. For example, the heading “Government Orders” introduces scheduled points of discussion such as readings of bills. To confirm the accuracy of this process, each document was visually scanned. The pared down transcripts were tagged with citation information (date, bill, parliament session and meeting/sitting type) and uploaded into the data analysis software. This elaborate design was developed to promote transparency such that another researcher could employ this method and replicate the process of drawing a sample.

As mentioned, data surround 12 bills that put forth revisions to federal youth justice policy, including the complete overhaul of youth justice legislation. As Figure 4.1 shows, several bills were re-introduced a number of times. The only youth justice bills that were passed as law during the study period include *An Act in Respect of Criminal Justice for Young Persons* (Bill C-7), which became the YCJA (2002), and more recently, the *Safe Streets and Communities Act* (2012), which received Royal Assent and was passed into law in April 2012. The 10 other bills were defeated at different stages for various reasons (including a federal election in a several instances). The Gantt diagram in Figure 7 provides a list of the central documents that made up the data overtime with colours representing the party that proposed the bill.

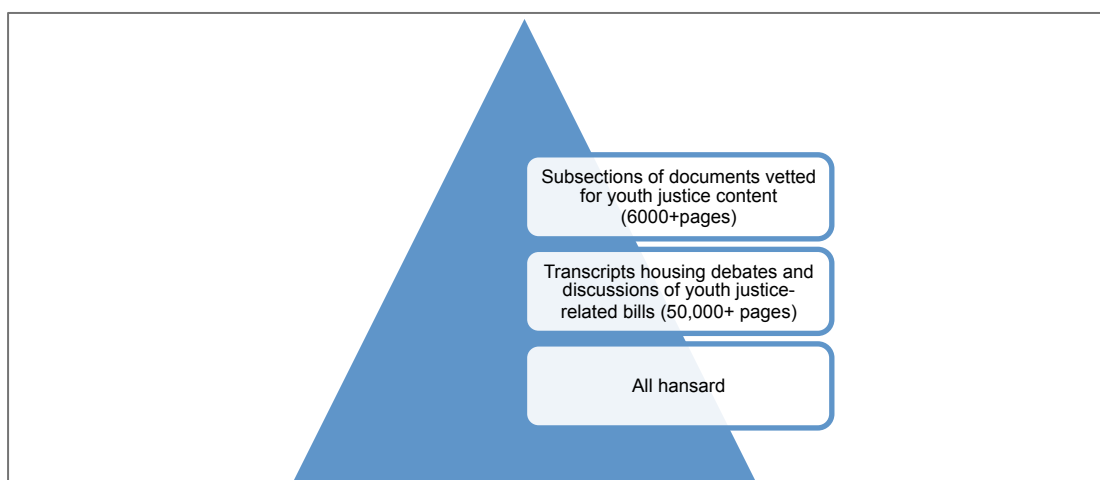
**Figure 7: Federal Youth Justice-Related Bills from 1999 to 2012**



Given the aim of this study—to investigate and catalogue legislative policy ideas and policy content, and subsequently to examine practice and implementation of community-based responses to youth crime over the last decade—I proceeded with a descriptive review of all 160 documents to illustrate a chronology of broad trends, themes and intents over the study period as they related to community-based responses to youth crime, and a more in-depth analysis of documentary materials surrounding bills that made it into law (Bill C-7 and Bill C-10). To

continue this process, each document was given a case number and entered onto an Excel spreadsheet chronologically with details including date, bill number, status, volume, number, session, and Parliament number. Each case was downloaded and separated into folders according to bill. The nature of Parliamentary debates means that a day of transcripts will cover several issues and will often move between debating and introducing various bills. For this reason, a *Word* document of each case was vetted to extract only the sections and excerpts relating to the youth justice bills<sup>47</sup> previously identified. This allowed for the systematic exclusion of extraneous information and reduced the amount of documentary data from over 50,000 pages to just fewer than 6,000 pages. Figure 8 illustrates the process identifying the sampling frame.

**Figure 8: Identifying the Sampling Frame**



Once the vetting process was complete, data were exported to *NVivo* to begin data analysis. The following subsection describes a key component of the data management task that also assisted in data analysis: computer assisted qualitative data analysis software.

### ***Computer assisted qualitative data analysis software: NVivo***

Once the cases of interest were gathered, I made use of Computer Assisted Qualitative Data Analysis Software (CAQDAS). CAQDAS emerged about 30 years ago, became broadly available in the 1990s, and is presently, a widely used practical tool to support qualitative data analysis (Lu & Shulman, 2008). In general, CAQDAS can be advantageous in the organization

<sup>47</sup> Un-related information typically centred on other matters before the House.

and analysis of large quantities of qualitative data and introduces analytical techniques not available to the manual analyst. Complex retrieval techniques including automatic coding; simple word searches; advanced Boolean searches; frequency counting/saturation analysis; coding for proximity between, overlapping of, and sequences of nodes along with several types of visual representation of the data is possible. The most commonly employed and useful aspect enabled by CAQDAS is “code-and-retrieve” where codes/nodes are manually or automatically linked to text segments (Kelle, 1997). In this way, nodes can be developed from the text and applied throughout the dataset. Deeper reading of the data allows early, tentative nodes to be refined and more deeply explained. Eventually, the researcher can call up each text segment to which a particular node was applied (Kelle, 1997) and conduct cross-comparisons. Hierarchical relationships can also be identified where nodes can be divided into subcategories of related concepts. This feature became especially useful in writing the dissertation because it allowed data excerpts to be called up easily to illustrate findings.

CAQDAS has been thoroughly discussed in the methodological literature across the disciplines. It is widely agreed that such software can expedite the analysis process and can make efficient work of large datasets; “in the best cases, more intellectual energy is directed towards the analysis rather than the mechanical tasks of the research process” (Lu & Schulman, 2008, p. 106). While coding manually necessitates a more manageable analytic scope, CAQDAS allows this scope to be expanded exponentially whilst preserving the required organization. Lu and Schulman (2008) make the important point that CAQDAS enriches and promotes flexibility in the analysis process by allowing the researcher to make quick changes and revisions (e.g., revising nodes and adding new concepts) as they move deeper into and back and forth between the data. Furthermore, it has been argued that CAQDAS can improve rigour and transparency (Lu & Shulman, 2008). For instance, Welsh (2002) argues that the ability of CAQDAS to probe the text by searching for instances of a particular word (and its synonyms) produces much higher accuracy than the same done by hand—in particular, in large data sets. It also allows researchers to more systematically and quickly confirm or reject tentative hypotheses about the data. It is, however, easy to imagine cases in which such straightforward data queries would be limiting and possibly incomplete lacking the nuances of the human researcher. As such CAQDAS is not automatic and self-sufficient, but instead, an aid to an informed, careful researcher. The robust abilities of CAQDAS were employed in this

research to aid in making general conclusions about the data that were investigated in more detail, to create a systematic way to move between data excerpts and to organize the data.

Despite the benefits CAQDAS brings to qualitative analysis, it is not without shortcomings. Briefly, limitations include: removing data from its context and, arguably, encouraging researchers to take shortcuts (Spencer, Ritchie, & O'Connor, 2003). Importantly, some researchers argue that CAQDAS distances analysts from their data and divorces data from its context thus providing quantitative analyses of qualitative data. Though this seems a reasonable risk (and perhaps a desire if researchers wish to "quantitize" their data), it hardly seems a necessary outcome of CAQDAS. Although, Welsh (2002) concedes that the speed of coding allowed by software assistance has potential to yield more coding than manual methods, it may also mislead researchers into thinking they have coded more, without yielding a more sophisticated understanding of the data. One reason put forth to help explain the important debates surrounding the use of CAQDAS is that such assistance is often framed akin to quantitative analysis (Kelle, 1997), thus the conclusion that CAQDAS inappropriately reduces qualitative data to frequencies devoid of context, relates more closely to an aversion to computerizing data than to the wealth of assistance CAQDAS can actually provide. This fear seems to have emerged in connection to the early analysis software designed to assist with quantitative content analysis and seems compounded by the contemporary researchers who use CAQDAS to generate automatic frequencies rather than to assist with rich, thick description. Bringer, Johnston and Brackenridge (2004) accept that while frequency counts may be appropriate in some research, the strategy is questionable when researchers misrepresent their methodological grounding by asserting that the project was qualitative. Such research exacerbates already present fears and tensions around the use of CAQDAS and serves to obscure the debate somewhat: instead of focusing on the techniques of CAQDAS and how these might best be employed, many researchers are concerned about whether CAQDAS dilutes the qualitative process.

By acknowledging that CAQDAS cannot replace the researcher, and by employing it as a supplement to, rather than replacement of, other analysis techniques, one can minimize the effects these limitations may have, and sufficiently balance them with the rewards of CAQDAS. One way to do this is by supplementing electronic coding and memo writing with a manual

process used to make sense of notes and coding (Welsh, 2002). This combination of processes encourages and makes room for manual examination of coded text and memos and produce new nodes on how this all fits together; computer assistance does not (nor should it), in this view, replace the human researcher.

At this point it is useful to think of the qualitative research project as a rich tapestry. The software is the loom that facilitates the knitting together of the tapestry, but the loom cannot determine the final pictures on the tapestry. It can though, through its advanced technology, speed up the process of producing the tapestry and it may also limit the weaver's errors, but for the weaver to success in making the tapestry she or he needs to have an overview of what she or he is trying to produce. It is very possible, and quite legitimate, that different researchers would weave different tapestries from the same available material depending on the questions asked of the data. (Welsh, 2002, para. 9)

There exists no shortage of cautionary articles stressing that while CAQDAS is a useful tool, it must be employed appropriately and with careful attention to purpose, rigour, trustworthiness and retaining context (see Lu & Shulman, 2008). Another key limitation of CAQDAS relates to drawing connections between themes. Though software can be helpful in identifying and sorting through instances of themes and in illuminating exemplars of themes, it is exceptionally difficult to draw comparisons between themes. This is another avenue where manual coding is integral. Specifically, while I used memos within the software package as I coded the data, I supplemented this process with manual memoing to highlight the key connections and relationships in various ways (e.g., diagrams). Especially because of the ongoing debates about whether CAQDAS enriches or undermines qualitative analysis, Bringer, Johnston and Brackenridge (2004) stress the importance that researchers carefully and completely outline their precise use of software and demonstrate its methodological appropriateness.

The cost, compatibility and training for CAQDAS comprise another set of concerns that must be balanced within the research (Lu & Schulman, 2008). Software tends to be expensive and requires annual licensing fees. A 12-month student license for *NVivo* was purchased and renewed three times to complete this research. At a fee of over \$700 per license, the software presents a demonstrable financial burden for researchers. Further, the most popular software is

designed for Microsoft Windows use and thus not compatible with Macintosh systems meaning that Macintosh users must either install a Windows operating system or switch to a PC for the purposes of data analysis<sup>48</sup>. Lastly, training can be costly and time consuming, a challenge worsened with frequent software updates.

*NVivo*, one of several qualitative data analysis packages, was chosen for this research. Qualitative Research Solutions International (QSR) initially designed *NVivo* as an efficient alternative to overcome “the chaotic task of photocopying, cutting, highlighting, and filing interviews and coding by hand” (Bringer et al., 2004, p. 248). The decision to select this package over the others was made with attention to its user-friendly interface and its wide use (and thus availability of support) among social science researchers. Additionally, *Nvivo* allows for pdfs and word documents, among others to be imported such that these can be analyzed within the *Nvivo* interface. Familiarity was also a key component in the decision to use *Nvivo*: the visibility of coding stripes (allowing the researcher to see the nodes that have been used and the text that has been coded) and memo and annotation features made the process similar to, and compatible with, the manual analysis procedure I have used in the past. This hastened the learning process and worked well with my own thought and analytic process.

*NVivo* not only assisted in organizing and managing the vast quantity of data, but helped to quantify themes and relationships, chart connections within and outside of the text and provide another way of validating the findings to increase systematization. *NVivo* can be a useful analysis program because it assumes the researcher will begin with theoretical concepts, and allows for the modification, expansion, and relocation of categories when presented with the data. In some instances, a technique such as cluster analysis can be performed to show statistical relationships between themes that may have escaped the researcher’s coding process.

### ***Data management and the restricted sample***

In order to promote in-depth and detailed coding of the archival data (more than 6,000 pages), after all of the transcripts had been examined, I felt that a smaller, more manageable sample needed to be drawn. Of the 160 cases (over 6,000 pages), a sample of 36 (1,554

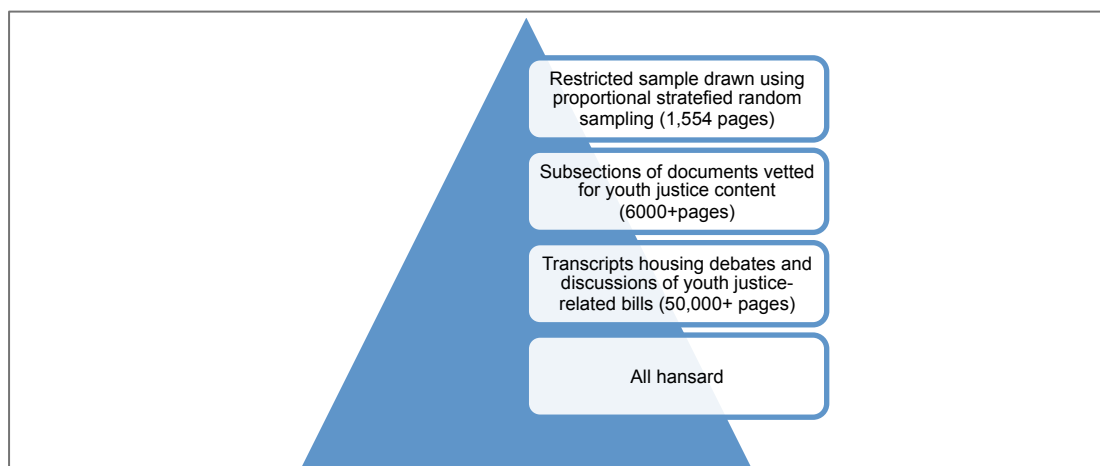
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<sup>48</sup> As of 2014, *NVivo* has been Macintosh-compatible.

pages) was drawn using a *proportional* stratified random sample (SRS) strategy. An SRS involves a division of the population into groupings/strata of significance and subsequent use of simple random sampling within each stratum. Because the technique relies on strata, it is useful only when there is some meaningful way to identify and utilize groupings within the data (Palys & Atchison, 2014). For the data at hand, the strata of interest were the bills over the study period, of which there were 12. An added detail is whether the sampling strategy is proportional or disproportional. While a proportional sample means that the sample mirrors the population in terms of the proportion of the sample in each stratum, a disproportional sample samples an equal proportion in each stratum. A proportional SRS was chosen based on the reasoning that the strata with more days in session are more important to the resulting narratives; as such, it is appropriate that the sample should also focus more on these discussions.

The result of the proportional SRS is “the restricted sample” as displayed in Figure 9. Of the 12 bills, many were introduced and reintroduced several times, as is typical of the parliamentary process. Because the process of numbering Bills starts over at each new Parliamentary session, some Bills have multiple numbers owing to the fact that they were discussed in multiple parliamentary sessions. Each Bill was tagged with a letter, A through L. Each transcript was identified and given a case number. Using a random number generator provided by *Excel* software, a proportionate random sample was gathered in each stratum. For example, Bill C-7—what became the YCJA (2002)—represented 28.5% of the entire data set. Accordingly, nine cases were randomly selected from Bill C-7 to make up 30% of the new sample. This strategy was particularly appropriate given that the most persuasive Bills—the ones that did in fact become law, featured far more prominently in the larger sample. As such, they also make up the bulk of the restricted sample. Furthermore, the diversity of case types (e.g., first reading, committee hearing) was also respected in the sample due to chance. This strategy yielded a sample of 1554 pages of data (36 cases due to rounding). Figure 9 illustrates the narrowing of the dataset that took place as a result of the restricted sample. As the entire dataset had been examined at the outset, the next task was to scan the sample to ensure some of the early themes that had begun to arise from the full sample were repeated in the restricted sample. Once this process was completed and relative saturation and mirroring was confirmed, the restricted sample underwent detailed analysis.

Figure 9: Drawing the Restricted Sample



## PHASE 2: Eliciting Stories Through Semi-Structured Interviews

Phase 2 of the research involved semi-structured interviews with key actors in the process of policy-making at each of the senior policy level, the management level and the front-line level. Jones and Newburn (2006) suggest that such interviews can be useful in exploring “the key events and time frames of policy development and to provide a richer understanding and explanation of the perceptions and involvement of key actors” (p. 36). Additionally, when research demands “an understanding of deeply rooted or delicate phenomena or responses to complex systems, processes or experiences...” (Ritchie, 2004, p. 36) interviews are quite suitable. Kvale (1996) suggests that a key strength of the semi-structured interview is the technique’s allowance for a set of pre-determined themes and categories to guide the interview, along with the provision of ample flexibility to account for changes in question order and form and follow up with the participant. Semi-structured interviews can also be advantageous by contributing to a more comprehensive and systematic method of collecting data from several individuals—thus providing focus as well as the chance for individual perspectives and stories to emerge (Patton, 2002). Compared to non-interactive forms of data collection such as questionnaires, semi-structured interviews allow for richness in interaction, yet are not as intimate as a therapeutic interview. For these reasons, the technique is quite useful and appropriate as a complement to the archival analysis.

I engaged those who implement policy on a local level (practitioners) since they are also characterized as creators of policy. While it was important to ask how a participant understands the policy setting, it was also imperative to enquire into “reasons for reasons” (Soss, 2006, p. 128). In other words, I asked participants how they came to their understandings, how their personal and social efforts to make meaning have contributed to their actions in the setting. My aim was to gather narratives on how each participant understood, interpreted and utilized community-based responses to youth crime under the YCJA (2002)—their subjective understandings of these measures.

Several studies in the field of youth justice policy provide good examples of interviews as data collection techniques and also the associated analytical techniques. For example, in an investigation undertaken by Hastings (2006) surrounding ground-level resistance to change in the area of youth justice in light of Canada’s National Crime Prevention policy, interviews were conducted with youth justice professionals and also youth “clients” of the system. Though Hastings acknowledges that youth justice work is driven by its social context (constraints and pressures of mandates, legislation, public) the views of those who carry out the work are seen as important in understanding how the policy setting is shaped. The following sections describe the interview sample, the semi-structured interview instrument and the data management process in turn.

### ***Interview sample***

The sampling strategy employed in Phase 2 elicited 14 interviews. A list of participants by attributes and participant pseudonyms<sup>49</sup> is provided in Figure 11. Like sampling in Phase 1, the strategy to locate interview participants was also of the non-probability variety. This study involved the geographic area of three of British Columbia’s most populated regional districts: Metro Vancouver, Fraser Valley Regional District and Greater Victoria/Capital Region. Specifically, the techniques of theoretical and chain-referral sampling were employed to collect and reach the sample. Planning at the design stage was only tentative and was eventually informed more completely by the beginning of data collection and analysis within the data

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<sup>49</sup> As is described later in this chapter, pseudonyms were assigned to participants to protect their anonymity. To promote transparency, data excerpts in chapters 6 through 8 are linked to their pseudonym and correspond to the map in Figure 11.

management stage. Altheide (2000), a specialist in qualitative methodology suggests employing progressive theoretical sampling. The process, borrowed from grounded theory, entails early data gathering that directs the researcher to the next sample group by highlighting preliminary concepts and questions, and also acknowledges some theoretical purpose for the direction taken (Glaser & Strauss, 1967; Ritchie et al., 2003).

Beginning deductively, my sample was initially informed by literature and theoretical sensitivity. For example, given literature on community-based responses to youth crime, I knew that members of several different professions were involved in delivering services in the community. As a result, I knew that police and probation officers, along with members of diverse community organizations had various roles in delivering these services in this province. Eventually, the process became iterative where pieces of the data from my archival analysis and from the first few interviews helped to identify more appropriate data and enabled me to move back and forth between sampling and early analysis. In this sense, immersion in the data and a thorough reading and re-reading of the content assists researchers in arriving at new sampling directions (Nikander, 2008). Typically once a point of saturation (the point where newly gathered data repeat instead of richen concepts and themes) has been reached, data gathering is complete (Ritchie et al., 2003). In this research, the point of saturation for some themes began to emerge early on, but it was not until 14 interviews had been completed that full saturation was achieved.

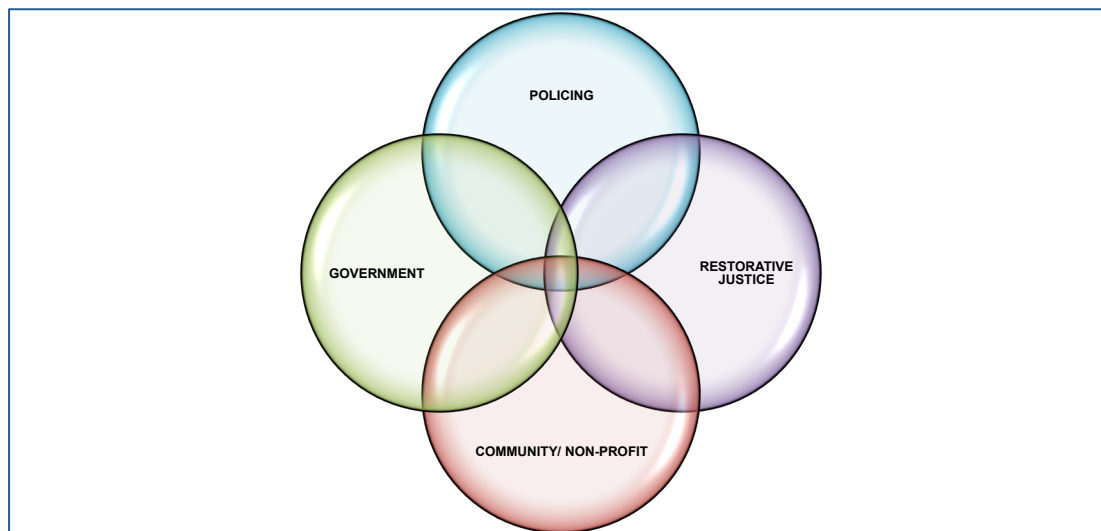
In addition to being informed by the literature, and the data, researchers may benefit from incorporating fieldwork early in the research process in order to allow participant feedback and gather advice to focus sampling can be exceedingly beneficial (Wodak, 2001). Chain-referral sampling, a method to supplement theoretical sampling, increases the sample by asking interviewed participants to recommend colleagues who might fit the criteria for selection (Ritchie et al., 2003). By using this strategy, I invited participants to identify other appropriate participants. Though chain-referral sampling tends to reduce the sample diversity, given that participants may recommend similar participants, its use together with theoretical sampling can mitigate that limitation. To supplement the chain-referral method that allowed for the sampling of individuals that I might not otherwise have included, maximum variation sampling was employed to gather as heterogeneous a sample as possible. While maximum variation sampling promotes an examination of how an issue is seen/understood among different people in different settings

during different times across the 10-year time span, it does not mean that the sample is representative of the wider province. Dimensions of interest included:

1. Professional sector (government, community, police)
2. Nature of work (director, manager, supervisor, front-line staff)
3. Time of employment (past, present)
4. Stage in career (novice, long-term)
5. Disciplinary training (enforcement, social work, psychology, child and youth care, criminology)

The importance of these dimensions in attaining maximum variation is widely established in the literature. Accordingly, participants were gathered from the fields of law enforcement, probation/government, intensive support and supervision/non-profit, and restorative justice (see Figure 10). Additionally, participants included directors, managers, supervisors and front-line staff. Several participants had over 35 years of experience in their field (meaning that they had worked with the JDA (1908), YOA (1985) and YCJA (2002), while others had less experience. Still others are considered novice with less than five years of practice experience in their field. Disciplinary training was also diverse with professionals having backgrounds in criminology, child and youth care, psychology, business administration, social work and specific enforcement training, and some with backgrounds in a combination of these disciplines. Levels of education also varied with some participants in the process of completing post-secondary education and professional certification, others having Bachelors degrees, some with graduate degrees. Another aim was to gather a geographically diverse sample within the areas of Greater Victoria, Metro Vancouver and the Fraser Valley. As such, roughly a third of the sample was from each area.

Figure 10: Sample Variation and Overlap

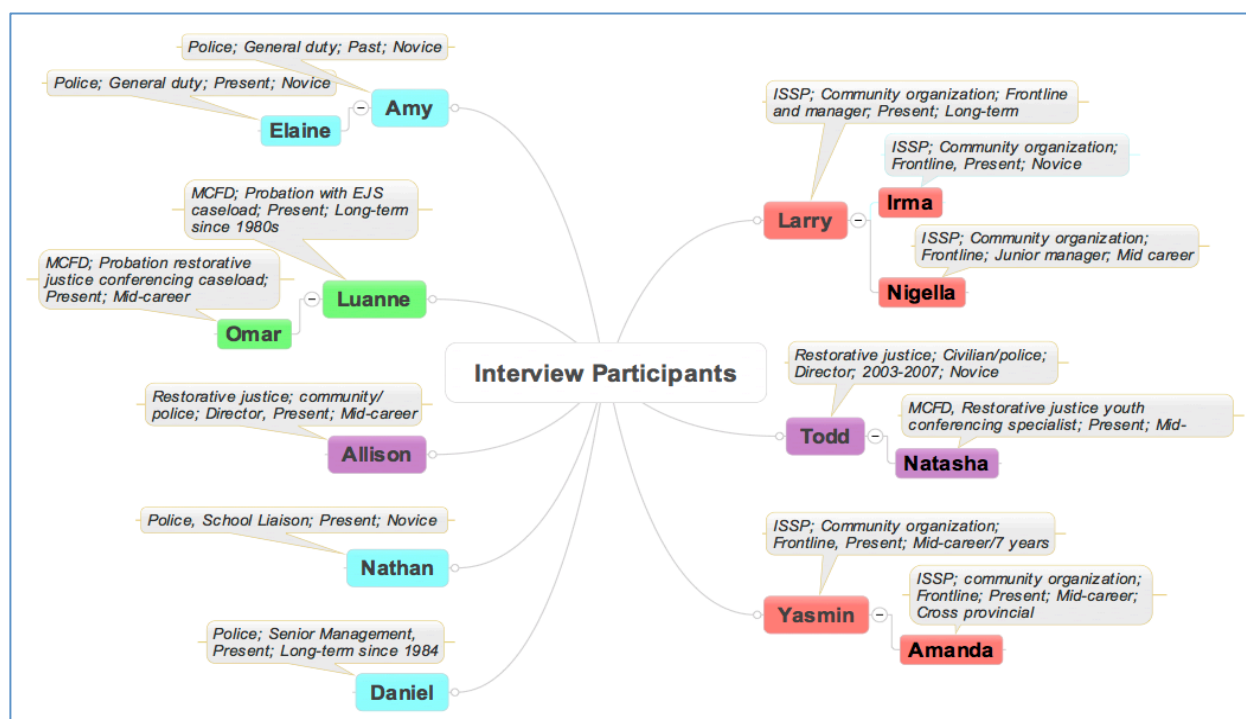


The interviews in this study were used to further explore, confirm, expand and clarify the findings from stage one of the research and to trace the presence or absence of dissonance between policy and practice. Those 14 professionals interviewed fell into the following categories:

1. Four police officers with experience dealing with youth. One is a senior manager with over 35 years of experience; three have less than 10 years of experience; one participant was a school liaison officer while two are general duty officers.
2. Five community workers employed at two different non-profit agencies contracted by MCFD to deliver intensive support and supervision services (i.e., supervise youth who have been given community supervision as an alternative to custody). One is a senior manager; one is a junior manager and three are front-line workers.
3. Two directors of restorative justice programs. One director has had 10 years of experience while the other was employed in the position for five years during the transition from the YOA (1985) to the YCJA (2002). Both have experience with police referrals for pre-charge extrajudicial measures/diversion.
4. One government (MCFD) youth conferencing specialist.
5. Two youth probation officers (employed by MCFD). One who supervises extrajudicial sanctions referrals; the other is a restorative justice conferencing specialist.

Given the importance of the maximum variation sampling strategy paired with the chain referral method, a concern was that the participants not be overly connected to one another. Figure 11 illustrates the connections between the participants: participants highlighted in the same color work in similar sectors while the connecting lines on the chart illustrate the occasions when one participant referred another. In the end, six referrals resulted in an interview being conducted.<sup>50</sup>

**Figure 11: Chain Referral Method of Participant Recruitment—Links Between Participants**



Because a good deal of the study is retrospective in nature, covering the last 10 years, a methodological challenge involved the difficulty in assessing the validity of accounts. Though a study focused on the contemporary setting would help alleviate these concerns, given the focus this research has on examining dissonance over a period of time, it is not appropriate. Instead, accounts were compared with one another and with documentary accounts to promote validity.

<sup>50</sup> Three other referrals were made, but these participants declined study involvement for various reasons: one participant did not have time to participate in the study, another did not respond to the researcher's request for participation. In communication with the third referral, it was determined that person did not have adequate experience with youth justice, specifically.

## ***Instrument***

Though a number of question types are identified throughout the literature, a few question types are appropriate for this interview schedule. Introducing questions, follow-up questions (Kvale, 1996), probing questions (Berg, 2007), specifying questions, direct questions, indirect questions, structuring questions, silence and interpreting questions. The variation in question format allows researchers to “draw out the most complete story” (Berg, 2007, p. 100). For this reason, the questions in my interview guide varied in form, and were designed to elicit narrative accounts from participants where they might share a story that helps to illustrate their views. For example, many direct questions were followed up with a question in the form of: “can you tell me about a time when \_\_\_\_\_ affected your practice?” Another strategy to preparing an effective interview instrument is to pre-test the schedule of questions with someone who is familiar with the audience (Glesne, 2010). The purpose is to assess whether all of the appropriate questions are included, whether appropriate responses were given, the appropriateness of the language, and to help alleviate any problems with the language used or format of the questions. To this end, I pre-tested my questions with a colleague who studies in the area of youth justice. I then made revisions following that pre-test. Additionally, I provided my interview questions to my supervisory committee as part of an initial research proposal. For a complete list of prepared questions, see Appendix B.

Interviews lasted an average of 90 minutes for a total of 25.5 hours of data. I conducted all but one interview in person. The one remaining interview was conducted over the phone. Rapport, closeness to research participants and the trust between researcher and participant are each known to be directly linked to validity of the data (Palys & Atchison, 2014). Because it is more difficult to develop a bond over the phone as compared to an in-person meeting, I carefully considered the chance that the quality of the telephone interview might suffer as a result of not being conducted face-to-face. However, the participant and I were long time personal acquaintances. For this reason I decided that the appropriate level of rapport already existed, and did not need to be created within the research relationship. It also became clear early during the interview that the participant felt comfortable sharing candid stories and personal reflections that did not seem to be impacted by a lack of in-person meeting. Another factor impacting the telephone interview is that due to personal circumstances, this participant had to end the interview after only 30-minutes. The decision was made to include the interview

despite its length because I knew that the participant had a unique set of experiences, which had not yet been seen in the data. In this case, the disadvantage of including the truncated interview was decidedly outweighed by the advantage of accessing a negative case example and increasing the variation in the data.

Twelve of the 14 interviews were audio recorded. At the request of two participants, those interviews were not recorded. Instead, detailed notes were taken during the interview and written out as fully as possible immediately following the interview. During these interviews, participants were asked to “check” the understanding of the research at regular intervals to ensure note-taking accuracy. For example, in several instances I asked a variation of this question: “A moment ago I heard you say \_\_\_\_\_. Have I got that right?” This invited participants to correct or affirm what I had written down. I also worked with the participants such that they would pause during lengthy narratives to allow me to write as verbatim as possible. The totality of the interviews was conducted over a 10-month period. This extended period of time allowed for data collection and the preliminary stages of data analysis to occur iteratively and allowed time for the process of transcription after each interview. Furthermore, it accounted for the sometimes-lengthy process entailed by the chain referral sampling strategy: in some instances interviews had to be scheduled several weeks after initial contact was made with participants.

### ***Data management***

The initial step in managing the data was to transcribe the audio recordings. The first interview was transcribed by a professional transcription service. This decision was revised early on since I felt that the best analysis would come from listening and re-listening to the data myself. Thus, aside from interview 1, I was the sole transcriber for all of the interviews. In all, about 7 to 10 hours of transcribing were required for each interview, meaning that just over 200 hours were dedicated to the transcription process alone. The interviews resulted in 340 pages of transcribed data. Like the data management procedure conducted with the archives, *NVivo* was also used with the interview data.

## Ethical Considerations

Once my supervisory committee approved the project research proposal, an application was made to University of Victoria's (UVic) Human Research Ethics Board (HERB) for ethics approval. Guidance on the facets of research ethics were gained from scholarly literature on conducting ethical research as well as the Tri-Council Policy Statement on the Ethical Conduct for Research Involving Humans (TCPS),<sup>51</sup> which is the Federal policy document that guides UVic's own research ethics policy. According to the TCPS, the process undertaken with document analysis does not require ethics approval given the use of publicly available secondary data, despite the fact that the data were not originally produced for the purposes of research.<sup>52</sup> Phase 2 of the research, however, did require institutional ethics approval due to data collection from human participants. The ethics board approves research by balancing the potential benefits (to society) against the potential risks (to individual participants, calculated by assessing seriousness of potential harm and the probability of potential harm). Within the definition set out by the TCPS, my research is "minimal risk." Such a designation refers to research where potential harms are no greater than a participant might be subject to in the course of his/her everyday life. Any risks that might be present will be mitigated through ethical conduct hinging on two inter-related procedures: provision of informed consent and the protection of confidentiality.

Participants in this research were asked to give voluntary consent to participate, and informed that they could withdraw their consent (and use of the data they provided) at any time. According to Berg (2007), free, voluntary, informed consent should be confirmed in writing; participants should be given an information sheet containing a brief summary of the research purpose along with an outline of the potential risks and benefits of their involvement. In order to safeguard participants and the researcher, these signed, dated information sheets should be stored privately by the researcher, and only divulged to the HREB in case of questions about the ethical procedure taken. Each of these procedures was undertaken (see Appendix C for the recruitment letter and participant consent form distributed to participants) in my research.

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<sup>51</sup> A Federal policy, the TCPS was created by a joint panel that sets out research ethics guidelines to be employed by Canadian universities and those conducting research funded by Government of Canada grants or scholarships.

<sup>52</sup> Though UVic's Human Research Ethics website suggests that the use of secondary data that was gathered for non-research purposes does require ethics approval, the TCPS clarifies that publicly available documents are exempt.

Confidentiality, achieved by removing identifying features from the data (Berg, 2007) is not only important as a means to encourage candid responses by participants, but also helps to protect participants from any recourse as a result of their comments; I took particular care in assuring my participants that their comments were confidential and also in ensuring that I upheld confidentiality to the utmost degree. This was particularly important given participants were asked to comment on their professional roles and could be subject to personal or professional repercussions. Berg (2007) identified strategies to achieve confidentiality including: assigning pseudonyms to participants; storing identifying information (e.g., consent forms) privately; and destroying identifying material when it is no longer necessary for the research. Accordingly, I assigned each one of my participants a pseudonym to protect their identity. Additionally, I anonymized the data during the transcription phase such that all comments that might identify the participant or the organization in which they worked were removed (e.g., organization/agency name, local program names and city names). Furthermore, I utilized a confidentiality and data storage agreement for the professional who transcribed the first interview.

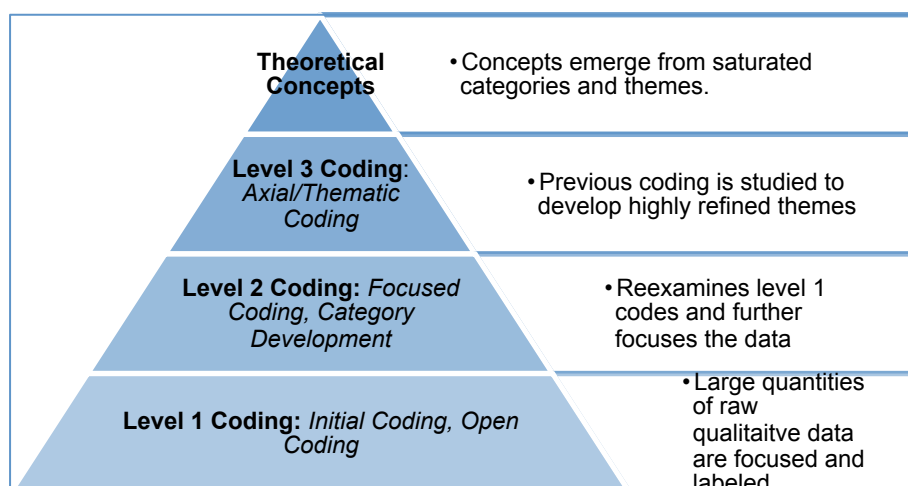
This research has been exceedingly complex from the outset. The act of attempting to distill youth justice narratives into manageable ideas, concepts and themes sufficient to make clear to the reader what I saw within the data throughout the research process has, at times, proven to be an overwhelming task. For this reason, the analysis and writing stages have waned on and on as I tried to accomplish several tasks: to make sense of, and to articulate what I was seeing; to offer an authentic representation of the data and my findings within this dissertation; and to present my findings in such a way as to speak to policy makers and practitioners alike. Amid these tasks, what I came to see as my most important duty was to adequately represent the voices of my participants who had given up their very precious time to meet with me, shared with me their passion about the work that they do and the frustrations they encounter, and entrusted me with presenting their stories in a meaningful way. For these reasons, I have tried to maintain a careful balance between presenting raw data in the form of data excerpts and adding analytical commentary to help contextualize the interview data. As such, a broader ethical concern of mine throughout the research and writing process was to produce a dissertation that would have practical utility and exemplify an authentic and credible process. Particularly due to the time dedicated by my participants, I engaged in the process of research and writing acutely aware that my responsibility as a researcher was to produce a well prepared account that

represented their voices as clearly as possible. The following section details the analysis strategy I employed for both types of data.

## The Thematic Analysis Strategy

Data analysis is generally not thought of as a sequential phase within qualitative research; instead, it is seen as part of an iterative process (Patton, 2002) along with the data collection phase. In this research, I began analysis while collecting data and utilized early findings to develop the rest of the study. Given the quantity and quality of the archival and interview data, I expected that the analysis procedure would be both time consuming and potentially unwieldy. For these reasons, and in an effort to adhere to a systematic and rigorous process, I followed the coding advice of Hahn (2008) as displayed below (see Figure 12).

Figure 12: Stages of the Coding Process



(Hahn, 2008)

### ***Initial coding, open coding***

The first stage of coding, open coding, allowed for the examination of the archives and interview data more generally, arriving at a broad idea of what the data contained and with respect to the archival data, to remove textual aspects that were clearly beyond the scope of the

project<sup>53</sup>. A key task completed in this initial coding stage was the organization of the large quantity of text (reduction and condensation would come later) and familiarization with the data. Memos were used to identify some early surprises and elements of significance that would be explored later. During this stage, all of archival data and transcribed interviews were read carefully over several months with nodes being developed, tentatively applied, and refined.

On March 5, 2012, I began open coding of the archival data set; open coding of the interview data began iteratively with the interview and transcription processes on July 2, 2012. The aim was to sift through the nearly 6,000 pages of archival data in the large sample, focusing on organizing and directing initial nodes and beginning the process of tagging text segments and to begin making sense of the interview data. During the process, I looked for early indicators of new as well as theoretically relevant themes. Initially, text segments were tagged with a code/node representing the content within the segment (e.g., diversion) as well as a process node, if applicable. In several instances, this meant that a single segment was tagged with more than one content node and process node. Eventually, nodes were adjusted to fit the text segments and descriptions from the text were applied to each node such that each node was defined by the text it described. This back and forth process allowed for the discovery of new material and nodes within the data to help shape the node/label/tag itself.

The aim in this process was to arrive at several nodes derived from the data. In this project, a key component of data analysis was to ask questions of the data based on the literature and upon those themes that emerge early in data analysis. These questions were designed to examine the presentation of ideas and to allow for comparison across time and space (policy sector). In this way, it was expected that themes would not only surface from the data upon close reading, but also, would be extracted with the use of focused questions. Though it was expected that the addition and revision of questions would occur as data was accessed and chronologically ordered (iterative), these are the questions that emerged from the literature prior to data gathering that represented a starting point:

- Analytic questions relating to research question 1 (content)
  - What are the political issues?

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<sup>53</sup> It should be noted that removing data was important for the archival data given the breadth of the subject matter. This was not an important task for the interview data since it was specifically gathered with this research in mind.

- What are the dominant ideas/themes within the rhetoric, the legislation and practice? (what are the less dominant ideas/themes?)
- What are the official goals and solutions?
- What are the messages?
- What informs the narrative? (Perspectives, stories, theories)
- Analytic questions relating to research question 2 (process)
  - How do more traditional discourses (young offender, dangerous offender) fit into the new ones?
  - How are the issues being framed?
  - Who are the players and how are they constructed within the discourse? (relates to both research question 1 and research question 2)
  - How is youth justice policy mediated through the state and articulated locally?
  - Are/How are ideas appropriated and re-worked – by what processes? (e.g., Campbell, Dufresne & MacLure, 2001 suggest that in order to mediate competing concerns, over-simplification and ambivalence was a key characteristic of the YOA)
  - How do some ideas/themes become hegemonic/ taken for granted? Under what conditions?
  - How is revision facilitated?
  - How do these idea/themes change or remain stable over time?

In addition to these questions, a few analytical questions helped with the analysis process. They were:

1. What is taken-for-granted, left unsaid or assumed?
2. What terms are left undefined, but used as though they have a fixed and universally accepted meaning?
3. What grand narratives or 'truth' claims are relied upon?

These questions helped to structure open coding and were eventually applied again to the restricted sample and where appropriate, to Phase 2 of data collection.

### ***Focused coding, category development***

Focused coding and category development refer to further refining and concentration of the data. Because of the amount of data and the time sequence, focused coding and category development took place along with stage one coding for both the archival and interview data sources. For example, once initial coding of the first bill was complete, stage 2 coding began in conjunction with open coding of the next bill. With respect to the interview data, I began the second stage of coding as I read through each newly transcribed interview while listening to the audio recording to ensure accuracy of my transcriptions. During this process I added memos throughout my transcripts and to begin to think about the connections between data excerpts with the archival data and the rest of the interview data. For the most part, focused coding examined the nodes that emerged in stage 1, identified connections between nodes (categories) and worked to make meaning of the initial stage. Memos and annotations recorded throughout stage one were exceptionally useful in this stage, as was computer software allowing visual maps of nodes to be created. The software, *Mindmanager*, is an application that builds webs and allows users to identify connections between ideas thus producing content related hierarchically and in other ways. Here, nodes were defined and elaborated upon even more carefully as the text segments were re-read and cross-compared both to check accuracy of tagging and to provide exemplars.

### ***Axial/ thematic coding***

Axial coding, also called thematic coding is the phase that allows the researcher to examine the nodes and codes identified by open and focused coding to begin to refine and make connections between them. It is here where themes begin to emerge and when the researcher develops names for them. By reflecting on the memos I wrote during open coding and focused coding, and the content of the nodes as evidenced using *NVivo*, I began the process of connecting nodes into themes, refining themes, and describing themes that had emerged. I also compared the themes that emerged from the archival analysis with those that emerged from the interview data. This process helped to shed light on research question 3—the disconnects and/or inconsistencies within and across the policy contexts. Furthermore, I was able to connect the narratives that had emerged in the archival data to the implementation setting in order to understand how this process worked.

### ***Theoretical concepts***

Theoretical concepts emerge from themes in the data. The process of connecting contextualized themes from both sources of data to theoretical concepts in the literature, and by developing theoretical concepts to help explain themes in the data when none existed in the literature was important at the penultimate coding stage. It is this process of coding that helps answer the “so what?” question in research and connects specific research to the body of research on the whole and to the potential implications research may have. Though examining and re-examining nodes within *NVivo*, refining memos and reviewing literature is instrumental during this phase, writing up the analysis became a critically useful activity and represented the final stage of my analysis.

### **Credibility and Authenticity: Quality of the Research**

It is well accepted within the field of qualitative research that “in creating understandings about the world, we each bring with us our interests, purposes and dispositions that are imbedded within our standpoint” (Garratt & Hodkinson, 1998, p. 516). Several methodologists (c.f. Denzin & Lincoln, 1994) argue that if this is so, there can be no universal language or essential governing features by which to judge research, because any attempt to do so would be embedded in a standpoint that may not apply to other approaches. This idea that acknowledges that any imposed and universal criteria would be value-laden is known as the “crisis of representation.” A related problem is that there can be no overarching standard by which to uphold research when we recognize power and knowledge as inextricably intertwined. While the consequences of this line of thinking lead some to conclude that we cannot evaluate research at all, others (c.f. Lincoln, 1995) work towards recognizing but not abandoning judgments. It is this approach towards credibility and authenticity that informed my own research framework and my focus on transparency, consistency and trustworthiness.

In all, my data collection, analysis and writing processes, which together formed interconnected iterative processes, were engaged over a period of 36 months. Throughout this period the most important considerations that guided my data collection-analysis-writing process were transparency, consistency and trustworthiness. For this reason I employed several strategies: memo writing, self-auditing, data tracking and concept mapping. The first, memo

writing, along with journaling involved analytic memos, or “notes to self” (Palys & Atchison, 2014). This strategy is useful in gathering reflections about the research design, process, and in particular, in making early links between pieces of data and between data and concepts or theories (Hesse-Biber & Levy, 2011). In addition to serving a useful practice in my data analysis, the practice of writing memos is even more fruitful when the researcher has the chance to go through the memos to recognize (and to keep in check) their own *positionality*<sup>54</sup>, personal views or tendencies. Each day throughout my data collection, transcription, data analysis and initial writing process I began a new memo entry in *Memoir*—journal software—that allows for sorting of entries and temporal organization (apart from memos I wrote and attached to nodes within *NVivo*). The features of the *Memoir* aided in keeping track of ideas and links and allowed for cross-reference with the data list (which listed the date each archival component was coded); past memo entries were reviewed and refined regularly. Memos included data excerpts and preliminary ideas about how they fit together and fit (or did not fit, as was often the case) with the literature. Using this process of memoing, the initial coding scheme was developed and refined and subsequently applied to the complete set of data. This strategy not only helped to track research decisions and their reasons, but also to note emerging themes and connections that had not fully developed. It also served as a place to record questions or inconsistencies to follow up later on. A key strength of the process was that it helped me to work reflexively—by questioning how and why I arrived at tentative conclusions, whether and how these conclusions might be interpreted differently and how the data drove the analysis. As memos became more thorough and complex containing more and more data, connections and negative cases, the memos became the foundation for the analysis chapters of this dissertation. The *NVivo* software also contains memo functionality that I used to attach ideas to, and make notations of links within each node/code. As ideas were refined in *Memoir*, they were transferred to *NVivo* and the data were constantly re-examined to ensure fit and appropriateness.

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<sup>54</sup> Positionality refers to one’s own personal location (e.g. race, class, sex, place) and assumes that this perspective influences and shapes the research and analytical strategy to some degree (e.g. what to research, how to research it, how to frame findings). Recognizing, examining and keeping positionality “in check”—positional reflexivity—denotes the process where measures are taken to ensure that the biases inherent in personal location do not take over the research and instead, are questioned and challenged throughout. Among the many ways to conceptualize and attend to the methodological dilemmas surrounding reflexivity and positionality—as a way to obtain objectivity; as an ongoing process etc.—Day (2012) argues that while positional reflexivity is not a panacea for the challenges in achieving validity and quality in qualitative research, it does allow the messiness associated with qualitative research to be examined. In turn, she argues, this begins the very important work of considering the impacts our research outcomes may make.

The second strategy to increase consistency and trustworthiness was self-auditing. Though qualitative methodologists disagree about the value of auditing in general, and whether it yields more valid findings, several researchers do speak to the process of engaging participants to “check” the results to determine that the researcher has appropriately understood what they said and meant (e.g., in interview studies) or the process of engaging one or more colleagues to read excerpts of the raw data and decide whether they agree with the interpretation put forth by the researcher (e.g., interview, archival or observation studies). This consensus approach seemingly increases the trustworthiness of the findings and inspires confidence that the researcher “got it right” so to speak. The process I employed did not engage colleagues or participants. Instead, I used a self-audit process to review the first stage of my archival analysis six months after I had completed it. This process not only improved my articulation of what I had observed in the data, but also served to question whether what I saw would again emerge, and whether new aspects might materialize. The process led me to add together some nodes that were previously separated and subsequently to confirm and elaborate upon much of what I had found earlier.

A third process, as mentioned earlier, involved tracking each archival source. I utilized *Excel* to catalogue each item and to record each time it was coded. Given the initial set of over 6000 pages of archival data, I found it was exceedingly difficult to manage the dataset. Using the spreadsheet allowed me to classify each document according to the Bill it referred to, status before the House of Commons or Senate and other pertinent information such as whether it contained a major speech. Eventually, this tracking spreadsheet also became a complete list of items in the population from which I drew the restricted sample.

Finally, concept mapping facilitated by *MindManager*—a software application that allows users to create “webs” of interlinking ideas and concepts—was used at several junctures in the research process to illustrate the links between ideas, literature, concepts and to refine concepts, findings and links even further. Kinchin, Streatfield and Hay (2010) profess the utility of concept maps “constructed by the interviewer to enrich the interpretation of information collected during the interview” (p. 53). Rather than reducing data, which is a common practice during the coding stage, concept mapping helped me to enhance the data and to open up more questions for inquiry. Because of its visual diagrammatic form, the concept map helped to illustrate dynamic relationships between concepts, nodes and the literature in a way that could

not be achieved through linear note taking alone. The process became essential in writing up and explaining the final product and was useful in organizing the interview data and bridging the two phases of research. Together, the software applications utilized throughout this research facilitated the organization, management and analysis of the data as well as the writing up process in a dependable, systematic way.

Though this project brings several advantages to the research setting, including its usefulness in highlighting interactions negotiated by power, its multidimensional focus, and its transformative potential, it is not useful as a technique to answer causal questions. Furthermore, natural limitations to the qualitative approach include its limited generalizability. Though the province of BC was examined, results cannot be said to reflect policy and practice in that province in its entirety. This limitation is exacerbated by the nature of diversion practices: practices, policies and guidelines as well as program availability varied widely across the sample. It is expected that an even greater variation would exist between other regions and other provinces. Instead, care must be taken to interpret the results as but one contextual examination of a complex process.

## **Conclusion**

This chapter outlined the approach I took to gather an understanding of politics, policy and practice around community-based responses to youth crime in Canada as well as the key research decisions I made given the breadth and depth of the available data. I detailed the role narrative analysis took in guiding the research from a methodological standpoint and also the role of technology in facilitating data management and analysis. Access and sampling featured prominently as considerations around how best to gather data and participants as well as how to narrow down the field was integral to the process I engaged. Finally, I outlined the analysis strategy, ethical considerations and the ways that I conceived of and achieved credibility and authenticity. This project was designed to will better inform the policy realm. As such, a dual-faceted research strategy that examined a decade of policymaking was necessary.

The next two chapters presents the first of several results chapter and centres on the political and policy narratives that emerged from the 10-year span of archives sampled. In them, I examine the way policy stories are created and presented, focusing firstly on the role of

evidence and expertise. Next, I look at two phases of the data and the sometimes-incongruent narratives that emerged. The chapter closes with a piece on how the narratives helped to shape policy understandings and, in particular, the impacts of the increasing politicization of youth justice and constructions of the “youth criminal” have impacted policy-making on community-based responses to youth crime as demonstrated throughout the archival data. The findings from the interview data are presented and discussed in Chapters 9 through 11 with attention to the connections and disconnects between the archives and the interviews.

## CHAPTER 7: Youth Justice Policy Stories: A Chronology of the Archives

*Honest differences of views and honest debate are not disunity. They are the vital process of policy making... ~Herbert Clark Hoover*

### Chapter Overview

It has been suggested that, although the original intent of the YCJA (2002) was to decrease incarceration, increase accountability for young offenders, and (arguably) focus on restorative processes, unintended consequences in implementation have led instead to a net-widening that increases justice system involvement and simultaneously creates an overreaching and disproportionate use of youth justice alternative measures (Barnhorst, 2004). It has also been suggested that the lack of clarity surrounding youth justice policy in Canada (Smandych, 2012) is partially, if not principally, responsible for youth justice practice straying from the YCJA's legislative intent. Additionally, those with a more pessimistic view have submitted that the intent of the YCJA (2002) was never based in an honest commitment by legislators to improve circumstances for young offenders, but was rather grounded in an effort to increase social control and community surveillance since youth justice had become a political platform not an instrument of social justice (Giles & Jackson, 2003; Hogeveen & Smandych, 2001). Perhaps the greatest concern in all this is that now, more than ever before, the intent of Canada's youth justice policy is difficult to ascertain for academics, policy-makers, and practitioners alike. As a result of the efforts of politicians to please divergent groups (Bala et al., 2009; Doob & Sprott, 2006) this legislation appears to be largely an attempt to hide cost cutting while supporting punitive social control measures that appeal to a certain segment of the Canadian electorate.

The documented controversy about the intent of the YCJA (2002) and the abundance of legislative attention that has been devoted to youth justice, and community-based responses to youth crime in particular, are the focus of this chapter. I utilize narratives—the content of ideas and interactive processes by which ideas are conveyed—as key sites to examine shifts over time and across contexts in concepts, beliefs and meanings that inform community-based

responses to youth justice. As discussed in Chapter 6, this analysis coupled with that in the following chapter begins to address my first and second research questions about the underlying policy aims and how policy change is articulated at the rhetorical and codification levels. Additionally, the analysis and results I present in this chapter and in Chapter 8 help set the stage to answer my third research question which focuses on the disconnects and inconsistencies within and across policy contexts.

To meet the above objectives, I present a detailed, descriptive chronology of the bills introduced into the House of Commons related to youth justice over the course of the study period: 2001 to 2012. As previously explained, these major legislative events are rich analytical vantage points from which to observe the content of youth justice policy narratives, and the shifts and regularities in these narratives over time. Despite only one post-YCJA bill receiving Royal Assent, the ideas contained within proposed policy solutions that “failed” are significant signposts in this narrative examination. In the chronology, I focus on the ideas expressed: “what was said” in the legislative context, where it was said, and by whom. As discussed in Chapter 6, key facets of the context include time, government leadership, the Member of Parliament who introduced a given bill, proximal policy documents, key events identified as influencing factors, the content and context of opposing ideas, and finally, the status or outcome of the bill.

## **Chronology of the Archives**

Given the complexities of the legislative environment, it is first important to discuss a key background factor emphasized in the chronology of the archives. Undoubtedly, the reality that the governing political party changed during the period studied, and the presence of both minority and majority governments at various points in time is a critical analytical feature. For this reason, attention to the contextual variable of “who is in the room?” was integral to my analysis, and has important explanatory utility. Furthermore, while the presence of a majority government makes space for the political narratives of the party in power to take hold and for policy ideas introduced by the government to be successful, when minority governments lead, policy change on controversial issues is not likely to occur—though ideas may still be introduced. As such, both of these variables are significant in examining the archives. Figure 13 identifies the governing party and the Official Opposition across the dataset.

Figure 13: Political Parties in Power

Parliament	Year	Party	Prime Minister	Justice Minister	Official Opposition
36 <sup>th</sup>	1999 to 2003	Liberal Party of Canada	Jean Chrétien	Anne McLellan	Reform
37 <sup>th</sup>				Martin Cauchon	Canadian Alliance
38 <sup>th</sup> (minority)					
37 <sup>th</sup> to 38 <sup>th</sup>	2003 to 2006	Liberal Party of Canada	Paul Martin	Irwin Cotler	Conservative Party
38 <sup>th</sup> (minority)					
39 <sup>th</sup> (minority)	2006 to 2011	Conservative Party of Canada	Stephen Harper	Vic Toews	Liberal Party
40 <sup>th</sup> (minority)				Rob Nicholson	
41 <sup>st</sup>					

Including Bill C-7, which gave rise to the YCJA (2002), youth justice bills were introduced 18 times across the study period for a total of 12 distinct bills. These bills are discussed in sequence below.

### ***2001-2002: An Act in Respect of Criminal Justice for Young Persons, Bill C-7***

The archival dataset begins on February 5, 2001, when Anne McLellan introduced Bill C-7, “An Act in Respect of Criminal Justice for Young Persons” into the House of Commons on behalf of the Liberal government (case 006).<sup>55</sup> As stated in Chapter 2, Bill C-7 was the culmination of several years of review and discussion surrounding the overhaul of the youth justice system and youth justice legislation, most notably a series of policy events that had taken place since the Liberals formed the government in 1994. Specifically, the events preceding the introduction of Bill C-7 included: Royal Assent of Bill C-37 in 1995; the House of Commons Standing Committee’s report, “*A Review of the Young Offenders Act and the Youth Justice System*” in 1996; the Federal-Provincial-Territorial Working Group on Youth Justice’s “*Renewing Youth Justice*” in 1997; the Liberal government’s “*The Strategy for the Renewal of Youth Justice*” in 1998; and finally, the Liberal government’s introduction of Bill C-68 and Bill C-3 in March and November of 1999, respectively. Both Bill C-68 and C-3 were, for the most part,

<sup>55</sup> I have designated each element in the archival data with a case number to aid in referring to specific data elements within this analysis. Case numbers correspond to the list shown in Appendix A. Where direct quotations are used, the speaker is identified as well as their party affiliation or professional membership, date, and case number. Case numbers were assigned sequentially by date such that smaller numbers appear in the early part of the data, whereas, larger numbers appear later on in the data set.

identical to Bill C-7; however, both bills were dropped from the Order Paper. In the first case the Parliamentary session was prorogued, while in the second, the legislative session ended as a result of the 37<sup>th</sup> federal general election being called. In 2000, the House of Commons Standing Committee on Justice and Human Rights met to consider Bill C-3. As such, the content of the YCJA (2002) in the form of Bill C-7 included numerous amendments informed by the earlier processes (case 005).

As noted in Chapter 2, the introduction of Bill C-7 occurred against a backdrop of deep dissatisfaction with the YOA (1985) and concern that youth crime was out of control and increasing, despite Canada having a youth incarceration rate that was higher than that of the United States, and on an upward trend (Davis-Barron, 2009). Additionally, increased public interest in youth justice matters and pressure on politicians to address key concerns, whether perceived or real, was seen as another catalyst for the overhaul of the youth justice system (Doob & Cesaroni, 2004). Finally, quite apart from concerns about incarceration and crime, the context of fiscal restraint played a role in shaping youth justice reform (Bala & Roberts, 2006). In *“The Strategy for the Renewal of Youth Justice,”* the government identified its key aims as being able to prevent youth from entering a life of crime, attending specifically to serious offenders, and responding to the problem of excessive incarceration by introducing community measures that would emphasize responsibility and accountability (Department of Justice Canada, 1998). In her speech during the first reading of Bill C-7, then-Justice Minister Anne McLellan described the approach of the bill as focusing on crime prevention through the identification of the root causes of crime, rehabilitation and reintegration, with an emphasis on meaningful consequences in order to meet the overarching goal of long-term protection of the public (case 005). She stated:

Canadians are committed to supporting children and youth. They are firm in their belief that as a society we must do everything we can to help young people avoid crime in the first place and to get their lives back on track if they do run afoul of the law. (Anne McLellan, Lib., February 14, 2001, case 005)<sup>56</sup>

In operationalizing these aims, McLellan put forth the following rationale:

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<sup>56</sup> Quotations from the archives have been re-produced verbatim from *Hansard* transcripts made available through the Parliament of Canada’s website. Due to the nature of the verbal record being transcribed, occasional grammatical errors exist. I have not made edits to the original transcriptions in order to preserve the integrity of the published record.

The proposed youth criminal justice act is intended to enable the courts to focus on serious youth crimes by increasing the use of effective and timely non-court responses to less serious offences. These extra-judicial measures provide meaningful consequences such as requiring the young person to repair the harm to the victim. They also enable early intervention with young people as well as the opportunity for the broader community to play an important role in developing community based responses to youth crime. (Anne McLellan, Lib., February 14, 2001, case 005)

Essentially, a key concept underpinning the new legislation was to involve the community and victims in a more transparent manner. The deep embedding of youth justice within a frame of community involvement seemed to reflect a belief that the legislation could also assist in addressing the problem that the “courts are overburdened with cases that do not involve serious and violent crimes, thereby hampering our capacity to focus swiftly” (Anne McLellan, Lib., September 27, 2001, case 019). Additionally, MPs depicted Bill C-7 as a wise balance between punishment and rehabilitation, given the intention to produce meaningful consequences, community involvement, long-term crime prevention and deal with the “root causes of crime.” In relation to this, during Liberal MP Martin Cauchon’s first month as Minister of Justice, he argued, “some members say the bill is too flexible and soft. Others say it is too rigid. In Bill C-7...we find a balanced approach, which focuses mainly on the rehabilitation of young offenders. That is what we believe in” (February 4, 2002, case 041).

The early debates of Bill C-7 produced three broad concerns, each raised by a different group of opponents: (a) that while an overhaul of the youth justice system was necessary, more punitive legislation was required; (b) that an overhaul of the YOA (1985) was both unnecessary and potentially damaging; and (c) that adequate resources to properly implement the promises of the proposed legislation were absent (case 005; 008).

Opponents—primarily MPs of the Reform and the Canadian Alliance Parties—contended that Bill C-7 was an inadequate response to what they saw as an increasing rate of ever more violent youth crime. These MPs tended to emphasize a worsening youth crime problem with a rising number of law-abiding victims who would be underserved by the approach taken in the bill. When the government argued that statistics reflected a decreasing crime rate in the two previous years, these opponents responded that, “citizens, embittered and disillusioned with the failure of the Young Offenders Act to address their serious concerns with respect to crime, have...simply stopped reporting crime” (Vic Toews, CA, February 14, 2001, case 005). Despite

a tendency to support a complete overhaul of the youth justice legislation as a route to repair the problematic system, on the whole, MPs of the Reform and Canadian Alliance Parties tended to disagree with much of the content of the newly proposed legislation.

I believe it is time for a change. Unfortunately I cannot personally support the bill because it is not the kind of change that Canadians are looking for with regard to young offenders. Now we hear the rhetoric that everything is all right and that it is decreasing by 3% or 2%. That tells me it has levelled off for the time being, but it is still 300% higher than it was when it (the YOA) was first brought in. (Myron Thompson, CA, May 16, 2011, case 011)

For the most part, the trouble with Bill C-7 according to Reform and Canadian Alliance opponents was its lack of emphasis on the protection of the public, specifically the “unsuspecting victim” (Peter MacKay, PC, February 14, 2001, case 005). To correct the perceived improper “balance [in] the legislation that favours the rights of the dangerous criminal over the rights of victims and potential victims” (Vic Toews, CA, February 14, 2001, case 005), members of the Canadian Alliance sought to allow the publication of the names of young offenders in certain serious cases. To this end, Peter MacKay (PC) introduced a motion into the House of Commons on May 28, 2001, that would permit information disclosure to school officials regarding young offenders for the purpose of protection of the public and with an aim to contribute to the rehabilitation of the offender (case 012). During the Bill’s third reading in the House of Commons, Canadian Alliance MP, Myron Thompson emphasized his position that it is the most serious and violent young offenders from whom society needs protection, and that rehabilitation interferes with adequate public protection. In an excerpt emphasizing the ubiquity of violent youth crime and the danger in which unsuspecting victims are placed, Thompson framed rehabilitation as contrary to the needs of “innocent victims.” He said:

I constantly hear from that side of the House that it would be a shame, for example, if the principal of a school expelled a violent student from the school system. I constantly hear that the person needs to stay there and learn and get educated and be rehabilitated within that society. When will the government recognize that in regard to any student who is a well known violent individual maybe the 400 other students would be better off and safer without that individual there?

When will the government start considering the safety of neighbourhoods by saying that we need to open up the information banks? What about someone who was once in jail for murdering a senior and then is living next door to a senior couple, which has

happened many times? Why is the government so adamant that violent people have to be treated with kid gloves?

Violence is something that has to be taken out of our society. People should not be subjected to individuals who have constantly proven to be violent. We all know it happens all the time. This system allows it to happen. When will it stop? When will let young people learn that they cannot violently hurt people and get away with it, that it is a very serious crime and that very serious consequences will follow? When will we stop treating violence with kid gloves?

I do not see anything in the bill or hear anything that comes out of the mouths of those people that indicates the government is really serious about protecting the innocent victims. We never even hear those people use those words any more. Instead it is "rehabilitate the poor guy". (Myron Thompson, CA, May 29, 2001, case 013)

Similarly, opposition members argued that the gateways to youth custody provided for in the new legislation were far too restrictive. Peter MacKay, PC, for example, found fault with the new system of police warnings and cautions that mean information learned at the diversion stage is not admissible in future bail hearings (case 013). MacKay also argued for mandatory and increased sentences for gang and violent crime, and specifically for the offence of home invasion—a break and enter offence where an offender knows a resident is present, or is reckless as to this fact, and where violence is used.

The greatest proportion of the debates on Bill C-7 did not, however, centre on the appropriate balance of punishment and rehabilitation. Instead, the debate centred on the argument that the YOA (1985) should not be overhauled at all, but rather implemented more fully. As stated earlier in this dissertation, in Canada's system of federalism the responsibility for the implementation of youth justice rests with the individual provinces, and vastly different strategies of implementing youth justice have existed and continue to exist across the country. Throughout the data, for example, Québec was identified as a special case where it was contended that implementation of the YOA in that province (specifically, funds devoted to the creation and maintenance of alternative measures programs, an emphasis on rehabilitation, and a streamlined process of transfers to adult court) was considerably more well aligned with the original intentions of the YOA. Further, Québec's system was said to be effective as evidenced by the province's youth crime and charge rates that were among the lowest in Canada (case 005). Bloc Québécois MPs, therefore, strongly opposed not only to the content of Bill C-7, but

also the idea that the federal government could override a strategy that was considered to be working in the Province of Québec. Michel Bellehumeur (BQ) stated, “We do not want the federal government to tell us how to raise our children. We have legislation called the Young Offenders Act and if it is applied properly, that legislation gives good results” (May 16, 2001, case 011).

As a result of the position held by many members from Québec and from the Bloc Québécois’, Réal Ménard, BQ MP proposed two amendments that would allow Québec (and any other province) to opt out of the YCJA (2002) altogether and continue administering youth justice under the YOA (case 011). Though his motions were defeated, Ménard’s position was illustrative of the level of opposition to Bill C-7 expressed by MPs from Québec. For these MPs, the bill did not articulate the necessary balance between attention to the offence and the offender. They interpreted the proposed legislation as asking youth justice professionals at all levels to overemphasize the offence and underemphasize the particular circumstances of the offender. The approach could not fit with Québec’s approach to youth offending which BQ MPs saw as committed to using “the right measure at the right time.” Bloc Québécois MPs were not the only ones to voice support for Québec’s unique position. On February 4, 2002, during the third reading of Bill C-7, NDP MP Svend Robinson from British Columbia (a province also depicted within the archives as committed to developing alternative measures under the YOA) gave his support of the Bloc Québécois motion that Québec be exempt from the YCJA (2002), emphasizing that the Québec approach had worked well as a result of the Québec Government’s respecting, “the fundamental principles of this legislation by providing the necessary resources to support the alternatives found within the act and to achieve the results that those who drafted the legislation wanted” (case 41).

Relatedly, another exceedingly important and frequent contextual factor was the challenge of providing adequate resources during a time of fiscal restraint and within a system of federalism. For example, Progressive Conservative MP Peter MacKay reiterated the concerns of some provincial representatives who testified before the House of Commons Committee on Justice and Human Rights in the following excerpt:

For all its good intentions and emphasis on early intervention, the new law would shortchange provinces which try to administer it. It would expand the existing Young

Offenders Act twofold. The provinces would cry out for resources because the bill permits and alludes to the expansion of early intervention programs.

The provinces would be left to live up to the standards the bill calls for without being given the resources to do so. The Minister of Justice has given the provinces a postdated cheque. The bill would come into being after being rushed through committee, as we have seen in this session. It would be foisted upon the provinces without the additional resources they would need to start and administer many of the programs.

Those are not my words or the words of the Progressive Conservative Party. Those words came directly from provincial representatives who appeared before the committee. They expressed grave concerns that the federal government, through Bill C-7, was trying to raise public expectations that all would be well if the bill came into being. They said that the notion of putting in place early intervention programs and restorative justice models without the resources to back it up, both human and monetary, was a fallacy. The provinces, given the option, would have preferred to keep the old bill. They would have simply asked the federal government for the money, the know-how and the support to put programs in place to make the existing system work. (Peter MacKay, PC, May 16, 2001, case 011)

In addition to partisan Members of Parliament and Senators who debated the bill, experts and key stakeholders invited to speak before either House also tended to fall into one of the above three categories. For example, provincial employees from both Saskatchewan and Manitoba expressed concern that the legislation would be overly costly to implement and would not adequately protect society and victims of the most serious and violent crimes. They argued the legislation would not properly denounce and deter youth offending. In her submission to the House of Commons Standing Committee on Justice and Legal Affairs, for example, Betty Ann Pottruff, Director, Policy, Planning and Evaluation, Ministry of the Attorney General (Saskatchewan) made the following remarks regarding the public's expectations from judges sentencing violent young offenders:

Denunciation and deterrence are not mentioned in the sentencing principles of this legislation. ... It would be difficult to foresee how denunciation and deterrence are relevant and credible sentencing principles for adults 18 and over, while somehow they are absent for those under 18. This is particularly difficult if you think of situations such as youth swarming, youth gangs, those sorts of activities, where denunciation may be something the public clearly expects to hear from the courts in sentencing. (April 25, 2001, case 008)

Bill C-7 was debated in the House of Commons from February 5, 2001, having been studied in the House of Commons Standing Committee on Justice and Human Rights for a period of just over a month, and passed third reading just short of four months later on May 29, 2001 (case 013). The bill was read into the Senate at first reading on May 30, 2001 (case 014). After passing at second reading, Bill C-7 was studied by the Standing Senate Committee on Legal and Constitutional Affairs from September to November of 2001, and passed in the Senate at third reading on December 18, 2001 (case 038). The House of Commons then considered recommended amendments from the Senate in January of 2002 (cases 039-041). Although numerous amendments were discussed by the Standing Senate Committee and in the meetings of the full Senate chamber, the only amendment proposed by the Senate sought the addition of a requirement that the court take into account alternatives to incarceration for all young offenders, most particularly Aboriginal youth. Essentially, this would replicate section 718.2(e) of the Criminal Code (case 039). At the conclusion of debate, the motion to adopt Bill C-7 was carried in the House of Commons on February 4, 2002 (case 041), the Liberal bill being supported by the NDP and the Progressive Conservative/Democratic Representative Caucus Coalition.<sup>57</sup>

Given the numerous points of contention expressed during the debates on Bill C-7, it was not surprising that revisions to the newly minted YCJA (2002) were proposed in the House of Commons almost immediately following its promulgation. It was not until 10 years later, however, that the first youth justice revisions, those contained in Bill C-10, received Royal Assent. As mentioned, despite the fact that no revisions were passed prior to 2012, the proposed bills and resulting discussions and debates that took place in the House of Commons and in the Senate reflect political sentiment and serve to foreshadow important revisions that would be made later. The following sections continue the chronology by discussing and describing each youth justice-related bill that was introduced into the House of Commons after the YCJA.

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<sup>57</sup> The Democratic Representative Caucus represented a few members who had left the Canadian Alliance. The caucus formed a coalition with the Progressive Conservative Party prior to the Conservative Party of Canada being formed in 2003 (Marland & Flamagan, 2015).

### **2002-2003: An Act to Amend the Youth Justice Act**

Beginning in 2002 and carrying on through 2003, first as Bill C-444 and later as C-204, members of the House of Commons discussed “An Act to amend the Youth Criminal Justice Act” (case 043; case 045). On April 22, 2002, Gary Lunn of the Canadian Alliance introduced the private member’s bill seeking to add the offence of home invasion to the YCJA (2002) (case 042). The amendment would impose “mandatory curfews for all young offenders convicted of a break and enter or a home invasion” (case 043) and would carry its own penalties. Repeat offenders would face mandatory incarceration of not less than 30 days. Additionally, the duty to report a young person’s breach of conditions would also be added by the bill, designed to compel a “responsible person”—typically a parent—to report non-compliant youth or face consequences of up to a \$2000 fine and/or up to six months in prison for a failure to report. Lunn described the amendments in his bill as reflective of an effort to achieve a balance between punishment and rehabilitation where “many young offenders never reoffend if they get the help they need” (April 22, 2002, Case 043).<sup>58</sup> According to Lunn, the amendments would address the “need to put these victims first” (047).

As is typical of private members’ bills, neither C-444 nor C-204 were passed, although C-204 was read at second reading in the House of Commons on October 23, 2003 (case 046). The issue of home invasions committed by youth was introduced during the Bill C-7 debates, most notably by the Progressive Conservatives, but also by the NDP. During the third reading of Bill C-7 in the House of Commons, PC MP Peter MacKay discussed home invasion, weapons offences and swarming as youth offences “on the rise” having “become commonplace,” and asked for legislative amendments that would provide for denunciatory and deterrent penalties such that seniors could feel “protected in their home” (May 29, 2001, case 013). Ultimately, proponents of Lunn’s bill described the amendments as putting into place the appropriate emphasis on deterrence, denunciation and protection of the public.

Despite never having been enacted, Lunn sought to strengthen non-custodial options through the amendments contained in his bill that would increase reporting and subsequent custody of youth on breaches, with the goals of rehabilitation and protection of society. The bill also delivered a symbolic message, informing the public (and youth specifically) that such

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<sup>58</sup> The bill was similar to a Bill C-3 introduced during the YOA and was again introduced by Gary Lunn, CA on October 2, 2002.

behaviours would be taken seriously and would be penalized. Importantly, the amendment emphasized “parental responsibility...to hold parents in most instances responsible for community supervision and proper accounting as to where their children are and how they are behaving” (Peter MacKay, PC, January 28, 2003, case 047). The bill did not move past second reading and was not voted upon. However, the lion’s share of the debate on the bill occurred between the Royal Assent for Bill C-7 on February 4, 2002 and the promulgation of the YCJA (2002) on April 1, 2003. Also, the offence of home invasion had already been added to the Criminal Code on July 23, 2002 and applied to young and adult offenders such that if a youth or adult offender knows that a residence is occupied at the time that she or he commits the offence, this foreknowledge should be considered an aggravating factor at sentencing for all offenders. Because of this, several MPs argued its specific inclusion specifically in the YCJA would be both redundant and unnecessary.

### ***2003: An Act to Amend the Criminal Code and the YCJA Respecting Sentencing Principles***

A few months later, still prior to the the YCJA (2002) coming into effect on March 20, 2003, MP Brian Pallister of the Canadian Alliance introduced his own private member’s bill, Bill C-416, “An Act to amend the Criminal Code and the YCJA respecting sentencing principles” into the House of Commons (case 048). Pallister sought to amend the YCJA “by removing the obligation of a court to consider with particular attention the circumstances of aboriginal offenders when imposing a sentence” (John Reynolds, CA, March 20, 2003, case 048). Pallister proposed revisions to section 3(1)(c)(iv) of the Act by deleting “respond to the needs of Aboriginal young persons...” and revising section 38(2)(d) to read “all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons” (case 048). This would effectively reverse the amendment to Bill C-7 passed by the Senate during debate on the YCJA (2002). The provisions this bill would amend mirrored section 718.2(e) within the sentencing principles of the *Criminal Code of Canada* that gave special consideration to Aboriginal offenders as a means to recognize systemic discrimination Aboriginal Peoples have faced in Canada under the legal system, and to correct the overrepresentation of Aboriginal Peoples in custody (case 052). Bill C-416 would remove the legislative guards that asked judges to give extra consideration to sentencing Aboriginal offenders to custody, and would potentially reduce the availability of community-based

responses for this group of offenders. Importantly, the justification for the bill seemed to rest on the belief that incarceration of offenders produces direct positive outcomes for victims.

Debate on the bill centred on the best approach to achieve a just sentencing result. Pallister and his Canadian Alliance colleagues favoured treating all young offenders “the same” and rejected efforts to incorporate contextual factors into sentencing decisions that would “treat aboriginals as a category rather than as individuals” (Brian Pallister, May 8, 2003, case 051). Overwhelmingly, Pallister argued that directing judges to consider the particular circumstances of Aboriginal offenders amounted to “discounting sentences for criminals [thus] discounting justice for their victims” and would undermine the public safety rights of Aboriginal victims (Brian Pallister, CA, May 8, 2003, case 051) by avoiding a focus exclusively on offender culpability. Opponents emphasized the need to “encourage restraint in the use of imprisonment for all offenders” (Paul Harold Macklin, Lib., May 8, 2003, case 051). Specifically, opponents of the bill argued that specific mention of Aboriginal offenders remains necessary to:

Signal Parliament's concern over the especially high aboriginal incarceration rate and the socio-economic factors that contribute to this. It requires sentencing judges to be sensitive to these matters and for judges to consider the appropriate alternative sentencing processes, including restorative, culturally sensitive approaches such as sentencing circles, healing circles and victim-offender mediation. (Paul Harold Macklin, Lib, May 8, 2003, case 051)

Both sides argued that their position would correct the root causes of criminality, by applying punishment more “evenly” on the one hand or by addressing systemic discrimination as a root cause of crime in an effort to achieve long term crime prevention, on the other. On October 29, 2003, following debate, members of the House of Commons voted on the motion that the bill be moved on to second reading and referred to the committee. When put to a vote, the motion was supported by members of the Canadian Alliance and opposed by members of the Liberal Party, NDP, Progressive Conservatives and Bloc Québécois. Consequently, the bill did not move past second reading.

#### ***2004: An Act to Amend the YCJA (Home Invasion Offence)***

On March 9, 2004, Gary Lunn, a member of the (then newly formed) Conservative Party of Canada introduced Bill C-492, “An Act to amend the Youth Criminal Justice Act (home

invasion offence).” The bill replicated C-444 and C-204 as described above, by introducing amendments that would toughen the provisions that had been added to the *Criminal Code of Canada* in 2002 making the offence of home invasion an aggravating factor during the sentencing stage. While the express addition into the Criminal Code of home invasion as an aggravating factor signalled the egregious effects this crime had on the Canadian public, Lunn’s bill would introduce mandatory minimum sentences of one year probation on a first offence and 30 days of incarceration on a second offence, effectively removing judicial discretion and individualized sentencing. Like its predecessors, the bill also incorporated parental responsibility with the introduction of a \$2000 penalty or jail for failing to report a youth’s non-compliance (cases 054 and 055). The bill did not pass first reading.

Lunn reintroduced the components of the bill that related to a guardian’s duty to report a youth’s breach of probation eight months later on November 3, 2004 in another private member’s bill. Like the previous bills, Bill C-258 “An Act to Amend the YCJA (2002) Respecting Breaches”, was premised on surveillance of youth to achieve rehabilitation, specifically to allow youth to “get the help and guidance they need to get them out of the revolving door of our youth courts” (Gary Lunn, CPC, November 3, 2004, case 057). According to Lunn, the bill would achieve a “fair balance between punishment and rehabilitation” by encouraging enforcement of the widely used community sentence of probation. Notably, the bill was introduced just over two weeks after the death of Theresa McEvoy. The bill did not move past first reading and was subsequently dropped from the Order Paper.

### ***2005-2008: An Act to Amend the Criminal Code, Extradition Act and the YCJA***

On February 11, 2005, Myron Thompson of the Conservative Party of Canada introduced his private member’s bill, Bill C-327 “An Act to Amend the Criminal Code, Extradition Act and the YCJA.” Effectively, Thompson sought to restrict subsection 33(8) of the YCJA (2002), by removing the availability of bail for violent offences including treason, murder, serious sexual assaults and other serious and violent crimes (case 058). Centrally, the amendments would “eliminate bailing these people (those charged, but not yet tried, for violent offences) out once they were arrested and charged, and thus would provide better safety to our communities” (Myron Thompson, CPC, February 11, 2005, case 061). For Thompson, the amendments would more clearly entrench the idea of community safety as the prime concern of the justice system.

Although C-327 was dropped from the Order Paper after first reading, Lunn later re-introduced it as Bill C-350, on September 18, 2006; and subsequently, Daryl Kramp, CPC reintroduced it as Bill C-247 on December 3, 2008. Discussion of the bill was interrupted by an election each time.

### ***2005-2009: An Act to Amend the YCJA (Publication of Information)***

In an overlapping time period, from 2005 to 2009, David Tilson of the Conservative Party of Canada introduced Bill C-453, first on November 24, 2005, then C-282 on May 15, 2006 and finally C-340 on March 11, 2009. The bill, “An Act to Amend the YCJA (publication of information)” re-ignited an issue that had been extensively debated during Parliamentary discussions of the YCJA (2002): the publication of a young offender’s name and other pertinent information. As it was then, section 75 of the YCJA restricted publication of a young offender’s name to cases where the offender was sentenced as an adult, and time-limited publication when a dangerous young person escapes from custody. With Bill C-453, Tilson and his colleagues sought to broaden the availability of publication such that youth charged “with an indictable offence or offence punishable by summary conviction” (case 067) who are at least 18 years old or older, could be subject to publication of their name. The bill did not move beyond first reading in any of the three instances in which it was read into the House of Commons, and was thus removed from the Order Paper in each instance without debate.

Until the 2006 Federal election, each of the youth justice bills introduced into the House of Commons were private member’s bills introduced during the term of the Liberal government. Thematically, the bills were similar in that they sought to limit judicial discretion through the imposition of mandatory sentences, broaden the gateways to custody and improve surveillance of young offenders serving their sentences in the community. These themes are integral to re-shaping the emphasis on community responses as set out in the dialogue on the YCJA. Proponents of changes to the YCJA (2002) emphasized the plight of the unsuspecting victim of violent crime—and the necessity of punishment as a mechanism to both teach young offenders to reform their ways and also to address the expectations of the public by showing a level of concern for victims through punishment of offenders. Absent from the Parliamentary dialogue was attention paid to what has been shown to work when responding to victimization (e.g., will fining guardians of non-compliant youth result in fewer breaches of probation orders by youth?)

and evidence with respect to how the responses under the YCJA were working (or not) to reduce youth crime. Instead, the amendments appeared to be posed as the obvious resolutions to violent victimization. And in the words of one MP, at least such amendments would be able to show victims that something was being done, rather than just “rehabilitat[ing] the poor guy” (case 013).

On January 23, 2006, a minority Conservative government was elected to the House of Commons in the 39<sup>th</sup> Parliament of Canada with the Liberal Party forming the official opposition. This change in government was of particular significance because it would allow bills previously introduced by Conservative Party members, but voted down and dropped from the Order Paper to gather more support in the House of Commons.

### ***2007-2008: An Act to Amend the YCJA (Treatment for Substance Abuse)***

On April 16, 2007, Mike Lake, a member of the Conservative Party of Canada, introduced Bill C-423, “An Act to Amend the YCJA (treatment for substance abuse).” With the bill, Lake sought to amend section 6 of the YCJA (2002), respecting warnings, cautions and referrals. The amendments would add a clause to the list of available extrajudicial measures requiring police officers to consider referring youth to an addictions specialist, and on a finding that a youth is abusing substances, to recommend substance abuse treatment prior to, and instead of, engaging in judicial proceedings. Under such a framework, a young person who did not complete treatment recommended by police would be subject to judicial proceedings (case 070). According to Lake, “the purpose of the bill is to help our young people get the help they need, sometimes when they have not yet come to a place where they realize they need it” (Mike Lake, CPC, April 16, 2007, case 071). The two-part bill would emphasize the position among Conservative MPs that,

We should try to save our youth from the ravages of substance abuse. We also agree that there should be consequences for the youth who fails to take advantage of the opportunities the bill would provide him, the opportunities for help. (Kevin Sorenson, CPC, October 14, 2007, case 074)

In effect, the amendments put forward by Lake would emphasize addictions treatment as a forms of extrajudicial measure available to police, and would permit the threat of court on non-completion, thus underscoring punitive sanctions (case 075) and significantly decreasing the

element of voluntariness for extrajudicial measures for young offenders suffering from addictions. Although each of the other bills introduced since 2002 had important implications for community-based responses to youth crime, Bill C-423 was the only bill to address front-end diversion specifically. As compared to its predecessors, the bill was also novel in that it focused categorically on young offenders accused of non-violent and minor offences that were acknowledged as being in a position to be “saved.” This contrasts with the focus on serious and violent young offenders and on protecting victims evident in the other bills—those from whom victims must be saved.

A private member’s bill, the bill was introduced during the Conservative Party’s minority government in the 39th Parliament during the first session (case 071) and was debated at second reading during the second session after the September 2007 prorogation of Parliament (case 074; case 075).<sup>59</sup> Though Bill C-423 was ultimately referred to the House of Commons Committee on Justice and Human Rights for consideration, as a result of the 2008 prorogation, committee consideration on the bill was cancelled. On May 16, 2008, the bill received third reading in the House of Commons—the first youth justice-related bill to be considered at that level since the YCJA (2002) itself (case 078).

Importantly, during debate on the second reading of the bill, Lake acknowledged his introduction of the amendments in the context of ongoing efforts by the Conservative government for more comprehensive amendments of the YCJA (2002). He stated:

I want to be very clear that the bill is in no way an endorsement of the Youth Criminal Justice Act as it stands right now. I agree wholeheartedly with our campaign pledge to strengthen the act, something that cannot properly be done comprehensively through a private member's bill. What I can do is strive for improvement in the legislation and the bill works with the existing provisions of the act to take a step forward. It is also consistent with our statement during the campaign that we need to “give young people better opportunities for rehabilitation.” (Mike Lake, CPC, June 5, 2007, case 073)

For the most part, all parties supported the referral of the bill to the House of Commons Standing Committee on Justice and Human Rights for more debate, citing its careful approach to reducing custody and improving preventive and rehabilitative responses to crime. One

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<sup>59</sup> While the government was prorogued in 2007, the Bill C-423 did not “die on the order paper,” as is customary, but was reinstated, meaning that it was allowed to carry on during the 2nd session at the stage at which it was left in the first session.

member even described the bill as “a spark of light or a ray of sunshine” (Carole Freeman, BQ, May 16, 2008, case 078) given its rehabilitative focus. For Liberal Party members, the fact that the bill was perceived as dovetailing with the fundamental goal of the YCJA, that of “holding youth accountable for their crimes outside of the formal justice system with the understanding and knowledge that early intervention can save valuable resources and more effectively address the root or underlying causes of youth crime” (Lloyd St. Amand, Lib, June 5, 2007, case 073), was significant.

Liberal MP Lloyd St. Amand indicated that as a result of the bill’s consistency with the YCJA (2002), one could argue that the amendments are superfluous, as police are already required to consider referring youth to community agencies—and addictions specialists could well fall under this umbrella. From the perspective of Conservative MPs, the identification of the police as key participants in a determination of the need for treatment, and the ability for communities to develop tailored responses to address referrals was appealing, especially when paired with the option for formal proceedings on non-compliance. “The bill complements the national anti-drug strategy, which provides funding to the Department of Justice to support extrajudicial measures and treatment programs for youth in conflict with the law who have drug-related problems” (Harold Albrecht, CPC, December 10, 2007, case 075). It was described as demonstrative of the position of the Conservative Party that “it is important to help our young people rather than just throw the book at them any time they commit a crime” (John Williams, CPC, December 10, 2007, case 075).

The approach enunciated in Bill C-423 would emphasize extrajudicial measures in the YCJA (2002) and a community-based approach to youth offending with the added availability of judicial proceedings on non-compliance. Despite wide support from legislators in order to move the bill to committee consideration, the bill generated two key interrelated concerns among NDP MPs. The first was that community measures were not adequately supported with resource allocation to the provinces, an echo of the concerns around resources that had been voiced during debate of Bill C-7 years earlier. The second was that the amendments were grounded in a philosophical approach to addictions that framed substance use as a criminal issue and failed to build policies around early intervention from a health perspective. With respect to the former, Peter Stoffer declared the following:

As much as we support this legislation...I would encourage the Conservatives to ensure that for every new piece of legislation...that they incorporate...the fiscal capacity for the provinces and municipalities to do their jobs effectively. It is no good to just download that responsibility. Civic authorities throughout the country are scrambling. (Peter Stoffer, NDP, December 10, 2007, case 075)

Regarding the philosophical approach to addictions, New Democratic Party MP Libby Davies argued that the Conservative government had removed harm reduction from their drug policies, resulting in an overreliance on the justice system as opposed to health-based prevention and early intervention. For Davies, the amendments proposed in the bill alone are not necessarily problematic, however, when viewed in the context of other federal policies, they help justify a move to refrain from both the appropriate allocation of resources and developing social policy in prevention and intervention. According to Davies, this juxtaposition demonstrates a drive towards waiting until issues become more severe and can be dealt with punitively through the justice system (case 073) rather than appropriate prevention. The arguments put forth by NDP MPs mirrored the stance MPs of that party took in the debates around the YCJA itself where they questioned whether adequate resources would be allocated to the diverse community-based responses to youth crime as set out in the legislation.

In response to the NDP critique, Conservative MPs took an extreme view of their opposition. For example, in the below excerpt, CPC MP Kevin Sorenson approached the absurd by portraying his opponents including Davies, as overly focused on widening availability of drugs to youth:

The Bloc Québécois and the New Democratic Party are disappointed that this bill does not give free needles to youth. The Bloc Québécois and the NDP are somewhat disappointed that it does not talk about safe injection sites for our youth. They are disappointed that does not speak to providing clean drugs for youth because sometimes the drugs on the street are dirty. Those are the kinds of policy initiative they looked at and considered and for which in some cases they were advocates during the time of that committee. (Kevin Sorenson, CPC, November 14, 2007, case 074)

As stated, the data reveal wide support for the bill to be considered at the House of Commons committee stage. However, without the availability of committee consideration due to the 2008 prorogation of Parliament, Bill C-423 was tabled and Lake signalled that a motion would be made to have it referred back to the House of Commons Standing Committee on Justice and

Human Rights for consideration at a later date. Indeed, the bill was referred back to the committee on May 16, 2008 (case 078).

To this point in the chronology, each of the bills related to youth justice introduced in the House of Commons since 2002 were private members' bills. While, it is extremely rare for private members' bills to gain Royal Assent; these do serve to illustrate particular narratives invoked outside of the governing party, and help to reveal key shifts and continuities in these narratives across time. Despite the fact that Bill C-423 was the only bill to specifically target extrajudicial measures, each proposed amendment had important implications for the position and context of community-based responses to youth crime in the political sphere. Collectively, the bills emphasized amendments that would add punitive components to community-based responses with strategies such as penalties for guardians who fail to report breaches and court processing on non-compliance. By attempting to restrict bail for certain violent offences, members sought to limit community responses for youth charged with violent offences prior to a finding of guilt. Further, members sought to broaden the scope of violent and serious offences to include offences that had previously been understood as non-violent in nature. Through their amendments, members also attempted to limit judicial discretion with the introduction of mandatory minimum sentences, either by setting a specific length of community sentence, or by specifying incarceration.

Overall, the youth justice-related bills introduced since 2002 emphasized deterrence and denunciation as well as protection of the public and the rights of the victim. The years from 2002 to 2008 failed to see the introduction of novel concepts that had not been discussed during debates on the YCJA (2002) itself—quite the opposite is true. The data suggest that the proposed amendments helped to reaffirm issues that were still pressing in the views of the opposition and foreshadowed the traction these ideas would later gain. This is an especially critical acknowledgement given that the Conservative Party moved from opposition to form the government beginning in 2006. Furthermore, key events such as the death of Theresa McEvoy late in 2004 and the completion of the Nunn Commission Report at the end of 2006, are reflected in the proposed amendments given the greater emphasis on broadening the set of serious and violent offences to be dealt with in the formal youth justice system, and also in limiting the community response of bail. While through the YCJA, legislators crafted a very small group of offenders to be dealt with punitively, amendments proposed since 2002 define a

serious and violent group that was much larger than before. It was this group that was targeted by the amendments.

Finally, the debates around the bills also served to re-emphasize a focus on victims that had been presented by Canadian Alliance and Reform Party MPs throughout the debates considering the YCJA (2002). As discussed in Chapter 4, such amendments were also consistent with the Conservative Party's 2006 election promise to "get tough on crime." Given these antecedents, that is, the content and narratives of proposed amendments to the YCJA from 2002 to 2008, the content of the bills introduced from late 2007 onwards were fairly predictable.

### ***2007-2008: An Act to Amend the YCJA, Bill C-25***

On November 19, 2007 Rob Nicholson introduced the Conservative government's Bill C-25 in the House of Commons, the first youth justice bill introduced by a federal government since the YCJA (2002) itself. Bill C-25 included the widest set of revisions to amend the sentencing and pre-trial components of the YCJA, and overlapped temporally with Mike Lake's private member's bill, Bill C-423 discussed above. According to Nicholson, with Bill C-25:

The government has committed itself to respond to the concerns that Canadians have expressed about youth crime. Bill C-25 now before this House is an example of how we are going to meet that commitment. We are going to strengthen the youth justice system and ensure fairness and effectiveness in the application of the criminal law for young people. We are ensuring that society is effectively protected from violent and dangerous offenders. Young offenders, like adults, must face meaningful consequences for serious crimes. (Rob Nicholson, CPC, November 21, 2007, case 081)

In order to adequately present the literature that formed the basis for this dissertation, I discussed the content and context of Bill C-25 (along with Bills C-4 and C-10) in Chapter 4. To avoid being overly repetitive, in this section I discuss the proposed amendments included in the three bills for what they lend to the analysis of key narratives across the political sphere that will be discussed in Chapter 8, with a lesser focus on describing their content.

It is important to recall, firstly, that Bill C-25 was positioned by the federal government as their comprehensive response to requests for change out of the Province of Nova Scotia as

based on the Nunn Commission Report that had been tabled in the province in early December of 2006 (Rob Nicholson, CPC, November 21, 2007, case 081). Recall the discussion in Chapter 4 that outlined Nunn's recommendation that the Province of Nova Scotia lobby the federal government to consider six of his recommendations. The six recommendations that applied to the YCJA asked that the legislation be amended to foreground public safety and expand the availability of pre-trial detention for serious and repeat young offenders. The amendments to the YCJA (2002) sought with Bill C-25 added:

deterrence and denunciation to the principles that a court must consider when determining a youth sentence. [Bill C-25] also clarifies that the presumption against the pre-trial detention of a young person is rebuttable and specifies that circumstances in which the presumption does not apply. (case 079)

As discussed in Chapter 4, Bill C-25 was critiqued from all sides: NDP MPs argued—once again—that the federal government had neglected to consider resources for provinces and adequate funding of prevention programs for youth (e.g., Joe Comartin, NDP, November 21, 2007, case 081). Bloc Québécois members argued that the government needed to pay more attention to the approach that Québec was using, which focused on rehabilitation and “the right measure at the right time.” Finally, Liberal members suggested that the Conservative amendments did not comprehensively address the recommendations of Justice Nunn including only two of the six recommendations that Nunn had directed to the federal government (Marlene Jennings, Lib, November 21, 2007, Case 081). Liberal MP Marlene Jennings, argued that in addition to a failure to consider several of Nunn's recommendations, the Bill far over-reached the recommendations of Nunn by providing for denunciation and deterrence, which had not been included in the Nunn Commission Report. On February 5, 2008, Bill C-25 was referred to the Standing Committee on Justice and Human Rights on a motion that was supported by all parties except the Bloc Québécois. Although members from the Liberal Party and the NDP did not entirely agree with the amendments proposed in the bill, MPs voted in favour of sending the bill to be debated at the committee stage (cases 084 and 085). The bill was dropped from the Order Paper as a result of the dissolution of the 39th Parliament in September 2008 prior to the federal election.

**2008-2009: An Act to Amend the YCJA (Protection of the Public), Bill C-525**

The implementation of the Nunn Commission Report would remain a central component in the private member's bill that was introduced into the House of Commons, Bill C-525, "An Act to amend the Youth Criminal Justice Act (protection of the public)" on March 12, 2008 (case 086), and again as Bill C-424 on June 17, 2009 by Liberal MP, Geoff Regan of Nova Scotia (case 088). The fact that a member from the Province of Nova Scotia introduced the Bill is significant given the basis of the amendments originate with the Nunn Report recommendations, commissioned by that province and endorsed by the premier of that province. Furthermore, Regan's bill seemed to respond to the criticisms his fellow Liberal MP Marlene Jennings had aimed at Bill C-25 by offering amendments to address each of Nunn's recommendations and by omitting any mention of deterrence and denunciation (case 081). According to Regan, Bill C-525 was introduced as a mechanism to fully implement the recommendations of the Nunn Commission Report and to address what Regan identified as gaps in Bill C-25, discussed above. The bill toughened the language and purposes of the YCJA (2002) with its proposal to add "ensure public safety" to the goals of the YCJA and to replace "long-term protection of the public" with simply "the protection of the public" as the overall intention of the YCJA (2002), thus responding to the Nunn Report's recommendation 20.

The second aspect of Bill C-525 specifically targeted pre-trial detention by addressing section 29(2) of the YCJA (2002)—a statement that pre-trial detention is presumed unnecessary if, on a finding of guilt, the young person could not be sentenced to custody. While, the amendments proposed in the bill would retain the presumption that pre-trial detention would be unnecessary, two exceptions would be added: (a) custody would be permitted where the youth had been charged with a violent offence or an offence that endangered the public and created a substantial likelihood of serious bodily harm to another person; and (b) custody would be permitted where a youth was found guilty of non-compliance with a custodial sentence. These amendments would widen the gateways to custody and would respond to Nunn's 21st and 22nd recommendations. Regan also sought to further amend the YCJA such that "when the designated responsible person is relieved of his or her obligations, some of the young person's obligations may nevertheless remain in effect" (case 088). The bill would also amend subsection 31(6) of the YCJA by allowing pre-trial detention in otherwise precluded cases as defined above

where there was a substantial likelihood that upon release the youth may endanger the public. Finally, the bill would remove the restrictions on length of time a judge may sentence a youth to non-residential program attendance, thus potentially lengthening such dispositions. Together, the revisions were crafted to implement the Nunn Commission Recommendations and, according to Regan, to “help make our streets and neighbourhoods safe for everyone” (June 17, 2009, case 089).

Regan’s bill received first reading in the House of Commons during the 39th and 40th Parliaments but, as is typical of private member’s bills, did not proceed to further legislative stages or committee hearings and was dropped from the Order Paper.

### ***2010-2011: Sébastien’s Law, Bill C-4***

Within a year, on March 16, 2010, the Conservative Government once again introduced a bill containing amendments to the YCJA (2002) and specifically community-based responses to youth crime. Like Bill C-25, the content and context of this bill have been set out in Chapter 4. Importantly, the bill contained the most comprehensive set of revisions to the YCJA, a total of 28 clauses. Where both Bill C-25 and Regan’s private member’s bill sought to amend the principles of the YCJA (2002), the amendments contained in Bill C-4 went much further to make protection of the public the sole goal of the Act. This change would appear to substantially de-emphasize the prevention of crime through the addressing of root causes, the rehabilitation and reintegration of young offenders and the ensuring of meaningful consequences. According to the text of the bill (case 090), like its predecessors, Bill C-4 removed “long-term” from the mention of protection of the public. Additionally, where both C-525 and C-25 retained the presumption against pre-trial detention, the amendments contained in Bill C-4 sought to completely remove the presumption, and instead specified the instances when detention would be necessary, that is, when a youth is charged with a serious offence or where there is a likelihood that the youth will not appear or a likelihood that the youth would commit a serious offence. As such, the definition of “serious offence” was to be clarified and broadened compared to the original “violent offence” category on which detention relied. Clearly, this was a response to the type of scenario Nunn encountered with Archie Billard involving auto theft. As discussed in Chapter 4, in addition to the Nunn report, Nicholson reported that the murder of Sébastien Lacasse and the national roundtable report had influenced the bill.

Recall the discussion in Chapter 4 where two clauses of Bill C-4 were identified as having direct implications for community-based responses to crime, specifically diversion: Clause 8 proposed amendments to section 39 of the YCJA (2002) relating to committal to custody. The amendment would broaden the gateway to custody for those young offenders who had a pattern of extrajudicial sanctions. There had been wide agreement by legislators and experts that more care should be taken in sentencing repeat youth offenders who had previously been diverted; this echoed recommendation 21 from the Nunn Commission Report, where Nunn sought to base pre-trial custody on a pattern of offending rather than a pattern of findings of guilt. However, clause 8 dealt with sentenced custody rather than pre-trial custody.

Academics tended to disagree with the amendment that would seemingly equate findings of guilt with extrajudicial sanctions for which a youth had not been found guilty in a court of law. Professor Tony Doob (University of Toronto), for example, in his testimony before the House of Commons Standing Committee on Justice and Human Rights on March 2, 2011, characterized the approach taken in clause 8 simply as “wrong” (case 107). For him, among many others, the approach went much further than informing judges of a young person’s past behaviour and instead problematically widened “the conditions that allow the judge to put the youth in custody.” For Conservative Party MPs, the clause would address “the problem that judges know absolutely nothing about the young offender being tried and sometimes render inappropriate decisions” (Daniel Petit, CPC, March 2, 2011, case 107). Clause 8 was found particularly problematic by the bill’s opponents, given that accepting responsibility in order to receive an extrajudicial sanction is widely accepted as distinct from being found guilty in a court of law, the former not permitting a full defence.

Clause 25 requires police to keep records of any extrajudicial measures—a discretionary provision under the YCJA (2002). The clause holds that should a young person be convicted, the record of extrajudicial measures would be added to their criminal history. While clauses 8 and 25 were the only ones in Bill C-4 that specifically addressed front-end community-based responses to youth crime, each of the other measures proposed had the effect of reducing the availability of other community sanctions, not only directly (e.g., pre-trial custody) but and also indirectly by emphasizing deterrence, denunciation and public safety which seem to point to increased incarcerating sanctions.

Except for Bill C-423 regarding the introduction of referrals to substance abuse treatment within extrajudicial measures, each of the proposed amendments to the YCJA (2002) introduced since 2002 have focused exclusively on serious and violent young offenders. Except for the focus of Bill C-492 on home invasion, the content of each of the amendments introduced as private members' bills since 2002—as well as the C-25 introduced by the government—was integrated into the amendments contained in Bill C-4, Sébastien's Law. As noted in Chapter 4, members of the House of Commons Standing Committee on Justice and Human Rights last discussed Sébastien's law on March 23, 2011, three days before the House of Commons was dissolved and an election called. The election was called as a result of the government being found in contempt of Parliament in its failure to address the costs of the YCJA (2002) and other reforms to justice policy (Mann, 2014). This led to a Liberal motion of non-confidence, a subsequent 156-145 vote in favour of the motion, leading to the defeat of the government and the 2011 election.

### ***2011-2012: Safe Streets and Communities Act, Bill C-10***

The 2011 election gave the Conservative Party of Canada a clear majority of seats in the House of Commons, followed by the introduction of Bill C-10, The Safe Streets and Communities Act, an omnibus bill containing a near duplicate of Bill C-4 among other justice-related bills. The discourse during the consideration of Bill C-10 from September 20th, 2011 to March 13, 2012 of the 41st Parliament was markedly different in tone, content and process compared to earlier discussions of amendments to the YCJA (2002). A key reason for this, as discussed in Chapter 4, is the fact that the amendments were proposed as part of an omnibus crime bill affecting nine pieces of legislation related to crime and public safety and containing more than 200 clauses (case 114). In fact, during the 2011 federal election, the Conservative Party issued a campaign promise that should they be re-elected, they would pass a number of crime-related bills that had been debated, but not passed, during the 40th Parliament (case 114). Part of the election promise was that a host of crime and public safety-related amendments that had previously been introduced, but not entered into law, would gain Royal Assent in the first 100 days of the Parliamentary sitting. Bill C-4, Sébastien's Law, was one part of the omnibus bill.

In his introduction of the bill to the House of Commons on September 21, 2011, then-Minister of Justice and Attorney General of Canada, CPC, Rob Nicholson stated:

The bill, which is known as the Safe Streets and Communities Act, fulfills the commitment in the June 2011 Speech from the Throne to quickly reintroduce law and order legislation to combat crime and terrorism. This commitment, in turn, reflects the strong mandate that Canadians have given us to protect society and to hold criminals accountable.

We have bundled together crime bills that died on the Order Paper in the last Parliament into a comprehensive piece of legislation and it is our plan to pass it within the first 100 sitting days of Parliament.

As I met with victims of crime and their families yesterday in Brampton, I was once again struck by the importance of having this legislation passed in a timely manner. Both in Brampton and in Montreal yesterday, people such as Joe Wamback, Sharon Rosenfeldt, Sheldon Kennedy, Yvonne Harvey, Gary Lindfield, Maureen Basnicki and Line Lacasse spoke about the need for these changes to our laws.

We have a duty to stand up for these victims, which we are doing by bringing in this legislation.

The objective of our criminal law reform agenda over the past few years has been to build a stronger, safer and better Canada. This comprehensive legislation is another important step in the process to achieve this end. (Rob Nicholson, CPC, September 21, 2011, case 114)

In response to the opposition, Candice Hoepfner, Conservative MP stated the following,

Madam Speaker, does my colleague across the aisle not recognize that in the last election there was a very clear distinction given to Canadians? On one side, there was the Conservative government which would finally get tough on crime and finally reverse the damage that the Liberals did to our criminal justice system by being soft on criminals and ignoring victims. Does he not recognize that the Liberals were reduced to 34 seats? Canadians do not want the Liberal way of dealing with criminals. Could he recognize that, acknowledge it and get in touch with Canadians as they view the criminal justice system today? (Candice Hoepfner, CPC, September 21, 2011, case 114)

As a result of the content of Bill C-10 being framed as accepted and welcomed by Canadians and also given the wide selection of issues contained in the omnibus bill, a good deal of discussion in the House of Commons and in the Senate, and the majority of witnesses called

to present evidence in both Houses regarding Bill C-10 did not specifically discuss youth justice at all. In fact, aside from the most widely discussed substantive issues—the introduction of new mandatory minimum sentences to be attached to drug offences and protection of victims—a key theme discussed throughout the debate was the concern (by the opposition) with the way the bill linked numerous complex amendments that should be separated and not rushed through. Conservative MPs met this concern with assertions that the content of the bills had been previously debated. During second reading of the bill in the House of Commons (Case 114), James Moore refuted the argument presented by the NDP that the bill was not well-aligned with expert opinion and the best evidence and also that extraordinarily costly measures were associated with the bill. He also refuted Green Party MP Elizabeth May's request to present the bills individually as a way to more comprehensively address each proposed amendment with the following:

Well, we are halfway through our sixth year as a government, although of course only a couple of months into our majority mandate, and we have tabled this legislation in the past. It is legislation that has been debated thoroughly in the House. In fact, it was a centrepiece of our election campaign platform, and Canadians had an opportunity to have input during the campaign. I can say that after five and a half years, this subject has been studied, and it is indeed time to act. (James Moore, CPC, September 21, 2011, case 114)

Similarly, MP Kerry-Lynne Findlay offered:

These will be studied in committee, as all bills are. They will be looked at clause by clause, discussed and witnesses will be heard, but they are being put forward as a comprehensive package. That is what we promised the voters. We are committed to protecting victims of crime. We told the Canadian public that and we will honour our commitments. (Kerry-Lynne Findlay, CPC, September 21, 2011, case 114)

In an effort to simplify the considerations, Justice Minister Nicholson stated:

The bill focuses on a relatively small number of young people who are a danger to the public, but a danger to themselves as well. We have seen over the years reports that focus on individuals who need help, need some type of intervention. So the bill is very specific. Again, we want to increase people's confidence in the youth criminal justice system. We want to make sure that those individuals who, as I say, are a danger to the public and a danger to themselves get the kind of treatment they need in order to

protect themselves and the public. The bill is very targeted, very specific. (Rob Nicholson, CPC, October 6, 2011, case 118)

Given the numerous clauses in the bill and the short time frame for debate and evidence, similar pressure was also displayed in the Senate. For example, in the following dialogue between Senator David Angus and Daniel MacRury of the Barreau du Québec (Québec's Bar Association) during a meeting of the Standing Senate Committee on Legal and Constitutional Affairs, it is evident that broad generalizations of evidence provided by the speakers is examined rather than the nuances contained in their, presumably, very detailed written submissions.

Senator Angus (CPC): Thank you all for your very thoughtful and thought-provoking presentations. As you know, we are dealing here with a huge bill and with nine different pieces of legislation. I want to make sure I understood that your presentations — those from the Canadian Bar Association, the Barreau du Québec and also from you, Mr. Kirby — are focusing mainly on the mandatory minimum sentences and the removal, or the non-existence, of the safety valve discretion clause.

Mr. MacRury (Barreau du Quebec): If you look at our 100-page brief, it covers a lot more than that, senator. I certainly invite you to do that.

Senator Angus: Your verbal presentation today focused on that.

Mr. MacRury: It is difficult, with nine pieces of legislation, to cover everything in five minutes. In fairness, our presentation was targeted, but I would certainly encourage you to read our brief, which was developed by our members, because we have problems with the overall concept of the legislation, not just one piece of it.

Senator Angus: Right. Is there anything in there that is any good, or is it all bad?

Mr. MacRury: You will see from our presentation that we compliment where we agree with the legislation. We do not say it is all bad or all good, but I hope we were constructive in our brief. Again, I encourage you to read it.

Senator Angus: I appreciate that. We should try to read as much as we can of this stuff. It is also unruly for us to get through it. (February 8, 2012, case 143)

Furthermore, each witness called before the Senate committee was given only five minutes to introduce their evidence prior to taking questions from the Senators. On March 1st, 2012, Senator Claude Carignan (Deputy Leader of the Government) motioned to restrict further debate on Bill C-10 within the Senate to an additional six hours. He said:

[W]e should remember that Bill C-10 contains a series of measures that we have debated in this chamber recently. These measures have been put together and added to others that will improve Canadians' safety.

Canadians gave us a clear mandate by electing a strong majority government last May because they believe that we are committed to ensuring their safety. We promised Canadians that we would pass this bill within 100 days. As in other matters, we will deliver the goods.

Keeping our promises is the best way to prevent people from becoming disillusioned with politics. The best way to protect public safety and make the justice system fairer and more effective is to pass Bill C-10. Today, we are taking great strides in that direction.

That is what Canadians expect of us. They have waited long enough.

Therefore, let us adopt this motion to prove that we have understood the message they sent last May. Let us keep our promise to make Canada a safer and fairer place. It is our duty as parliamentarians. I am asking you to join me in supporting this motion so that we can move through all the stages leading to the passing of this long-awaited law. (Senator Claude Carignan, CPC, March 1, 2012, case 156)

Given the Conservative majority in the Senate, it was not surprising the motion was adopted. However, many Senators outside of the Conservative Party spoke out against the motion. For example, Senator James Cowan, Leader of the Opposition in the Senate responded:

Honourable senators, this is not the first time — and I suspect it will not be the last time — that I will speak on a time allocation motion moved by this government. I readily acknowledge that there may be circumstances in which proceeding in this way is justified, for instance when a deliberate filibuster drags on and on, or where there is some public urgency for the legislation in question. However, that is not the case with Bill C-10.

Following its second reading, the Senate asked its Committee on Legal and Constitutional Affairs to examine Bill C-10 so that we in this chamber could better focus our debate and consideration of the legislation. Our committee heard from over 100 witnesses during almost 60 hours of testimony. It then presented its report containing a number of amendments, as well as some observations that were unanimously agreed to by its members.

Our committee did what we asked it to do, but yesterday, after less than an hour of debate on its findings — really just an explanation of the amendments and observations by the chair and a few comments from me — the government had heard enough. Senator Carignan gave notice of this motion to limit further debate.

Not only did he give his notice of motion with unseemly haste, but he also then gave us only the very minimum time allowable for any additional discussion.

Rule 39(2) states that “the motion shall provide for at least . . . a single period of a further six-hours debate, in total, to dispose of both the report and the third reading stages of a public bill.”

That is exactly what Senator Carignan’s motion gives to us all — six hours, not a minute more.

After barely 30 minutes of debate on an omnibus bill containing more than 200 clauses, the government decided there would be only six more hours of debate. The government had the option of giving more time under rule 39. It could have given 12, 10, or even 7 hours, but that is not what it chose to do.

We have exactly six hours to debate and discuss this omnibus crime bill before it is brought to a final vote — six hours, 360 minutes, not a minute more.

...Honourable senators, omnibus bills are inherently dangerous creatures. They allow dangerous clauses to be buried, as we in this chamber have discovered on several occasions in recent years. They do not allow interested Canadians and others with serious knowledge of particular issues to be heard. Witnesses frequently find their voices lost on large panels. Other potential witnesses are left out in the cold, prevented by so-called time constraints from testifying altogether. (Senator James Cowan, Lib., March 1, 2012, case 156)

## **Conclusion**

The descriptive aspects of this chapter identify and track some of the key ideas expressed around community-based responses to youth offending; this description helps to show that the ideas that had gained prominence a decade after the YCJA (2002) had been widely discussed and debated throughout the entire period. In fact, all of the content introduced with Bill C-10 had been part of the debates a decade earlier. This chapter has provided a catalogue of the key concepts utilized in parliamentary discussions regarding youth justice over

the past decade. What remains clear is that many of the arguments raised during the debate of the YCJA itself have been re-introduced during this time period, thus emphasizing the stability of policy ideas over time. With respect to community-based responses to youth offending, it is clear from the above discussion that it is a shift in emphasis, largely as a result of a shift in government leadership, that has occurred throughout the data. The move is away from an emphasis on the community as the site of response to the bulk of youth crime and an understanding that legislation is a responsive tool, and towards an emphasis on punishment for a larger group of serious and violent young offenders and a focus on legislation as an active tool that can “combat” undesirable behaviour, ostensibly if it is equally tough itself. The belief that legislation can be a tool to “combat crime” (and terrorism) is a clear shift away from the presentation of legislation as being capable of responding to crime once it has occurred, which seemed to be the dominant view underlying the content of the YCJA initially. In the following chapter, I move beyond the manifest content reviewed thus far and focus on three grand narratives made up of underlying beliefs, meanings, intentions, assumptions and values invoked by legislators in contradictory and complementary ways across the archival data—the underlying stories.

## CHAPTER 8: Youth Justice Policy Stories: Narratives in the Archives

*Policies ride on the back of more or less powerful plots that resonate in the minds of the relevant audience. The persuasiveness of a policy thus has less to do with the strength of its proposals for beneficial action or with its grasp of facts, but with the particular story line it has appropriated. ~ Wagenaar, 2011, p. 217.*

The purpose of this chapter is to articulate the overarching narratives evident in the archival data and to examine their functions—to see how and when the narratives are employed in addition to their contents. I examine the *processes* by which narratives shape understandings, and how they are invoked to justify particular policy responses; that is, how the policy problem is constructed through and in the narratives, how these constructions have shifted over time, and how this influences the narrators' community-based responses to youth crime. I also examine how the evidence and expertise invoked in these policy narratives have taken shape, emerged, and in some cases disappeared, and pay attention to the politicization of youth justice that feeds the complex tensions played out in the debates that constitute youth justice policy narratives. Like the previous chapter, this discussion addresses my first and second research questions and begins to set the stage to answer question 3.

Chapter 5 included a lengthy discussion on the assumptions about the policy processes that frame this analysis. In that chapter I acknowledged the work of academics who emphasize the socially constructed nature of policy, where policy outcomes reflect the world-view of policy-makers who have power (Ney, 2012; 2014). From this perspective it is assumed that youth justice policies depend upon the ways in which policy-makers subjectively understand the policy problem and the key characters involved (e.g., offenders, victims). Furthermore, I acknowledged the assumption that policy problems are not objective issues for which there is a single accepted response that must simply be “found” and “applied” (Colebatch, 2006). Instead, policy actions are negotiated by both the socio-political landscape and the specific actions of policy actors (Jones & Newburn, 2002). When the context of policy-making is highly indeterminate, conflicting, and unpredictable, as it typically is in the context of criminal justice policy, policy narratives—stories—tend to provide tentative authority for action. Support for these assumptions was articulated throughout Chapter 7, where policy-makers were shown to have diverged widely

on the problem of youth crime and on how best to respond to it, where ideas only became entrenched in law once parliamentary power shifted, and simple stories of good versus bad, victim versus offender, and rehabilitation versus punishment (normative frameworks) dominated. According to Wagenaar (2011), the study of policy narratives demands attention to how familiar, accepted, and convincing stories help policy-makers “move about in a world of indeterminate outcomes...and deep conflict, to the more straightforward representation of political doctrine” (p. 209-210).

Respecting the underlying stories within the narratives as accessed through the archival data, in this chapter I make the argument that community-based responses are invoked at the nexus of three complementary/contradictory narratives: communitarianism, managerialism, and punishment/toughness. In an effort to frame the (ever-changing) landscape of community-based responses to youth crime, I examine how these narratives have been illustrated throughout the archives and during which period(s) of time they were most influential. I argue that though the three narratives seem inconsistent with one another, they often appear together because they buy in to similar objectives. I also argue that the latter part of the data is illustrative of a shift in balance where the punishment/toughness narrative has begun to overshadow communitarianism.

### **Communitarianism: “Turn Their Lives Around in the Community in Which They Are Found”**

According to Pickford and Dugmore (2012), communitarianism “involves placing the responsibility for, and the solution to, crime firmly within designated communities or areas” (p. 50). As discussed within the literature, communitarianism refers to social policies that identify localized communities—rather than centralized governments—as important sites for the delivery of social policy. As such, policies invoked from within a communitarian narrative tend to carve out a specific issue to be dealt with in the community and may privatize the delivery of social services that were once within the purview of the government. Clearly, the century-long history of youth justice policy, as discussed in Chapters 1 through 4, is illustrative of the integral role that the community has long played in the response to youth offending. In fact, the entrenchment of alternative measures under the YOA (1985) was widely agreed to have been an attempt to provide a legislative framework for the numerous programs and measures that

had long been in existence within communities—though varying—across the country. The examination of the past ten years of archival data undertaken in this study has shown that in debate and discussion over the YCJA (2002), the community was positioned not only as a useful supplement to the overarching youth justice system, but also as the cure to what ailed the severely criticized system under the YOA. Through the narrative of communitarianism, legislators highlighted a broad role for the community in responding to youth justice in order to simultaneously correct numerous diverse problems: the over-incarceration of young offenders, the expensive and slow court system, the lack of capable guardians to monitor children, and the low level of victim participation in the youth justice system. Furthermore, community-based responses would make use of police officers, articulated as “people who know them (young offenders) and know their community” (Bill Blaikie, NDP, February 14, 2001, case 005), and would serve to achieve “responsibility and accountability” (Stephen Owen, Lib., February 14, 2001, case 005) in young offenders “in [their] community” (Carole-Marie Allard, Lib., February 14, 2001, case 005). By providing immediate, local responses “addressing the circumstances underlying a young person’s offending behaviour” (Anne McLellan, Lib., February 14, 2001, case 005), community-based responses were positioned to address the “root cause of youth crime” (Stephen Owen, Lib., February 14, 2001, case 005) and to help “rehabilitate and reintegrate youth into our society” (Stephen Owen, Lib., February 14, 2001, case 005), which in turn would accomplish “long-term protection of society” (Anne McLellan, Lib., February 14, 2001, case 005). In this section I examine how community-based responses to youth crime were invoked within the communitarian narrative.

Numerous examples throughout the archival data establish that prior to the enactment of the YCJA (2002), the successes of community-based responses to youth crime under the YOA (1985) were widely recognized by Members of Parliament, senators, and those who gave evidence before the House of Commons and Senate Committees, for example:

The proposed new legislation will require the people working in the system to consider measures that do not involve court proceedings before other measures are contemplated. Alternatives to court that require young offenders to accept responsibility and repair the harm done to victims, in conjunction with effective community-based measures such as community service and supervision in the community, are often more effective than custody, which is often imposed on young people found guilty of minor offences. (Anne McLellan, Lib., September 27, 2001, case 019)

The problem, according to legislators, was that these successful measures were widely under-utilized as a result of provinces improperly applying youth justice legislation given inadequate legislative guidance under the YOA (Anne McLellan, case 005). This made most legislators dissatisfied with the status quo as governed by the YOA. As a result, the government depicted a framework of measures as provided for in the YCJA, both as necessary to capitalize on community successes and as a solution that would have no downside. These measures were characterized as inexpensive (see following section for a more detailed discussion on costs) and capable of freeing up time in the formal system of courts and corrections to deal with the most serious and violent young offenders (Anne McLellan, case 005). In turn, a system where more young offenders were dealt with in the community would hasten access to formalized court responses for the most problematic youth, thus providing meaningful consequences for all.

The emphasis on community-involved justice with an overarching narrative of communitarianism is an easily recognizable theme within the Canadian youth justice system and, as was expected, is well documented throughout the archival data. For instance, in the early debates surrounding the YCJA (2002), the Minister of Justice, Anne McLellan, regularly reiterated,

Extra-judicial measures provide meaningful consequences such as requiring the young person to repair harm to the victim. They also enable early intervention with young people as well as the opportunity for the broader community to play an important role in developing community based responses to youth crime. (Anne McLellan, Lib., February 14, 2001, case 005)

The messaging used by McLellan to present the community as a key crime control partner underscored not only the importance of local solutions to youth crime but also the partnerships that would be engaged with the community at large. In contrast to responses that had been delivered under the YOA, McLellan said,

Often it will be more meaningful for a young person to have to make restitution to the victim, or do some form of community service, as opposed to serve a few weeks in a detention facility. This, as I said, has unwittingly led the YOA to overuse incarceration and to underuse the other possibilities that are meaningful in the life of young people that could enhance their understanding of their actions and the resulting consequences, so that they could take responsibility for their actions and begin to turn their lives around in the community in which they are found. (McLellan, September 27, 2001, case 019)

A key facet of the communitarianism narrative is that in order to be meaningful, a consequence under the YCJA (2002) would involve a youth's community, including his or her parents "and social or other agencies..." (case 005). Notably, during debates on the YCJA, speakers emphasized the importance of meaningful consequences, accountability, and responsibility, and how these important elements of a successful youth justice system could be achieved within the community. For example, respecting meaningful consequences, Minister of Justice, Anne McLellan stated,

Our youth justice legislation is based on three fundamental values of paramount importance to Canadians. Those values are: first, that one prevents crime before it happens; we do not need more victims; second, that when crime happens there are meaningful consequences for those who hurt others; and, third, a strong commitment to rehabilitation and reintegration of young offenders back into the society and communities from which they came. (February 14, 2001, case 005)

The concept of "meaningful consequences" is thus a powerful one early in the dataset and serves to broaden possible punishments and responses to criminal behaviour among youth. The concept is defined in the data as those responses that "convey an appropriate sense of responsibility...so that they could...begin to turn their lives around *in the community in which they are found*" (Anne McLellan, Sept. 27, 2001, case 019, emphasis added). Speakers made it known that the responses to crime should be meaningful to youth themselves, and are most likely to be achieved through immediacy (rather than solely through the often lengthy process of the formal justice system) and may be served in the community. Finally, to be meaningful, consequences should respond to underlying problems that may have caused a youth to commit crime in the first place, thus appealing to the idea of "root causes." Attention to root causes helps to distinguish community efforts from actions undertaken in courts and custody. In fact, the communitarianism narrative was employed to set community responses to crime apart from formal solutions such as courts and custody by emphasizing that the latter did not perform well in finding and addressing underlying causes of crime and delinquency among young people. The message seemed to be that if the formal process was poor at addressing underlying causes, informal community measures were necessarily useful, regardless of the amount of resources provided.

Simultaneously, attention to the impersonal nature of formal judicial processing, a disadvantage that community-based responses to youth crime are positioned to address, is embedded within the communitarian narrative:

I was staggered to hear the Bloc Québécois critic say that it was preferable to have an adolescent's record handled by the crown prosecutor. He said "Mr. Speaker, currently, when an adolescent commits a minor offence, the matter is referred to the crown prosecutor, who determines whether the young person needs help. If so, the Québec system rehabilitates him immediately". Why would a crown prosecutor be in a better position to decide the future of a young person than a neighbourhood police officer or a community agency long involved in the field? Why the outcry when clause 6 proposes letting the police decide whether "to take no further action, warn the young person, administer a caution,—or, with the consent of the young person, refer the young person to a program or agency in the community that may assist the young person not to commit offences". What is the problem with wanting the young person to be treated in his community instead of sending him to detention when he commits a minor offence? (Carole-Marie Allard, Lib., February 14, 2001, case 005)

In addition to addressing the need for a quick and responsive youth justice system able to address the complex needs of young offenders, all while attending to their diminished moral culpability given their status as young people, legislators used the communitarian narrative to illustrate community-based responses as the best way to protect the public, with the flexibility to involve rehabilitation and reintegration and, finally, to encourage the repair of harm done (case 005). Likewise, by crafting the community as the opposite of the courts and correctional system—both already accepted as undesirable and overused and the very impetus for youth justice reform—speakers invite the characterization of the community as problem-free. As a result, community-based responses were depicted not as punitive, but instead as constructive aims of the youth justice system, necessarily responsive to offenders in their individual contexts while addressing a crime prevention initiative in the long term in order to "be tough on the causes of crime" (case 005; case 008).

Cohen (1985) reminds us that within the crime-control ideology, community invokes a kind of nostalgia—a romanticized look at a past time complete with pastoral imagery to support the notion of the community as the locale for appropriate, humane, cost-effective resolutions that are community-based. "The iconography is that of the small rural village in pre-industrial society in contrast to the abstract, bureaucratic, impersonal city of the contemporary technological state"

(p. 118). Furthermore, the community justice narrative begins to depict the responsibility or obligation of the community (as opposed to the government) to deliver justice services. I discuss communitarianism in more detail in the two subsections that follow, with a focus on how individuals—rather than the central government—are framed as having responsibility for youth crime, and also how restorative approaches are brought into the narrative.

### ***“We all have a responsibility”***

As the chronology in Chapter 7 established, nearly all of the ideas and concepts introduced into Parliament throughout the study period were met with resolute opposition throughout the House of Commons and the Senate. This conclusion was not unexpected given the partisan environments under study. Though many specific strategies surrounding community-based responses to youth crime were also critiqued, the underlying principles of greater community involvement and more diverse opportunities to respond to young offenders within the community were widely accepted across party lines and acknowledged as important parts of a new youth justice system. In addition to the elements of communitarianism embedded in ideas put forth by Liberal Members of Parliament, both proponents and opposition members also spoke from a position that emphasized the importance of the community in the “cure” of delinquency. Often, support for the role of informal community solutions to delinquency appeared to be drawn around the very basic concern of children being raised in a context where they are insufficiently supervised by traditional caregivers: their parents and immediate family. To this end, a number of Members of Parliament told stories of the consequences of parents—particularly mothers—increasingly being present in the workforce and thereby leaving children without a sufficient social network. Though no legislators presented evidence that mothers working outside the home led to improperly cared for children, or that the increase of females in the workforce was a contributing factor in youth delinquency, this aspect of the communitarian narrative proved appealing for legislators across party lines. The excerpt below illustrates the way one Member of Parliament framed the value of local responses to delinquency:

My wife and I have two boys. One day when they were in junior high they were exposed to some things they were not sure about. In fact, it had something to do with drugs. They came running into the house and, the younger fellow especially, wanted to talk to their mom, but she was not there. They both needed to find her because they had an

important question to ask. They ran to the back of the house and found her working on her flower beds. She loves gardening. They ran up to her and told her what they had been offered in the school washroom. They then asked her what they should do. She was able to deal with them. I will never forget that because she was there when they needed her.

I know many of my friends' children come home to an empty house. A note is left on the fridge telling them that there are sandwiches and that they should help themselves, or a note is left telling them which button to push on the microwave if they want hot chocolate. It is a different phenomenon. Does that mean it is bad for both parents to work? No. It just means that kids should not be home without some kind of adult influence in their life. Someone should be there to help them.

...Not only do parents have a responsibility for their children but the teachers and the community also have a responsibility for these children. How many of us simply ignore and walk away from the problems our neighbour's kids may have believing it is not our problem? When I was a child and I did something bad, I can remember a neighbour putting his hand on my shoulder and saying "Werner, do you know what is happening over here? Is this what your dad would want you to do", and I would behave myself. It made a difference.

I believe we all have a responsibility. It is part of the prevention and it is part of the cure. (Werner Schmidt, CA, May 29, 2001, Case 013)

Schmidt's juxtaposition of the image of a mother being "there when [her children] needed her" with young people who are unsupervised invited a longing for a lost community, necessarily framing supervision as a key part in curing delinquency. Utilized in this way, a key facet of the narrative of communitarianism is attention, not only to the delivery of justice in the wider community, but alongside an emphasis on parenting as a locale for proper child rearing and when parents are not available, the community has "a responsibility for these children."

In another example several years later, Canadian Alliance Member, Myron Thompson reported that,

Good parenting is a good thing to have. A good solid home makes a big difference in the lives of young people. In the province of Alberta a poll was taken of working mothers. Seventy-four per cent said they would prefer to stay home with their children if they could afford to do so, but they could not. We have been after the government for some time to give tax relief to families who choose to keep a parent at home. That has never

occurred. Could the hon. member tell me why? (Myron Thompson, CA, May 15, 2006, case 067)

Further, according to these opposition members, the community should be reignited as a site of surveillance “because today parents are no longer able to stay at home to tend to their children. Parents have been forced out into the workplace over the heavy taxation and heavy costs of living in Canada.” As a result, there is “no parent to look after the children when they come home from school. The children are now learning all kinds of things at the parks...” (Werner Schmidt, CA, May 29, 2001, case 013). In this way, the manner in which community was invoked during the early part of the data, it would be all things to all people and would ultimately be the remedy for a very expensive and ineffective system.

When youth are the targets of government service, parents tend to be framed as the immediately available network, and as such, argumentation centres on parenting and guardianship and how to increase the informal monitoring of young people.

This law, in our humble view, seems to support alternative measures and treats prison as a last resort - and so it should. Prison, detention or incarceration should be a last resort for our young people. We, after all, are the ones raising them. We, after all, are the ones responsible here. The bill supports an emphasis on rehabilitation. Many of our native communities in Canada say that it takes a village to raise a child. Many of our children are being raised without a village. This bill's emphasis on implication of families, implication of communities and implication of victims will perhaps give some of those children a village within which to grow up. (Isabel Schurman, Canadian Bar Association, October 4, 2001, case 019)

This aspect of communitarianism remained significant when throughout 2002 to 2004 attempts were made to amend the YCJA (2002) so that guardians would be punished with a fine or with incarceration for a failure to report a breach of probation by a youth under their care (e.g., as established in Bills C-444 and C-208). In this way, legislators emphasized the responsibility of individual parents for regulating and monitoring their child's compliance.

The case for the connection between the community and responsibility—responsibilisation—is not new and has already been made by academics given the focus of the communitarian story on locating responsibility for deviance within the community (Pickford & Dugmore, 2012). Muncie (2006), for example, discussed responsibilisation as nested in a move away from welfarism: the downloading of what was once considered state responsibility (e.g.,

policing) onto individuals, communities, and families. He argued that responsabilisation means that crime prevention accountabilities are delegated to communities, individuals (youth) are held accountable for their (anti-social) actions and, as a consequence, families and parents bear the responsibility of preventing anti-social behaviour in their children—much like the example of fining parents for failure to report a breach of probation. White and Stoneman (2012) remind us that the responsabilisation story tends to divert attention away from broader socio-structural contexts in which problematic behaviour occurs (e.g., poverty, racism) and doubly entrenches the role of the charitable helping professions—within the community—to save these problematic individuals from themselves.

The communitarian perspective is embedded with notions of individual responsibility held in the community or, more commonly, by individual youth and deeply contrasts with welfarism and the provision of needed services by a centralized government. As such, though social conditions of crime are identified sporadically throughout the data and occasionally as the “root causes” of crime, evidence for this lies in the rarity with which these factors are discussed in any detail (i.e., what are the social conditions? What effects do they have? What does the research say as to how these social conditions might be eradicated?) as they tended to be invoked as a category: “social causes of crime.” Furthermore, the concept of “social conditions” was at times invoked to affirm that such challenges are no excuse for criminal behaviour, thus further entrenching the concept of individual responsibility.

Finally, I would like to say a bit of what I think about the conditions that sometimes lead to crime. We need to recognize the links between social conditions and crime, while at the same time creating a renewed sense of **individual responsibility** for one’s actions. A deficient upbringing of one kind or another may be an explanation but in the end it is no excuse for morally reprehensible actions. (Bill Blaikie, NDP, February 14, 2001, case 005)

By emphasizing that the sense of responsibility among youth must be “renewed,” Blaikie appealed to the nostalgia of a previous time where people took responsibility for their actions, in apparent contrast with the process of youth justice under the YOA (1985). Simultaneously, Blaikie’s identification of only one social condition—“a deficient upbringing”—seemed rather purposeful and appeared to function to emphasize parental/maternal responsibility rather than social systemic causes.

## **Restoration**

Despite the attention paid to restorative justice in the literature, and the acknowledgement by numerous scholars that the YCJA (2002) opened the door to increasingly restorative practices, mention of restorative justice was unexpectedly infrequent throughout the archival data. When it was mentioned, restorative justice tended to be invoked within the communitarianism narrative, and occupied a place on a widely varied list of community-based responses that would resolve numerous problems. This framing of restorative justice as simply another tool in an array of community-based responses reflects Woolford's (2009) governmentalist approach to restorative justice presented in Chapter 3. For example, in her presentation of Bill C-7 to the Senate Committee, Anne McLellan stated:

As you know senators, we are trying to involve the community and the victim, whether through **restorative justice** initiatives, community conferencing, or whatever the case may require. We need to look at how we reorient our criminal justice system to ensure that all legitimate stakeholders have a voice and are contributing, especially in relation to young people, to their rehabilitation and reintegration into the community from which they came and from which, almost always, the victim comes. (Anne McLellan, Lib., September 27, 2001, case 019, emphasis added)

Legislators tended to present any processes that involved the community and the victim as restorative in nature, quite apart from any discussion of how these practices would be carried out, or on what assumptions they would rely.

For numerous speakers, the community was framed as an important site where delinquent youth would “face their victims and recognize the pain they have caused those individuals and their families...they (young offenders) should recognize that it is not only the victim who is the object of a violent attack but the victim's family and indeed the whole community” (Werner Schmidt, CA, May 29, 2001, case 013). Community-based responses and restorative justice methods are also positioned as ways to curtail repeat offending:

Repeat offences are a big problem when it comes to youth. I have seen many instances where it takes five, six, or seven court appearances before a young person is given a custodial sentence. In fact, 48% of those convicted had at least one previous conviction. There is very often a trend of escalating behaviour that leads to a life of crime. It demonstrates the point that early intervention and perhaps an attempt at restorative

justice or alternative measures should be pursued, highlighting the need for resources. (Peter MacKay, PC, February 14, 2001, case 005)

Quite apart from the discussions primarily by members from the NDP and Liberal caucuses that clarify the overuse of custody as a reason to respond to young offenders within the community, MacKay crafted community-based remedies, including restorative justice, as mechanisms to fill the gap where youth are not sentenced to custody.

Gord MacKintosh, then Minister of Justice and Attorney General for Manitoba equated “Aboriginal justice” and community justice and advocated paying more attention to turning over control to the community in his submission to the Senate Committee:

Aboriginal justice, by and large, means greater community justice and more community control whether that be policing and community justice to provide consequences or sanctions, providing greater victim satisfaction, providing probation on a local basis or even providing bail supervision locally. The more emphasis that the criminal justice system can put on enhancing community justice, the stronger the message is to the offender that someone has been harmed and that he or she must right the wrong. The justice system has to provide stronger messages, and the stronger message comes when victims and survivors are present to express the harm – when they want that...it is important that the offender look into the whites of the eyes of a community member who has been hurt. (Gord MacKintosh, Minister of Justice and Attorney General of Manitoba, October 30, 2001, case 022)

By his dialogue, MacKintosh equated justice delivered in the community with restorative justice. Interestingly, though restorative justice is not discussed at length in the archives, it is seemingly invoked by attention to a community approach to delivering youth justice. Furthermore, the excerpt above underscores the role of the community to control and supervise and as the appropriate site to emphasize wrongdoing and harm. This situating the community as an extension of the state, is quite different from the role that the Liberal government had set out for the community of addressing “root causes” of crime.

Throughout the first part of the archives, Anne McLellan suggested that the YCJA (2002) would respond to youth crime through the community given the vehicle of diversion and, as the following quote demonstrates, “repair harm.” The YCJA will

enable the courts to focus on serious youth crimes by increasing the use of effective and timely non-court responses to less serious offences. These extra-judicial measures provide meaningful consequences such as requiring the young persons to repair the harm to the victim. They also enable early intervention with young people as well as the opportunity for the broader community to play an important role in developing community-based responses to youth crime. (Anne McLellan, Lib., February 14, 2001, case 005)

It is through this kind of framing of meaningful consequences that a connection was made between extrajudicial measures and restorative justice.

The narrative of communitarianism as employed within the archives presented an exceedingly simple and idealistic illustration of how responses delivered in the community could address youth crime and the resulting harm. Speakers appeared to take for granted that young offenders (and their victims) are part of a community in which these responses would be delivered (a criticism previously raised by Hogeveen, 2006) and as such, that superior justice solutions would result. Furthermore, by invoking the communitarianism narrative, legislators simultaneously limited and expanded the role of community in providing youth justice responses. The community was framed as a place to accomplish all of the aims traditionally sought by the government—accountability, punishment, responsibility, retribution, restitution, and efficiency—a tremendous burden given the consensus that even the government has been unable to achieve all of these aims. Likewise, these are the *only* aims the community should address. The data reveal only a superficial contemplation of community as a site to accomplish non-traditional justice aims such as restoration or social justice.

## **Managerialism**

According to Muncie (2013), managerialism “comprises a set of techniques and practices – driven by notions of efficiency, effectiveness and economy – that aim to transform the structures and to reorganize the processes for both the funding and delivery of youth and criminal justice” (p. 222). For this reason, the philosophy is primarily governed by pragmatism rather than “any fundamental penal philosophy” (p. 222) and is invoked when the aim of policy is the management rather than rehabilitation or punishment of young offenders, or resolution of broader social and youth justice issues. As discussed in Chapter 4, managerialism is closely related to communitarianism in that both narratives tend to situate the community as a key site

of intervention (e.g., through practices such as diversion). However, while speakers throughout the archival data tend to emphasize the unique abilities held by communities to assist offenders, to address and repair harms resulting from crime, and to strengthen the criminal justice system through partnerships in their use of the communitarianism narrative; with managerialism, policy-makers positioned the community a useful site of crime control in its ability to help control costs and to assist in streamlining a system that was framed as unwieldy.

The backdrop of managerialism was revealed early in the data, particularly in the speeches by Anne McLellan on the overall aims of the proposed YCJA (2002). In the following excerpt, she discusses the potential effects of extrajudicial measures as reducing the burdens on the court system so that the courts could focus on more serious offences:

The proposed youth criminal justice act is intended to enable the courts to focus on serious youth crimes by increasing the use of effective and timely non-court responses to less serious offences. (Anne McLellan, Lib., February 14, 2001, case 005)

Relatedly, the government's position at the outset was that "the new law makes the distinction clear between those who commit violent crimes or seriously reoffend and those whose transgressions are non-violent" (Anne McLellan, Lib., September 27, 2001, case 019) such that the government could limit access to cumbersome and expensive formal solutions.

As such, community-based responses are framed as appropriate for first-time and non-violent offenders, while incarceration is reiterated for serious and high-risk young offenders. In specifying which aspects of youth crime would best be dealt with in the community, McLellan argued that the principles underlying the YCJA (2002) would "consistently make this important distinction" between "serious violent offences and less serious offences" (case 005). The community is positioned as a key site of youth justice and depicted as the best place to handle minor incidents such that they are removed from the possibility of going to court.

We are sending a message, senator, that we do not want all of our dollars spent on warehousing young people as they have been in the past. We want people to think more creatively about extrajudicial measures that will help young people who commit less violent crimes and who would be better served in the community. (Anne McLellan, Lib., Sept. 27, 2001, case 019)

Legislating the separation of a particular group of young offenders has a dual effect of rationalizing budgetary reductions to other parts of the system (e.g., courts) and emphasizing that “experts in the community” who have the capacity to rehabilitate young offenders already exist. Take, for example, the following excerpt from Liberal Member of Parliament Carole-Marie Allard:

I know crown attorneys who work at the youth court. I would rather trust the police officer walking the beat in a neighbourhood because, in my opinion, he certainly has a better idea of what is going on than the crown attorney in his ivory tower at the courthouse, if only because the latter is often overburdened following all kinds of budget cuts. I also think that we can better rehabilitate young offenders by putting them, as provided under clause 6, in the hands of stakeholders or experts in the community who know criminal gangs and street gangs in that area. (Carole-Marie Allard, Lib., Sept. 27, 2001, case 005)

The impacts of emphasizing the role of the community in crime control policy has already been established in the literature, and notably by Cohen (1985), who suggests that although legislators may have genuinely appreciated the movement back to the community and away from the correctional institutions that had appeared to be ineffective, this ideal has been widely “used as an alibi” (p. 121) by policy-makers to support changes that were being made to rationalize budget cuts and financial restraints. According to him, “pragmatists, progressive reformers and fiscal conservatives alike could all make the same sentimental claims to be doing good” (p. 121). In the following two subsections I examine managerialism more closely.

### ***Community-based responses in a managerial context***

Despite wide support for addressing youth crime through increases in the use of community-based measures, a number of speakers throughout the archival data expressed deep concern that however appropriate community-based responses to youth crime might be, there had been inadequate attention paid to how practitioners would implement the philosophy called for in the YCJA (2002). Specifically, speakers foreshadowed challenges to implementation not only as a result of a lack of dedicated resources, but also as a result of difficulty in shifting professional practice on the front-line, as revealed in the following excerpt from David Griffin, the Executive Officer of the Canadian Police Association in his testimony to the Standing Senate Committee on Legal and Constitutional Affairs:

There is a presumption in the bill that we can make this change fairly quickly and move into this new system. Our submission is that while there are many good things here, we must ensure that those checks and balances are available. They [police] must be trained on the implementation of this bill, and perhaps we should slow down somewhat on the assumption that they [police] will just take this proposed legislation and move forward. (David Griffin, Canadian Police Association, October 16, 2001, case 020)

Concerns around implementation seemed especially prominent during the Senate hearings. Senator Raynell Andreychuk, referring to the over-incarceration under the YOA (1985) and in reference to judges and caseworkers, stated the following:

They [judges and caseworkers] do not resort to incarceration because they want to or even because they think the legislation (YOA) drove them there. They resort to incarceration because it was the only alternative left after piously hoping something in the community would work. (Senator Raynell Andreychuck, Lib., September 27, 2001, case 019)

Andreychuck's comments are reflective of her belief that the approach to young offenders did not need to be shifted; instead, the resources and specific implementation plans needed to be addressed—something that was not well attended to by legislation or by the government.

I think the sooner in some of these children's lives that police and courts can become involved, the better. I have known many young people over the years who developed a trust and relationship with police officers and judges and have benefitted from it in the long-term. They are more open to some of these people. I am not putting down social workers, but they do not always have the time and resources to spend on some of these kids. (Gary Rosenfeldt, Canadian Centre for Missing Children, October 3, 2001, case 019)

Invoking community-based responses to youth crime in the context of the managerialist narrative appeared to justify inadequate resources by crafting formal responses as expensive and cumbersome and reliant on highly paid experts. The opposite construction then is that responses delivered outside of this unwieldy formal system—in the community—are simple, informal, volunteer-based, and achievable. More problematically, by emphasizing the structures and systems of community-based responses that were already well entrenched across the country (although this belief is exceedingly over-simplistic) more numerous and diverse measures were discussed as able to function in a system that is already in existence. As such, concerns about resources do not appear to be taken seriously throughout the data, with

comments of the following nature: “we’ve costed it,” “I don’t have the numbers in front of me,” “this will be collaborative,” and “this is part of a wider strategy.” Early in the data, with reference to community-based responses in the YCJA (2002), Anne McLellan offered the following vague reply to questions from Senators who doubted that the appropriate financial framework was in place to properly sustain the numerous responses contained in the legislation:

We believe that there is enough money. Would we like more money? Of course we would. I would like more money for everything I do in my department. However, we think we have enough money. (Anne McLellan, Lib., September 27, 2001, case 019)

Primarily, though the detailed web of community services and roles and responsibilities for community members seemed overly complex—and was criticized as being so—it was simultaneously un-detailed, vague and simplistic, as was the associated financial infrastructure. This tendency seemed to entrench even further the notion that these programs would be a local responsibility.

### ***Guarding the gate***

While the use of the communitarianism narrative helped to frame community-based responses as the panacea for youth crime that would localize delivery of governmental orders while addressing root causes and the overreliance on custody, speakers simultaneously imposed a managerialist framework on the selection of solutions. For some speakers, this framework was evidenced by the attention placed on cost-cutting and providing solutions outside of the expensive formal system. For others, this approach made for striking concerns of resource allocation from the outset. Community-based responses to youth crime could never live up to the hopes expressed by legislators within the data. Although numerous legislators discussed funding, the discussion was never specifically about exactly how these kinds of measures would be implemented. The emphasis created through the discussion of community-based responses was on two groups: minor offenders (theft, mischief) and serious, violent offenders. No discussion occurred on what to do with the group of young offenders who would fall in between these two groups: low-level habitual offenders who demand great resources as a result of complex factors. This concept is taken up again throughout Chapter 9.

By examining community-based responses to youth crime through the managerialist lens that seems to have taken hold throughout the archival data, it is apparent that a lack of resources is overly simplistic. Ideological beliefs seem to take for granted that local solutions are necessarily exceedingly effective and also inexpensive and thus, obviously “good.” Additionally, policies built through this perspective necessarily background social and structural causes of youth crime and emphasize the individual and dyad relationships between the offender and victim. Community-based responses as illustrated through the communitarian and managerialist narratives are not met with a sufficient focus on implementation and fail to address the most pressing questions: How will/should these community-based responses actually unfold in practice? How will youth justice actually change as a result? How will root causes actually be addressed by community-based responses? Essentially, the approach is utopian and fails to consider that we know little about whether the approach is useful, effective, or achievable.

Both the narratives of communitarianism and managerialism appear to have been overshadowed in the introduction of new bills until 2007, when an expansion of front-end measures was proposed in Bill C-423. Again, the concepts invoked by responses to youth that emphasized the community were widely agreed upon across partisan lines. Further, despite an argument that the proposed amendments merely reaffirmed provisions that existed in the YCJA, most members agreed with the philosophy underlying the bill. This despite disagreement from NDP Member of Parliament Libby Davies, who reiterated concerns regarding sufficient resources and argued that such a provision should not excuse health-based harm reduction strategies designed to curb addictions before a young person’s contact with police.

While members of the Liberal government were drawing together a narrative in which the community would take on a good deal of responsibility for addressing youth crime, members of the Canadian Alliance were making the case that the courts should decide whether extrajudicial measures are used “so it can be satisfied that the public will be protected” (case 005). This comment helps to illustrate the tensions between justice being delivered in the community versus being controlled by the courts, and how best to achieve the goal of public safety. Furthermore, members of the Bloc Québécois also found the community approach troubling, believing it would threaten the approach Québec was using to promote rehabilitation. Throughout the archives, members of the Bloc Québécois discussed the ideal of the “right measure at the right time.” Because the intention of diversion is to deal with youth informally, a

fear was expressed that professionals would not be able to track offence history in order to craft rehabilitative measures early in a youth's criminal career. For example, Michel Bellehumeur argued:

If the first offence is a minor offence, like shoplifting, the police will only give a warning. If the same young person travels to the neighbouring town and is caught shoplifting again the same day, he or she will be given another warning. Where will that be recorded? If at some point the offences become more serious, for example large graffiti involving some violence, a cautionary letter will be sent to the parents. The crown attorney will never find out...The bill would prevent Québec from doing the right thing at the right time. It is better to invest as soon as the first offence is committed, when it is not serious, than after three or four years of delinquency in a neighbourhood, a town or a region. If the minister's bill becomes law, the whole rehabilitative approach used in Québec in cases involving minor offences would no longer be possible. (Michel Bellehumeur, BQ, February 14, 2001, case 005)

Muncie (2013) suggests that contemporary youth justice policy is not concerned with achieving justice or welfare, but rather in arriving at the most cost-effective way to manage youth crime. There is certainly good evidence that the managerial story of cost-effectiveness permeated the early archives and operated along with communitarianism. However, this finding poses two important implications. I propose that the use of the narrative casts doubt that discovering root causes was actually a genuine goal of embedding youth justice policy with community-based responses, or perhaps, less pessimistically, that if root causes could be identified, they should be, but cost-effectiveness should be a primary goal. The problem with cost-effectiveness as a goal of social policy is that costs of responses and programs can be measured by dollars, but social good is not so easily captured.

## **Punishment: Tough on the Causes of Crime to Tough on Crime**

As discussed in Chapter 7, each of the revisions proposed since the coming-into-force of the YCJA (2002) until the end of the dataset in 2012, helped to tell aspects of the same story: youth justice policy reform focused on emphasizing the more punitive aspects of the legislation. Simultaneously, intense resistance among legislators and speakers to an approach that many speculated would inevitably cause more youth to be incarcerated complicated the landscape. Where discussions around community-based responses to youth crime in the YCJA can readily

be identified as having been framed with attention to communitarianism and managerialism, the content of subsequent bills and discussions among their supporters have been almost exclusively incrementally more expressive and punitive. There has been far less emphasis on the community, except where the community is positioned to become the site of more punitive interventions, and in fact, far less emphasis on young offenders themselves (except for some severe depictions of the most serious and violent young offenders). This is not to say that legislators did not invoke the punishment narrative early in the archives—in fact, attention to individual responsibility to justify punishment and meaningful consequences seems very much embedded in a punishment orientation. However, punishment did not seem to be a central story underlying community-based responses until Bill C-25 was introduced in 2007.

It should be noted that it is unsurprising that the narratives evoked in debates on the drafting of the YCJA (2002) itself are far more diverse and complex given those debates focused on an entirely new system, whereas with later amendments, legislators proposed to revise only a few sections of the legislation. However, an important finding is that legislators tended to focus almost exclusively on expressive and symbolic aspects of punishment in the latter part of the archives in contrast to instrumental aspects of punishment in the earlier part of the archives. The concerns about financial costs raised in the earlier part of the data are replaced by concerns about the intangible costs (i.e., pain and suffering) to individual victims that are the foremost concern—a shift that seems to justify stricter (at least symbolically so) sanctions for young offenders. If the communitarian narrative was invoked by legislators to demand responsabilised communities, youth, and their families for minor and moderate youth crime under the YCJA, with Bill C-10 and its predecessors, legislators dramatically shifted the course.

It should be kept in mind that introducing and passing the reforms to youth justice under Bill C-10 had everything to do with the Conservative Party gaining a majority. These ideas were not new; as evidenced in Chapter 7, the data show that the tough on crime/punishment narrative was a part of the debate much earlier on, but did not have enough political support to frame the legislation. It would be an overgeneralization to suggest that the only measures introduced in Bill C-10 were exclusively punitive—this is far from accurate. In fact, the revisions made some very important acknowledgements that seemed to have come from a child rights perspective, including the assertion that youth must never be incarcerated with adults. With these factors in mind, in this section I examine the presence and role of the punishment narrative in setting the

stage for community-based responses to youth crime—and primarily, how this narrative became central to the political discussions post 2007.

***“Canadians gave us a clear mandate...we will deliver the goods”: The politicization of youth justice***

The “get tough” narrative that was first recognized in the archival data during the proposed revisions to the YCJA (2002), and that became particularly pronounced in each of the proposed amendments to the YCJA, seemed to finally take hold with the introduction of Bill C-25 and later Bills C-4 and C-10. Punishment is framed throughout the archives as a response to a threefold list of concerns: The assertion that youth crime has increased; the sense that the public has lost confidence in the youth justice system; and the view that nobody is advocating for the rights of victims. For example, with respect to Bill C-25, introduced in 2007, then Justice Minister Rob Nicholson stated:

Many Canadians are concerned about youth crime and believe that changes to sentences can be very helpful. They want to stem the reported recent increase in violent youth crime and restore respect for law. (Rob Nicholson, CPC, November 21, 2007, case 081)

Though the theme of concern for victims was present throughout the entirety of the archival data, during the debates around Bill C-7, legislators tended to discuss strategies that would prevent further victims and tended to emphasize the repairing of harm through local solutions—however underfunded these approaches may have been. The propensity in the later part of the data was to frame punishment of the offender as the only way to recognize the suffering of victims. In this way, legislators tended to emphasize expressive, symbolic sanctions—those that would send a message—rather than those that were framed to correct patterns of offending. In this way, the problem definition accepted in the latter part of the data was strikingly different than that accepted in debates over the YCJA (2002). As a result, youth justice policy would need to be embedded with a sufficient level of punishment so as to recognize the suffering of the victims. For example, in a 2012 speech to the Senate Committee in support of Bill C-10, Senator Lang offered the following:

I have listened to a number of your presentations, and I have listened to them over the last two to two and a half years that I have been here. Very seldom do we speak of the

victim. We talk about the legal system, the offender and the consequences to the offender. This bill talks to some degree about the victim and the consequences to the victim. What I do not understand is, we have had federal-provincial conferences over the past five years on this legislation. There are nine pieces of legislation here. They have been debated in various forms and various forums over the last five years. It has been accepted in many cases across the country.

You have stated, Mr. Battista, that the judicial system is working and you are satisfied with it. Yet, at the same time, over the course of the last 10 years, people who have been afflicted, namely the victims, have felt that offenders have not seen the consequences for their actions and they have had to form organizations called victim advocacy groups. What does that tell you? Does that not tell you that there is a feeling out there amongst a good size of the population that this judicial system is not working and that there must be more consequences built into our legislation so that we as the general public recognize that our rights and our safety is being taken care of? (Senator Hector Lang, CPC, February 8, 2012, case 143)

Additionally, throughout the latter part of the data the government invokes *the* cohesive, singular victim as the impetus for change. Nicholson emphasized the approach of Bill C-25 as protecting the interests of victims:

Many of us, when we came to government, we asked who was in charge, who looked after the rights of victims? Everybody else seemed to have somebody else lobbying or campaigning on behalf of their rights, but there was very little in the way of spokespeople who concentrated on the rights of victims. Therefore, it is very appropriate that the Government of Canada has initiated that new response to something very fair, which is looking after the victims of crime. (Rob Nicholson, CPC, November 21, 2007, Case 081)

As mentioned, one clear contrast that emerges when comparing the earlier and latter parts of the data is the accepted problem definition. Discussions around Bill C-7 centred on preventing crime and emphasized the community's responsibility in addressing early forms of criminality underscoring an approach so as "not to create more victims" (Anne McLellan, Lib., February 14, 2001, case 005). Through responsabilising families and communities, legislators crafted the role of individuals as responsible and accountable for addressing youth crime. Later, speakers defined the problem to be addressed quite differently. In these later discussions, the fact that many Canadians are victims was accepted, and because all Canadians were framed as being at risk of being victimized (those who were not seemed most likely to be criminals

themselves), the role of individuals was framed as a much more passive one of victim/potential victimhood. As such, punitive responses were positioned as the natural resolution to that problem. Given this new problem definition—that we are all (potential) victims—the communitarian approach to youth offending is incongruous. Through this lens, the appropriate response to youth offending cannot possibly lie predominantly within the community, because the community is exceedingly vulnerable to harm by offenders. Like the communitarianism narrative, what helps to entrench this very simple story about youth justice is its appeal to commonsense. This contrasts with the concerns in the early part of the data, around what it means to deliver justice, how best to achieve positive outcomes and the root causes of crime that featured very importantly.

While the communitarian narrative emphasized the position of offenders within individual communities and even as victims themselves in some cases, through the punishment narrative legislators emphasized families and victims as separate from offenders. Vic Toews offered the following:

Our government's mandate from Canadians is to keep our streets and communities safe by moving quickly to reintroduce comprehensive law and order legislation. The government is taking action to protect families, stand up for victims and hold criminals accountable... (Vic Toews, Minister of Public Safety, CPC, September 20, 2011, case 113)

In another example, during the second reading of Bill C-10 in the Senate, Senator Bob Runciman emphasized the focus of the bill as very much the opposite of addressing youth offending in the community:

The amendments to the Youth Criminal Justice Act...increase judicial discretion by allowing judges to consider the traditional sentencing principles of denunciation of crime and deterrence of the specific offender, and by making it easier to keep violent young offenders in pre-trial custody. That is what this is all about – keeping dangerous people off the street. (Senator Bob Runciman, CPC, December 8, 2011, case 136)

In my discussion above regarding the responsabilisation of the community as one aspect of the communitarian narrative that dominated discussions of Bill C-7, I attended to the widely used phrase “meaningful consequences.” Used early on in the archives to refer to a wide array of responses to youth crime, most especially those in the community that would address the particular circumstances of young offenders, the concept seemed to be a euphemism for

informal responses to youth crime that must be delivered by individual communities. In fact, the use of meaningful consequences seemed to be an important signifier of community responsibility for youth crime. Meaningful consequences was also a critical component later on in the archives, but used very differently. For example, Rob Nicholson invoked the familiar term in his introduction of Bill C-25, saying, “young offenders, like adults, must face meaningful consequences for serious crime” (case 081). With this, “meaningful consequences” seemed to be redefined in a much more punitive fashion where youth are implicitly, and sometimes overtly, compared to adults and where clear statements that youth themselves hold responsibility for their offending behaviour is established.

Amid the emphasis on a new path for youth justice as set out by a new problem-response framework that emphasized a punitive response, several key counterpoints permeated the dialogue. First, despite the argument from Members of the Conservative caucus that they were given a mandate by Canadians to enact more punitive policy (see Toews above), a number of MPs and witnesses before both the House of Commons and the Senate argued against Bill C-10, framing it as ideologically—rather than evidence—based. For example, Senator Jane Cordy, speaking before the Senate at third reading, offered the following:

Honourable senators, I have the honour to present a petition from Canadian citizens concerning Bill C-10, the proposed Safe Streets and Communities Act. The petition states that Bill C-10 ignores proven crime prevention strategies in favour of ideological policies which were shown to fail in other jurisdictions, while placing a substantial burden on taxpayer funds. Therefore, the petitioners call on all senators to vote against Bill C-10, the proposed Safe Streets and Communities Act. (Senator Jane Cordy, Lib., March 1, 2012, case 156)

Similarly, in offering his own counterpoint to the dominant narrative, Daniel MacRury, representing the Canadian Bar Association offered the following in his speech to the Senate Committee on Legal and Constitutional Affairs:

One of the problems that we have with this debate is there is an awful lot of labeling going on. Someone is for a criminal or for a victim. The reality is that sometimes accused are victims...Sentences are contextual and we are not dealing with statistics; we are dealing with people. (Daniel MacRury, Canadian Bar Association, Chair, National Criminal Justice Section, February 9, 2012, case 144)

He went on:

On a personal level, I stand up for victims every day, quite frankly, whether it is prosecuting murders or shoplifting. I have for a long time. I was involved on a personal level with the first victim implementation legislation in Nova Scotia. We have certainly evolved in our legal system in terms of victims are more involved than they used to be, which is a good thing for your system. I encourage that, but it is not a situation for justice for victims. It is not an "us" or "them." It is justice for everyone that participates in the system. The CBA believes, quite frankly, that, yes, you are given the impression that you will give more to victims in this legislation.

Earlier, we talked about resources. If resources are not coming, I can certainly tell you that victims will not be happy when cases are thrown out for delay. It is not good enough to say "we told you so" at that point in time. The reality is that the system will not sustain this piece of legislation. If you are committed to victims, I would respectfully submit, then, that you should fund the legislation as opposed to saying that it is not our constitutional responsibility, it is the province's. I would respectfully submit to you that you have to be transparent about it as well. On the ground, the resources are not there to implement the legislation and, at that point in time, you are putting false expectations on victims, which is not fair. (Daniel MacRury, Canadian Bar Association, Chair, National Criminal Justice Section, February 9, 2012, Case 144)

Throughout the data, making reference to ongoing or past public and specialist consultations has been a common strategy relied upon to justify and gather support for one's perspective, and also seemingly, to show that a particular policy direction is widely supported by the Canadian public—if not their elected representatives. As discussed earlier, the Liberal government frequently turned to the consultations that had been undertaken in their study of the youth justice system to rationalize the approach they suggested for Bill C-7. So too, the use of public and expert consultations was extensively used throughout the latter part of the archives in discussions surrounding Bills C-25, C-4, and finally, C-10. The key difference, not surprisingly, was the content of the consultations that was emphasized. While in the earlier part of the data the consultations undertaken by the federal government were used by parliamentarians to establish a desire to enhance community measures, consultations referred to by members of the Conservative government were framed as supportive of measures such as deterrence in sentencing and increased availability of remand.

It goes without saying that decisions are made not solely based on objective facts given the best evidence available on what works, but that in a necessarily political environment, value-based positions have a very important role. This is not least because of varying party-political

positions and the partisan/competitive nature of the political environment, but also simply because of the lens through which individuals view and construct policy problems and the disparate aims they are trying to meet (Wagenaar, 2011). This approach is decidedly complex given the countless times within the data that members argued that the consultation was not wide enough, or that the resulting policy did not adequately draw on the diversity of opinions heard. Interestingly, while politicians used the process of 2008 consultations on youth justice reform (that culminated in the unreleased “Roundtable Report” as discussed in Chapter 4) to support their policy decisions—i.e., I have consulted the people and this is what the people said—some participants in the archival dialogue disagreed that the proposed reform was created as a result of consultation. For example, in his testimony before the House of Commons Committee, Jonathan Rudin, representing Aboriginal Legal Services of Toronto stated:

I can tell you, as a participant [in the consultations on youth justice reform], that no one in Toronto consultations advocated that deterrence be added to the YCJA (2002). No one argued for more reliance on remand. No one felt the YCJA (2002) was too lenient...it is significant that the amendments being advanced are not addressing the concerns that were expressed at that meeting. (Jonathan Rudin, Program Director, Aboriginal Legal Service of Toronto, June 15, 2010, case 103)

Though with the proposed reform, Nicholson purported to find a way to implement the recommendations of the Nunn Report (the report focused on simplifying administration of justice, improving accountability, giving “teeth” to the YCJA (2002), and addressing youth crime prevention), Liberal Marlene Jennings suggested that Bill C-25 was an example of “cherry-picking.” It was the opinion of Jennings and many other MPs that the bill did not respond to the Nunn recommendations wholly, and instead focused on specifically on punishment under the guise of protection of the public. When they reintroduced bill C-525 as Bill C-424, for example, Liberals argued:

This bill strives to fully implement all the federal recommendations stemming from the Nunn commission in Nova Scotia...It encompasses all of the Nunn recommendations, including those that were ignored by the Conservative government. (Geoff Regan, Lib., June 17, 2009, case 089)

The debates on Bill C-10 again spoke to the complex use of evidence. For example, a key critique of Bill C-10 on the whole is that its drafters failed to comprehensively examine the costs associated with measures that—for the most part—would be expected to have the effect

of increasing the prison population in absence of a parallel increase in rehabilitative services either in prison or as part of a reintegration package on exiting custody. At numerous junctures, the members of the Conservative caucus responded to questions about the overall costs associated with implementing the bill by citing a 2008 study by the Department of Justice regarding the costs of crime. The study was first cited on September 21, 2011, and cited numerous times throughout discussions on Bill C-10:

Please look at the cost to victims in this country. Victims tell me every time I see them that they pay most of the costs. A study by the Department of Justice in 2008 confirms that. About 83% of all the costs of crime in this country are borne by victims. If those members are worried about costs, about taking a violent criminal off the street and locking up that individual, that is okay because that is their concern and their priority. That is fine, but they should also worry about the victim, the law-abiding Canadian who could be a constituent of theirs. I want them to worry about that individual as well. (Rob Nicholson, CPC, September 21, 2011, case 114)

The report shows that of the tangible costs of crime, the criminal justice system (e.g., policing and correctional services) and victims (e.g., hospitalizations, stolen property) are each burdened with roughly half of the estimated \$31.4 billion annual cost of crime. However, when intangible variables are considered (e.g., pain and suffering), the total estimated cost of crime rises to \$99.6 billion, 83% of which is borne by victims. The author notes that monetizing intangible costs is typically controversial and uncertain and that numerous analysts would utilize different methodologies that would produce varying findings.

This approach seemed not only to re-emphasize the role of the public and the community by answering the plea to “democratize” the policy-making process, but also seemed to form a key contextual feature of how community-based responses were invoked in the archives. In fact, throughout the early part of the archives, apart from the discussion of Québec, public consultations were heavily relied upon to justify the approach articulated in Bill C-7. Invoking “consultations” in this way seemed to have been done for the purpose of shielding the policy from more thorough debate. Public consultations were once again at the forefront in debate on Bills C-25, C-4, and C-10.

Clearly, a shift in the response to youth justice and the role of community-based responses to youth crime is evident in the latter part of the data. The shift seems to have been justified, not only by the argument that the public had given the government a “clear mandate”

as a result of the Conservative Party of Canada's election to a majority government in 2011, but also as a result of the way in which public consultations had been framed within the political dialogue. Moreover, the very problem with which youth justice policy was shown to be concerned was dramatically altered in the latter part of the data. As a result of all people being framed as victims/potential victims, the place for community-based responses would necessarily be more limited.

***“I'm talking about killers, psychopaths, rapists, pedophiles...”: constructions of the “youth criminal”***

In addition to the problem-response framework, it is also telling to examine the construction of the young offender throughout the data—the process by which the speakers illustrate and bring to life the young offenders who would be the targets of youth justice legislation and specifically community-based responses to youth crime. As Stoneman (2011) and others have argued, there is a vital link between the *construction* of the young offender and the *regulation* of the young offender. Simply, the definition ascribed to young people—the target of youth justice legislation—helps to identify the types of responses that are appropriate. For example, when youth were seen as miniature adults in colonial Canada, so too they were treated as adults and subject to harsh punishments when they came into contact with law enforcement. Once “childhood” was recognized as a distinct developmental phase—a phase during which a person was in the process of becoming an adult—criminal justice responses changed such that children and youth were protected from the full force of the law. It is this connection between the views or constructions of youth and the responses to or regulation of youth that make discussing the narratives around the target of youth justice so essential. As this chapter demonstrates, the connections between the constructions embedded within the narratives and the implied and blatant suggested policy solutions are important. One way to make the connection and its importance more visible is to ask: If speakers were to discuss youth differently, if speakers were to frame the problem differently and examine the main character through a different lens, would they come up with different policy solutions? How is it that among the very different youth who are involved in the system, very few different stories are told? In fact, in this data, only three categorically different “stories” were told: youth as individuals capable of taking individual responsibility for their actions; youth as under development and in

need of being taught right from wrong and serious, and youth as violent, dangerous young offenders from which the public must be protected.

As I expected, the speakers throughout the archival data were greatly concerned with illustrating the “typical young offender.” In a 2001 discussion before the House of Commons regarding Bill C-7, Bill Blaikie, emphasized youth culture as producing gang-involved youth who are capable of “senseless acts of violence” with the following excerpt:

It is true that unemployment, inner city decay, drug addiction, child abuse, child poverty and an ever widening gap between the most and least prosperous in society create certain negative factors. However, it is also true that some of the most frightening and senseless acts of violence are committed by people who are not socially or environmentally deprived. A very real problem is that too many Canadians are growing up in a moral vacuum, where the very notion of right and wrong seems to be called into question. This morally deprived environment, I believe, is partly the product of the violence and the shamelessness of modern TV programming and media advertising, but that is only part of the problem.

Our entire culture has become one which emphasizes the bottom line and self-interest over everything, so it is not that some of these kids who offend do not have values. They do. They have picked up the vulgar, materialistic and individualistic morals of the marketplace that they are bombarded with and they are applying them to every aspect of their lives. It is something we should all be concerned about. (Bill Blaikie, NDP, February 14, 2001, case 005)

Blaikie used his assertion to rationalize individual responsibility for one’s crimes and to shift attention away from social causes such as addiction and unemployment. Importantly though, and quite apart from the function of a similar narrative invoked more recently, Blaikie emphasized restraint in responding to young people. He advised:

A certain amount of discretion, mercy and exercise of judgment when it comes to young people that sometimes can only be exercised by people who know the community, or who know the family or who know that young person. (Bill Blaikie, NDP, February 14, 2001, case 005)

Blaikie’s emphasis on mercy is a key way in which the discussion of individual responsibility in the early part of the data emphasized communitarianism, whereas near the end of the data, individual responsibility began to be used to signify punishment. Some of the

discussions throughout the archives did seem to contrast with the narrow view of youth as serious, violent and dangerous. Notably, some speakers suggested that too much emphasis was being placed on serious and violent young offenders in the discussion about Bill C-7—a bill that was aimed at providing a justice system for *all* young offenders.

When young people get into trouble with the law, they cannot be named and they appear to get a slap on the wrist, headlines scream. People get upset and the flames get fanned. We get the impression that the Young Offenders Act, which the bill is designed to replace, will not solve the problems. Young people will be running amok committing crimes, raping, pillaging, murdering and building a society that will fall apart.

The reality is that the vast majority of young people who commit crimes do not commit rape, assault, aggravated assault, attempted murder or murder. Surely to goodness we can arrive at an agreement on that. The vast majority of young people who do commit crimes, commit crimes that need to be dealt with seriously but dealt with in some new creative way rather than just punishment. We as a society should perhaps look at solutions on how to properly rehabilitate. (Steve Mahoney, Lib., March 26, 2001, case 006)

Mahoney's position was typical among Liberal Members of Parliament in the early 2000s and helped to emphasize an instrumental role for punishment as part of a rehabilitative approach. Similarly, in 2010 during debates on Bill C-4 in the House of Commons, Liberal Member of Parliament Judy Srgo rejected expressive punishment in favour of responses that produce opportunities for all children:

I actually believe that every child represents untapped potential and hope for the future. Every child is a doctor in waiting, a lawyer in waiting or a scientist of tomorrow, and every child could be our next great leader. Because of this belief, I want to make sure we do not just focus our attention on punishing those who go astray. We need to work together to ensure all children have the opportunity to reach their full potential, even if they veer from the path briefly before they reach adulthood. (Judy Srgo, Lib, April 22, 2010, case 093)

By referring to every child as untapped potential, Srgo underscored the incongruity of the Conservative approach while acknowledging that children are necessarily to be treated differently from adults.

The following excerpt from Larry Spencer, Canadian Alliance Member of Parliament, in contrast, tells a story where youth today are *different* from youth in previous generations:

I want to speak to the broader issue of dealing with youth rather than getting into the details of the amendment...With whom are we dealing? It sounds like a very simple question because obviously we know we are dealing with youth under 18 years of age. We are not sure whether that should go down to 12 or 10 years but we are sure that it is youth under 18 years of age. What does that mean? Who are these people?

I was severely shocked about 20 years ago when I walked out to my backyard in Regina and heard some kindergarten children and first graders using language that I had never heard in my youth all the way through high school. I came from the sticks, as the House can tell, but I had never heard that kind of language.

What I realized was that we live in an age where the age of participation in violent and vulgar activities is becoming lower and lower. It is a declining age of awareness and involvement. We are dealing with young people who are in that kind of time. (Larry Spencer, CA, March 26, 2001, case 006)

Today's youth (children even), we are told, are very different from previous generations of young people. Interestingly, Spencer uses a personal anecdote about what he views as inappropriate language used by children to make the claim that children are becoming *violent* earlier. This is perhaps the key "moral" of the story. Spencer uses a two-decade-old anecdote that functions as a parable to tell the story of youth becoming more violent at a younger age. In a similar example, his Canadian Alliance colleague, Roy Bailey, recounts a past when things were better than they are today:

Perhaps it is time for people of both sides of the House and the young and the old to ask ourselves a few questions as to why we have this bill (C-7) and why we are at this position in our society. Fifty years ago we had more youth in my province than we have now. We had very few people appearing in court. Why was car theft almost an unheard thing? Why have we listed all these crimes today? Our jails are not large enough to hold the people. Our courts are busy and stacked up. What were we doing right 50 years ago? Maybe we should take a look at that because obviously what we did then did not promote what we have today. We have to take a serious look at that... (Roy Bailey, CA, February 4, 2002, case 041)

Speaking in 2002, Bailey recalls the 1950s as a positive time regarding youth justice. Early in the data, Vic Toews, then justice critic for the Canadian Alliance party described young offenders as “dangerous youthful predators” (case 005) at several junctures to support the idea that the names of young offenders should be published. Anne McLellan often characterizes youth crime as “when young people hurt others in [our] communities (September 27, 2001, case 019). She goes on:

We believe first and foremost that young people are different, that they have a chance and that they should be given a chance to turn their lives around (Anne McLellan, Lib., September 27, 2001, case 019)

Others present young offenders as conniving individuals who have the skills to “beat the system”:

Some of these young offenders are very sophisticated. They know the system and its processes, and they know their rights. There is nothing wrong with people knowing their rights - children too. What is wrong is young people having no respect or empathy for other peoples' rights and having the instinct or the impulses to hurt or to violate, whatever the form of the violation. (Anne Cools, Lib., September 27, 2001, case 019)

In contrast to the negative depictions that were commonplace throughout the data, speakers who focus on the social issues afflicting young offenders complicate the narrative. As one example, Senator Thelma Chalifoux provides an illustration of her experience of the “typical” in the following excerpt provided during a senate committee debate on Bill C-7 in 2001:

In the inner city, we have a single mother with five or six children between the ages of 1 and 13. The welfare worker is breathing down the mother's neck because she is not working, so the mother takes a menial job. She does not have the financial resources for a babysitter so the older children must look after the younger ones. Most of the time, if a food bank is not available, they go hungry. One little nine-year-old girl came to our youth centre at about nine o'clock one night just when we were getting ready to close up. She said, “Grandma” – because they call me “Grandmother” – “my mother has been gone for two days. I have no milk for the baby.” That little girl had missed school and was looking after her little brother. We went to the store and bought food for her and the baby. If a welfare worker is called in these circumstances, the kids will be taken away and stuck in foster homes. We all know the horror of foster homes. When the mother comes back and sobers up, she is a good mother. We are faced with a dilemma here. When the child gets out, he or she gets into the wrong crowd and into trouble. Years ago, trouble

was in the form of vandalism. Today, these youth are involved in serious property offences and violence. They get into fights and assault charges are laid. (Senator Thelma Chalifoux, Lib., September 25, 2001, case 018)

She goes on, discussing the experiences of youth once they become part of the justice system and how this fits into a cycle of criminal justice system involvement, particularly inescapable for Aboriginal families.

When the kids get into the court system, they are immediately put into jail, into the adult cells. I know because, on a few occasions, I have gone down to bail them out at two or three o'clock in the morning. These kids are terrified when they go to court. At times, there is a Salvation Army worker in court; at other times, a native counselor is there. Most of the time, they are just left. Sometimes Mom and Dad come. Usually they do not bother. In my experience, if the parents are present the judge is very lenient and looks on things more easily. Most of the time, the mother is working or cannot get a babysitter, and the whole cycle begins anew. That is what disturbs me most. The last time I was at the Edmonton jail, I saw our young women charged with assault or assault with a weapon, at the ages of 12, 13 and 14. This is what is happening in our inner-city communities. Relatives come in from the isolated settlements and the cycle begins again with them. No one seems to care. (Senator Thelma Chalifoux, Lib., September 25, 2001, Case 18)

Anne McLellan, then Justice Minister, offered up a broader conception of what the typical young offender looks like in her dialogue during the Standing Senate Committee on Legal and Constitutional Affairs in 2001:

The one thing I will say is that too many of them are Aboriginals. That is the one thing I will say here today categorically. Also, too many come from families where there is addiction or abuse. Too many of them were born with either FAS or FAE...Some young offenders come from middle-class families and commit what would seem to us absolutely senseless, brutal crimes. (Anne McLellan, Lib., September 27, 2001, case 019)

Unsurprisingly, these excerpts knit together to illustrate a contested narrative of young offenders, the targets of youth justice policy; these stories tell us that there should be some attention paid to addressing the complex circumstances of young offenders within the community, but also some attention paid to emphasizing responsibility and accountability of youth who commit the most egregious offences.

Harold Albrecht, Conservative Member of Parliament, discussed the “overwhelming majority of youth in Canada” who are “excelling in their studies...participating in sports,...serving sacrificially, volunteering time and money to help disadvantaged kids..., shoveling sidewalks...” (November 21, 2007, case 081) he goes on:

Unfortunately, a very tiny minority continues to leave a black mark that is a terrible blight on our society. My involvement and interest in bringing this much needed change to the Youth Criminal Justice Act is rooted in a desire to protect youth. This very small minority of youth who currently encounter conflict and eventually end up being charged with criminal offences need earlier intervention. If the propensity toward criminal activity is intercepted at an earlier time with meaningful direction to custody and treatment options, I believe that many of Canada's youth would be spared from spiralling into deeper criminal activity. (Harold Albrecht, CPC, November 21, 2007, case 081)

Fast-forward several years, and Aboriginal status is an even more pressing concern in depicting the typical young offender. As Jonathan Rudin, Program Director, Aboriginal Legal Services of Toronto submitted to the Standing Committee on Justice and Human Rights with respect to Bill C-4, though the incarceration of youth decreased under the YCJA (2002), Aboriginal youth—and in particular Aboriginal female youth—occupy a much greater proportion of the youth custody population as compared to previously. He cited a Statistics Canada *Juristat* report that affirmed the following: Of the female youth who are sentenced to custody in Canada, 44% are Aboriginal. He suggests that this feature, that has only become more intense under the YCJA (2002), will continue even more dramatically in the advent of Bill C-4, specifically with the introduction of deterrence and taking into account a young person's extrajudicial measures (rather than solely convictions) at the sentencing stage. These both, he argued, will have a disproportionately dire effect on Aboriginal youth (March 15, 2010, case 103).

Conversely, other speakers depict young offenders very differently. In his testimony before the House of Commons Standing Committee on Justice and Human Rights, Joseph Wamback illustrates young offenders as violent, proud, and protected from consequences in the following excerpt:

There are several instances in my own community where a young boy has been beaten almost to death, and the individual who committed a particular act was arrested, brought before a JP, and was brought back into the same school wearing a bigger badge

of courage than he had the day before he beat that young man. (Joseph Wamback, Chair, Canadian Crime Victim Foundation, June 15, 2010, case 103)

I premised my arguments and my position here before I started by saying that I'm talking about killers, psychopaths, rapists, pedophiles, and the worst. (Joseph Wamback, June 15, 2010, case 103)

In the latter part of the dataset, speakers rarely addressed young offenders. A noteworthy juxtaposition exists in the transcripts with respect to the discussion on the parts of the omnibus bill concerning mandatory minimum sentences for sex offences against children. In discussions revolving around those amendments, child victims are depicted as innocent, in need of protection and referred to as “ours,” a marked contrast to those children who also find themselves to be victims and who are subject to the YCJA amendments. For example, in the House of Commons Committee on Justice, Conservative Party Member of Parliament Kerry-Lynne Findlay stated: “I believe that all honourable members here wish to do everything possible to protect our children from harm. As a parent, it's certainly a great fear of mine any time that I hear that a child has been hurt or could be” (October 6, 2011, case 118). Similarly, Senator Marjory LeBreton put forth the following:

Canadians want to feel safe in their own communities. We must see to it that they are. We, as Canadians, want to be able to raise our children without worrying about criminals roaming our neighbourhoods and streets. We want to and must put an end to drug dealers trafficking dangerous and harmful drugs near our schools and playgrounds. We insist that we not be placed in a situation where we are confronted with sexual predators prowling around, many out on early release. (Marjory LeBreton, CPC, March 1, 2012, case 156)

In a rare comparison, Senator Grant Mitchell, during the third reading of Bill C-10 in the Senate, made the following comment:

Therefore, here we have a government that says it wants to protect victims, but once they are victims — and they act in a way that would follow from that, often — there is no compassion, no understanding, and no discretion for an ability to deal with them in ways that people with judgment and experience — namely judges — could apply to meet and accommodate the specific circumstances of that young person, once a victim and now victimized the second time. (Senator Grant Mitchell, Lib., Mar. 1, 2012, case 156)

Because, during the early part of the archives, such a large group of young offenders were framed as having committed minor crimes, a community-based approach seemed particularly reasonable. As the data have illustrated, however, depictions of the young offender during the later part of the archives became far more simplistic, with an almost exclusive depiction of young offenders as particularly serious and violent, and the expansion of this group to include the newly introduced group of the “prolific” young offender. The policies introduced with the adoption of Bill C-10, for example, crafted the problem to be resolved as one having to do with an overuse of community-based responses to prolific young offenders and dually crafted formal solutions as the only alternative with this special group. This technique also functioned to draw attention away from the under-resourced community system of measures and used the deficits of the community system to justify formal solutions. Furthermore, most discussions did not describe or discuss the offenders who would be subject to the new policies—accepting these as a given category—but instead focused primarily on the victims to be served by a more denunciatory and deterrent-based youth justice system.

Exacerbated by the politicization of youth justice, policy-making seems to be heartily based on emotion at regular intervals and increasingly so during the most recent revisions. A competitive governance structure tends to encourage polarization of platform issues, particularly in a time when youth justice is always a platform issue. Jones (2010) put forth the assertion that

once a government is in power with a large majority in parliament, the electorate can do little to resist a determined executive. This feeds into a particular political culture, in which politics is a zero/sum game. The aim of the opposition is to criticize and undermine the government of the day...Adversarial politics provide incentives for politicians to inspire or exploit emotive populist discussions of policy, perhaps most vividly illustrated in the field of crime politics. (Jones, 2010, p. 357)

For the most part, this chapter has focused on the content and functions of narratives invoked in the policy setting. Within the political realm, complexities are not very useful. People are drawn to straightforward cause/solution/responses and simple ways of framing ideas. This gives rise to the “tough on crime” narrative and later the “smart on crime” narrative (Tonry, 1996). In the next section, I focus on how simple stories concerning evidence and expertise are employed.

***“Just...answer with a yes or no”***

The use of scientific evidence in order to justify policy responses is used widely throughout the archives, in particular to justify the call for more punitive sanctions for young offenders. As one example, in his discussion around the rationale for more stringent youth justice measures, Justice Minister Rob Nicholson relied on statistical evidence (purportedly showing an increase in violent crime among youth) to support Bill C-4 and the Nunn Commission Report to support Bill C-25. As the impetus for Bill C-4, then-Justice Minister Nicholson stated that, “violent crime among youth rose 12% between 1997 and 2006 and since 1991 it has climbed 30%” (Nicholson, CPC, March 19, 2010, case 092). While it is clear that he based his claim on statistics from a 2006 *Juristat* publication (see Taylor-Butts and Bressan, 2006), Nicholson failed to acknowledge that the bulk of these offences are assault (80%); in fact, common assault makes up 60% of all youth involved in violent offences. These may have been handled differently previously and certainly do not match the story of violent offenders he told. He also stated that the homicide rate has “one of the largest increases.” However, because this number is so small, percentage increases are poor indicators of change. Even the study that Nicholson appears to be citing stresses this caution. Additionally, the small number of youth murderers hardly justifies the over-arching policy change contained in Bill C-4 that would not modify the treatment of youth charged with murder.

Although legislators discussing the YCJA (2002) tended to accept a wide variety of evidence and called numerous subject-matter experts to testify, there remain examples where evidence seemed to be used merely to justify an already decided upon policy aim. Legislators rationalizing the YCJA also attempted to show how their suggested course of action was grounded in evidence—often by oversimplifying the evidence and being sufficiently vague so as to prevent opponents from disagreeing and with little attention to discussing the source or quality of the research. For example, in a 2001 discussion before the Senate Committee, Senator Anne Cools suggested:

We also hear very little about the families that are producing these troubled children. Some beautiful work is currently being done in the United States that is revealing that the single most reliable indicator of things like delinquency is family structure. It is a greater predictor than race, social stratification or any of the other factors. Depending on the language one wants to use, mother-led or father-absent families are of particular note. (Anne Cools, Lib., October 16, 2001, case 020)

Goldson (2001) uses the term “selective amnesia” to describe the problem when policy-makers forget or discount scientific evidence and research knowledge and instead attend to political messaging designed for wide appeal to the public. Commenting on the American setting, Tonry (2013a) argued that policy-making often occurs in an “evidence-free zone” (p. 1). Despite the emphasis on rationality, evidence-based knowledge, data, and research in the policy setting, “the political imperative has served to obstruct the application of research to policy formation and practice development” (p. 76). Instead of genuine attention to research evidence, speakers tended to utilize technical details to elicit emotional responses. The following examples shows how, during discussions on the YCJA (2002), Vic Toews, provided an unsubstantiated explanation to data illustrating a decrease in youth crime. His explanation rejected a reduction and was consistent with the belief that youth crime in the years preceding the YCJA was worsening:

Although the government makes much of the fact that the violent youth crime rate appears to have dropped to some small degree over the last two years, the Canadian public has not been fooled. The violent youth crime rate is still over 300% greater than it was three decades ago. In addition, it is my experience that citizens, embittered and disillusioned with the failure of the Young Offenders Act to address their serious concerns in respect to crime, have in many cases simply stopped reporting crime. Is it any surprise then that the figures may have shown a small drop in the crime rate over the last two years? (Vic Toews, CA, February 14, 2001, case 005)

In a similar vein, Peter MacKay stated:

Statistics are often referred to in the debate about youth crime being up or youth crime being down. The most important verification of what is happening on the street is to talk to the police, the court workers and those on the front-lines who are administering the law. They will tell us that violent crime is up. Violent crime, particularly that committed by young women, is on the rise. The use of weapons in violent crimes is increasing. That is a disturbing trend that is not directly addressed by the legislation. The concept of somehow defining violent versus non-violent versus serious violent offences blurs the entire issue, so much so that in one of the sections so-called simple assault is not deemed a violent offence. That is perverse. Statistics Canada also highlights another weakness in the system. Based on August 2000 statistics, almost half of convicted youth in 1998-99 were merely placed on probation. Three-quarters of custodial sentences were for three months or less and 90% were for six months or less. Two percent of convicted offenders got more than a year. Only .1% of youth crimes made it to adult court through the transfer provisions. (Peter MacKay, PC, February 14, 2001, Case 005)

Towards the later part of the archives, in the debates surrounding Bill C-4, another strategy in dealing with evidence was apparent: efforts to simplify not only the evidence itself, but to require subject matter experts to provide exceedingly simplistic responses to complex questions. Take for example, the following dialogue between CPC MP Stephen Woodworth and Kim Pate of the Canadian Association of Elizabeth Fry Societies:

Stephen Woodworth (CPC MP): I have a question that I'd like to pose to each of our four social workers, for want of a better phrase, if I may, but because of my time limits I'm going to ask you the unfair duty of just trying to answer with a yes or a no. I'm going to read to you a statement that I find in the report on the National Invitational Symposium on Youth Justice Renewal, in which were participants from the Coalition on Community Safety, Health and Well-being, the Child Welfare League of Canada, and the Canadian Association of Chiefs of Police. I'll ask you whether you agree with it. The statement is as follows "The least intrusive measures may not be in the best interests of the young person, whereas very intrusive interventions may be the ones that will serve the young person best." It says "may be the ones." Ms. Pate, do you agree or disagree?

Kim Pate (Canadian Association of Elizabeth Fry Societies): Out of context, you can't agree or disagree with that, because certainly I've worked with many young people where we've had very structured, very supportive, very intrusive interventions that have not been involved in the judicial system at all and in fact have been very effective. So it depends on the context.

S. Woodworth: You are not able to answer my question on whether you agree that the least intrusive measures may not be in the best interests of the young person, whereas very intrusive interventions may be the ones that will serve the young person best.

K. Pate: No, I have answered your question. I just haven't been able to answer with a yes or no because you can't answer.... That's exactly the point of the Youth Criminal Justice Act, to have that discussion.

S. Woodworth: I'll ask Ms. Osmok, then. Do you agree or disagree? (June 15, 2010, case 103)

In his preface to the exchange, MP Woodworth seemingly recognizes the absurdity of requiring a simple answer to a complex question, particularly when there is no associated context, but proceeds anyway, attempting to justify his actions by referencing the short amount of time allocated to him in the House of Commons Committee. In a different vein, the same point is made once again by Peter Dudding of the Child Welfare League of Canada in his testimony to

the same House of Commons Committee, once again regarding Bill C-4: Very complex and contentious matters are the subject of youth justice policy-making that cannot easily be reduced to concrete, simple, widely-applicable solutions. He said:

I would have a problem with a number of Justice Nunn's suggestions. Of course, his sample size was one, and I think it's always a mistake when you try to fix the system based on one experience, a very experienced jurist no doubt, but limited in terms of the scope of his inquiry. (Peter Dudding, Executive Director, Child Welfare League of Canada, June 1, 2010, case 099)

For Dudding, the contents of the Nunn Commission Report should be understood cautiously and understood as stemming from a single, particularly egregious case—that perhaps the experience in the case of Archie Billard is not widely applicable.

The comments respecting the politicization of youth justice as outlined in Chapter 4 have much to impart in explaining the troubling connection between expertise and policy-making. Specifically, Chapter 4 presented literature that there is an increasing disenchantment with, and decreasing confidence in, expert opinion. Rather than use evidence obtained by rigorous science, data revealed that experiential expertise makes it into the political narrative more regularly. According to some commentators on youth justice reform in Canada, it was not until the late 1980s and early 1990s that youth justice became a highly politicized issue dominated by partisan political interests and ideology (Bala et al., 2010; Corrado & Markwart, 1992). This characteristic means that experiential expertise is invoked with the aim of giving parliamentarians and senators a robust picture of what is going on, and to enhance the process of democracy where members of the public are encouraged to share their views during the policy-making process. Experiential expertise can be defined as expertise gained through lived experience. In the data, many MPs shared their own personal experiences in the form of anecdotes designed to support their prescriptive views of youth justice, and witnesses were called to share their direct experiences with the youth justice system (typically as victims).

Anecdotal evidence pervaded the data and typically told the story of expressive punishment leading to positive results. There seems to be a trend within the policy realm to discount formal evidence in favour of anecdotes and experiential evidence—in some instances. These stories help to construct a story of more—rather than less—violence, and tend to support

a punitive policy response fairly consistent from members of the Reform, Canadian Alliance and later Conservative caucuses In 2002, Peter MacKay stated:

The number of youth charged with violent offences last year increased by 7%. The number of youth charged with sexual assault increased by 18%. The violent crime rate among female youth has jumped a staggering 81% in the last decade. Some 72% of Canadians believe our youth justice system, including this bill (C-7), is so weak it needs a complete overhaul (Peter MacKay, PC, February 4, 2002, case 041)

As a counter-example, Bill Blaikie offers the following anecdote to emphasize the importance of police discretion, what he calls “the right spirit in dealing with young people.”

I am reminded, as I often am with justice matters, of a person in my family, my grandfather, Alex Taylor, who was the chief of police in Transcona for many years, and before that a constable. Subsequent to being the chief of police, he became a justice of the peace. Although he has been gone for 40 years, I still run into people on the doorstep who say “your grandfather gave me a boot in the rear end once when I needed it”, or “your grandfather took me home once when he could have taken me to jail” or “your grandfather put me in jail for the night when I needed a lesson”. This was long before there was a charter.

All these things demonstrate to me a certain amount of discretion, mercy and exercise of judgment when it comes to young people that sometimes can only be exercised by people who know the community, or who know the family or who know that young person. (Bill Blaikie, NDP, February 14, 2001, case 005)

Hogeveen (2006) has proposed that experiential stories that come from the families of victims of serious crimes perpetrated by youth knit together to illustrate youth crime as typically serious, rather than typically minor. The stories tend to generate the belief that unless we respond with harsher and more punitive policy, Canadians will be at a very real risk of violent victimization by exceedingly violent young people. Experiential expertise becomes even more important in the development of youth justice policy as we move towards the end of the decade: Sébastien’s Law, named for Sébastien Lacasse seemed to indicate that violence had heightened through the reign of the YCJA (2002) and was even more threatening to Canadians. For this reason, Lacasse became somewhat of a “poster boy” in discussions around strengthening youth justice policy throughout the late 2000s.

## Conclusion

With the above analysis I have attempted to illustrate several key findings. First, the narratives within the political data are numerous, complex, and at times competing. As such, it is difficult to extract uniform, cohesive narratives that serve to cogently characterize the youth justice landscape. In fact, the overarching narratives that I have identified as best describing the policy-making landscape that sets the stage for community-based responses to youth crime, given the dataset at hand, are inconsistent with one another in the ways I have described above. The findings help to present the case that what has occurred and continues to occur within youth justice policy and community-based responses is the product of complex tensions between several very different narratives: communitarianism, managerialism and punishment/toughness. These tensions are set against a backdrop that privileges simple answers to complex social problems (i.e., what to do about youth crime?), and in which evidence is contested. This analysis provides a landscape of the archival data and sets up the following three analysis chapters where the narratives from both data sources (the archives and the interviews) are woven together.

As discussed in Chapter 5, evidence in policy-making is both complex, as many different types of evidence exist, and contentious, as there exists great disagreement on what should (or should not) count as evidence, and how evidence should be represented. According to Fischer and Gottweis (2012), policy analysts must examine “argumentation, processes of dialogic exchange, and interpretive analysis...to discover how competing policy actors construct contending narratives in order to make sense of and deal with such uncertain, messy challenges” (p. 14). Consequently, policy stories involving evidence are viewed as persuasive techniques with rhetorical functions to convince others of a particular world view. Wagenaar (2011) suggests that policy narratives are particularly important when policy-makers are confronted with diverging demands that cannot be reconciled. Policy narratives help policy-makers decide on a course of action and “give the actor a certain measure of provisional certainty that allows him to act at all” (p. 215). As a result, policy narratives also tend to be “coated with Teflon” (p. 215), meaning that they tend to have a certain level of resistance to change even when faced with contrary evidence. According to Roe (1994),

Stories commonly used in describing and analyzing policy issues are a force in themselves, and must be considered explicitly in assessing policy options.

Further, these stories (called *policy narratives*) often resist change or modification even in the presence of contradicting empirical data, because they continue to underwrite and stabilize the assumptions for decision making in the face of high uncertainty, complexity, and polarization. (p. 2; italics in original)

The data revealed several types of evidence introduced by individuals in the policy setting that were used to expand upon and justify policy stories. The types of evidence can be meaningfully grouped into the following categories: government data (e.g., crime statistics collected by Statistics Canada and produced by the Canadian Centre for Justice Statistics); academic/legal research and academic/legal opinion; community consultations (e.g., roundtables) carried out by the government and reports by independent think-tanks; subject matter expert opinion (e.g., non-profit organizations including the John Howard Association of Canada); independent judicial inquiries (e.g., the Nunn Commission Report); and personal experience. This analysis has underscored the importance in recognizing the many ways there is a “narrative” quality to all types of evidence, whether rigorously scientific or anecdotal in nature, largely due to the human element interpreting it. This quality is magnified when evidence is introduced in the policy setting because it is meant to be persuasive, to support stories, and to frame policy solutions as rational.

Given that areas of social policy are fraught with uncertainty, conflict and unpredictability, we must also recognize that policy-makers must act. Not making a policy is typically not an option (Wagenaar, 2011). For this reason, evidence of all sorts is useful in providing a direction of action and for rationalizing the direction chosen. As the following section shows, different types of evidence were used at different times and with varying effects and purposes in the discussion of community-based responses to youth crime throughout the archives. I argue that over time the problem definition surrounding youth crime has changed and, accordingly, the solution narrative has done the same. Furthermore, there appears to be a deep discomfort with the use of formal academic and scientific knowledge as of late, where exceedingly simple responses are favored and objective evidence is refuted altogether. These strategies seem to have helped usher in a more punitive response to youth crime, including key amendments affecting community-based responses to youth crime that tend to make such measures more punitive.

During the early phase of the data while the YCJA (2002) was being debated, the problem crafted by legislators was how best to achieve effective and efficient youth crime prevention over the long term in the context (as characterized by the government) of declining public confidence and an overuse of youth custody, despite the majority of young offenders committing minor crimes. As such, a key aspect of the YCJA was the entrenchment of community-based alternatives to divert youth from the formal system. During the latter part of the data, the problem statement had been reframed as how best to address “public safety for all Canadians” and the problem of a lack of public confidence in the context of a perceived increase in violent youth crime and prolific offenders. While the problem statement accepted during debate on the YCJA foregrounded long-term crime prevention, efficiency, and effectiveness, the second problem statement emphasized the public’s perception and response to youth crime. These varying problem statements and the way in which evidence and knowledge is utilized to frame them and direct a policy solution is critical in the examination of community-based responses to youth crime.

Furthermore, the characters in the narratives also varied between the earlier data and the later: A diverse group of young people who had experienced challenges along with their families, communities and victims were the key characters in the earlier narrative. Later on, the key characters were a more concentrated, and increasingly more serious and violent group of repeat young offenders and what was depicted as a cohesive group of victims—a victimhood depicted by legislators as one that all citizens could very likely become a part of. The story, in the latter part of the data, has become much more simplified. Comparatively, the evidence used to support youth justice policies in the earlier data was more complicated and diverse, while the later data moved away from scholarly evidence to an almost exclusive incorporation of anecdotal evidence and attention to public opinion.

Nicholson suggested that the impetus for the bill came from the Nunn Commission report and the requests of Nova Scotia and Manitoba. He argues that Canadians are

concerned about youth crime and believe that changes to sentences can be very helpful. They want to stem the reported recent increase in violent youth crime and restore respect for law...Bill C-25 should be seen in the context of a wide range of government initiatives, all of them designed to make our communities safer, to make our streets safer, to stand up for the **innocent victims of crime...we are on the right track to help**

**build a better and safer Canada.** (Rob Nicholson, CPC, November 21, 2007, case o81, emphasis added)

Despite Nicholson's reference to an increase in violent youth crime, Bala, Carrington and Roberts (2010) make the point that the tougher responses to youth crime introduced as of late by the Conservatives coincide with—and contradict—their own findings that one of the YCJA (2002)'s overall aims, that of reducing the use of custody through enhanced diversion measures without leading to an increase in crime, has been largely successful. Bala and his colleagues speculate that the tougher measures were introduced not to solve a real problem of increased crime but instead because the issues played “well to their base” (p. 336)—an indication that the approach was grounded in political self-interest rather than beliefs or evidence around the strategies that would be effective. The premises upon which tough on crime policies are founded are especially problematic: First, it is unclear whether the majority of the public actually desires more punitive measures. Second, whether youth crime has increased is contested and highly dependent on specific contexts. As discussed in Chapter 1, data from Statistics Canada on police-reported youth crime show decreases in youth crime over the long term.<sup>60</sup> On the other hand, crime severity indices show an decrease in the severity of youth crime and data from victimization surveys emphasize the large amount of crime that goes un-reported. The only way to assess youth crime is to examine multiple measures of delinquent behaviour.

This analysis of archival data has demonstrated that community-based responses to youth crime are invoked at the nexus of three complementary/contradictory narratives: communitarianism, managerialism and punishment. Notably, however, no single narrative has completely dominated any period of time; instead, these narratives ebbed and flowed over the study period (and it is expected that they will continue to do so). In this instance, the communitarian narrative through which community-based responses to youth crime were invoked helped to substantiate the more punitive lens through which the availability of these types of responses were narrowed during Bill C-7. This shift, however, did not occur in a straightforward way and has been foreshadowed throughout the archives on the whole. The

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<sup>60</sup> It should be noted that youth crime rate is an especially problematic figure as it is based on the frequency for which youth are accused of crime. It is necessary for a specific offender to be identified so that the determination can be made that the crime was indeed committed by a youth. This is quite different from overall police-reported crime statistics, which are based on crimes reported to the police and substantiated, regardless of whether an individual has been accused. These counts include crimes regardless of whether an offender was identified. Despite youth crime measures being impacted by these measuring challenges, past figures were similarly impacted and thus are comparable.

identification of these narratives is not novel to this study as variations on these themes have been discussed by other authors in the Canadian and international setting. What is novel is the approach taken in this study that emphasizes the individual agency of policy-makers and implications the political context has on the mediation of these narratives, and how some of the structural conditions outlined in Chapter 5 translate into policy choices and ideas advocated for and introduced by a host of different speakers. This type of analysis has underscored the tensions, contradictions, disagreements and struggles over policy development and helps to shed some light on how decisions around social control and regulation are made.

With the multi-method approach to this dissertation, I have examined policy with the understanding that while policy-makers “set out” policy, the implementers of policy are indeed part of the policy-making process. The following three chapters examine how that is so, given the policy contexts examined in this chapter. It will be argued that though social and structural forces very much shape policy, individual agency should not be understated in how policy works. Specifically, a key set of intermediaries between policies as they are envisioned and codified and policies as they are implemented, is a set of human processes that, as this research will show, are oriented towards an ethos of care.

A key focus of this dissertation has been the examination of beliefs, meanings, intentions, assumptions, and values that underlie policy aims and actions with respect to community-based responses to youth crime, with specific attention given to Federal youth justice policy. A key methodological assumption has been that through a narrative approach, these elements are revealed. As discussed in Chapter 6, the debates and hearings on youth-justice-related bills are particularly rich sites of analytic utility due to their depiction of the underlying messages and key constructions employed over the course of time. I have described the 10 years of archival data and highlighted key sites of contention, key shifts in content and arguments, and also key contextual shifts. This has been a productive activity to show the shifts in content and also to begin the discussion of the ebb and flow of particular narratives over time.

## CHAPTER 9: Youth Justice Practice Narratives: Operational Challenges

*...vision without implementation is hallucination. ~Anne Golden, 2008*

### Chapter Overview

In what is the first of three chapters that integrate the findings from Phases 1 and 2 of the research—archival data and practitioner interviews—this chapter begins with an introduction of the landscape of practice by illustrating the contexts in which the professionals who took part in the interview process work, and how these contexts fit into the British Columbian youth justice policy delivery landscape around community-based responses to youth crime. In the second part of this chapter, the narratives are examined by weaving together both the archival and interview data sources with an emphasis on interview data. The following themes are discussed: (a) a desperate lack of resources, specifically relating to the deficiency of transitional services and after-care for youth along with challenges faced in the delivery of community-based youth justice responses and the poor availability of existing services; (b) resistance around practice change; (c) the complexity of dealing with youth justice matters when other social issues are pressing; (d) a phenomenon not previously mentioned in the literature, of net-narrowing that results from an improper balance in deciding who may access youth justice services; and (e) the impacts of outsourcing youth justice service delivery.

As I expected, professionals described inconsistencies between what they believed policy to mean and how this was translated into practice. The archives foreshadowed practical challenges as Parliamentarians concerned themselves with resource allocation and how to “carve out” the problem of youth justice from a complex constellation of social concerns (including issues that young offenders faced such as poverty, mental health and addiction). Furthermore, nearly every participant described frustration and in some cases deep despair over the process of youth justice service delivery in British Columbia. As such, the narratives that emerged from the interviews predominantly surrounded challenges to the operational youth justice setting. On the other hand, this chapter will also show that amid discussions of inconsistencies, challenges, contradictions and deficiencies, professionals emphasized their

personal and/or organizational adaptations—strategies that they performed in order to improve the quality of community-based responses to youth crime. Perhaps the broadest finding within the interviews with professionals is that within the framework of the YCJA (2002), there is a tendency to deliver community-based alternatives from a charitable approach. The narrative of charity will be discussed at the end of this chapter.

## **The Landscape of Practice**

As stated in Chapter 6, I selected interview participants to provide as much variation in practice areas and experiences as possible, despite the chain-referral sampling method. The result was a group of 14 professionals with experience in the (sometimes overlapping) areas of policing, social work, restorative justice, probation, youth work, and non-profit community work within the decade-long study period. Each participant played a role in the delivery of community-based responses to youth crime. Most, but not all, of the participants continue to practice at the time of writing this dissertation.<sup>61</sup> Within their respective areas, participants' length of service varied from less than two years to over 30 years, meaning that several participants worked in the youth justice system under each of the JDA (1908), the YOA (1985) and the YCJA (2002). Furthermore, some participants worked in different provinces in Canada, and were equipped with helpful reference points from which to compare their local experience.

Given the broad professional experiences of the participants, it is valuable to discuss their specific areas of practice to help contextualize the data. The following information was derived from the interviews. Beyond municipal and provincial government structures (e.g., probation officers as provincial government employees) and law enforcement (e.g., police officers), memorandums of understanding (MOUs) structure the way community organizations support youth justice services in British Columbia (these give rise to partnering strategies as discussed in Chapter 5). As stated earlier, each province holds sole responsibility for the delivery of youth justice services. In order to deliver a diverse set of services in communities across the province, the police, individual municipalities and the provincial government (Ministry of Children and Family Development, Youth Services Branch and the Ministry of Justice, Crime Prevention and Victim Services Branch) work with other agencies. The result is that each

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<sup>61</sup> Two participants no longer work in the area of youth justice, having left their professions within the two to five years immediately preceding the interviews.

community may have very different combinations of youth justice services, and, accordingly, very different arrangements for referrals of young offenders to community-based programs. Among these variations, most communities have one or more of the following arrangements:

1. Police and municipalities enter into MOUs with community organizations (e.g., for the provision of diversion or restorative justice) to take police referrals. Such arrangements make room for pre-charge diversion.
2. The provincial government enters into MOUs with community organizations to deliver diversion or community-based crime prevention programs to youth facing charges or on probation (e.g., intensive support and supervision services; restorative justice conferencing). This results in post charge diversion.
3. Police and municipalities hire restorative justice professionals, or train existing municipal and/or civilian employees as restorative justice personnel to deliver extra judicial measures programs and hold conferences under the purview of police or the city/municipality.
4. Delivery of/referrals to community-based responses to youth crime (e.g., restorative justice conferencing) by public sector (e.g., police; Crown; probation; judges).

Except in point 3 above, community organizations function as independent non-profit entities and typically offer a wide variety of services to marginalized children and youth. These organizations have their own mandates, boards of directors and core funding that is separate from, and not directed by, the bureaucratic entity with which they have an MOU. This structure allows police, the provincial government, and municipalities in all parts of the province to partner with local organizations to divert and support youth and to offer a host of community-based responses. Theoretically, a key advantage of this arrangement is that the members of a local organization know the community and its citizens best, and can deliver community-specific, tailored responses (Bala & Roberts, 2006). An added benefit, as discussed in Chapter 5, is that these services can be much less costly than police, government or city-funded initiatives (Maclure et al., 2003). The MOU will generally define the types of youth to be referred, some parameters around how they should be dealt with and some indication of targets (e.g., the number of youth who should go through the program annually). The MOU will include a budget

for annual or multi-year service; though the MOUs are not usually entered into for an extended period of time. Point 3 in the list above is slightly different. In that model of service, the police and/or municipality creates its own department to deal with referrals to community-based programs internally. In several instances, a diversion or restorative justice program is run “in house” by a combination of civilian police staff and city employees.

In British Columbia, the Ministry of Children and Family Development maintains contracts with community-based non-profit organizations to deliver specific services. Despite the involvement of a host of public sector employees in the delivery of youth justice (e.g., probation officers and police), the non-profit sector is an integral part of the functioning of youth justice. The expertise of youth justice professionals offers important insights into the operational youth justice environment (Maclure et al., 2003). The following sections examine the themes that emerged from the interviews.

## **Lack of Resources**

Interestingly, Davis-Barron (2009) has drawn a link between the YCJA’s (2002) pursuit to keep young people out of formal institutions when possible and the JDA’s (1908) mission to do the same, as an interesting parallel, albeit an entire century apart. Under the JDA, the task was to be accomplished through increased use of probation, while under the YCJA, there is a much wider array of community-based responses made available. While the JDA was expected to yield cost reductions given an increase in supervising and disciplining young people within the community, practical application yielded case overloads and cost-shortages such that the vision of humane, effective treatment was difficult to realize (Davis-Barron, 2009). As this section shows, the lack of resources may be another parallel between the JDA and the YCJA. As discussed in Chapter 7, the archival data examined during Phase 1 of this dissertation research revealed that a lack of resources being delivered to provinces in order to implement the YCJA was an early and persistent concern among policy-makers and experts as documented in *Hansard*. As early as 2001, trepidation around resource allocation was voiced in the House of Commons and the Senate. For example, Stephen Owen raised concern that the emphasis placed on diversion would not be accompanied with necessary community resources:

My concern is that when attorneys general, prosecutors, and correctional officers are under severe fiscal restraint—and I've been such an officer under such a constraint—there's a real temptation and pressure from treasury boards to take the quick buck and divert people out of a system that is expensive but then not to provide the requisite funding in the community that would support the restorative justice programs (Stephen Owen, Lib., April 25, 2001, case 008)

Owen went on to liken the process of diversion to 1970s-1980s deinstitutionalization of mentally ill patients where, as discussed in Chapter 2, people were diverted into individual communities that were not equipped with the infrastructure to provide necessary services. In this model, by shifting responsibility for youth justice service delivery to the community, the government takes a step back and becomes a manager, as opposed to a deliverer, of services. Similarly, Senator Andreychuk described a key problem associated with a focus on community programs: They are severely under-resourced and often unable to offer an appropriate substitution from incarceration. She said:

The concern that I would want addressed is whether we have costed out what these changes [to increased community-based responses to youth crime] will mean practically. During the time that I was a judge and thereafter, I tracked this very closely with provincial authorities, non-governmental authorities, caseworkers and judges. They do not resort to incarceration because they want to or even because they think the legislation drove them there. They resort to incarceration because it was the only alternative left after piously hoping something in the community would work. Consequently, the measures here (within the proposed Bill C-7) are credible, but they are two-fold. First, they are highly complex, if they will work. There are no simple answers for young children. Second, many of them are within the purview of provinces. (Senator Raynell Andreychuk, Lib., September 27, 2001, case 019)

At the very nexus of the apprehension around community-based responses, as expressed by people like Senator Andreychuk, was the fact that the nature of the strategies meant that programs would be rolled out by each province and community individually, and could potentially be excessively fragmented in their operation. Despite the federal government's approach to cost sharing, it was expected that the already-strained provinces would be burdened with the bulk of the expenditure.

Given these early warnings, the lack of resources in the delivery of the YCJA (2002) as uncovered during the interviews was not an unexpected finding. However, the emphasis that

participants placed on budgetary shortfalls, and the degree to which they felt their practice was impacted, was unforeseen. In fact, although participants were not specifically asked to comment on resource allocation in the operation of the youth justice system, this was one of the most prevalent themes throughout the interviews—one discussed by every participant. The following subsections describe the key areas that participants identified as being impacted by a lack of resources, and also the implications of these constraints.<sup>62</sup>

While the challenges associated with a lack of resources appeared most pressing to those who worked in the non-profit community sector, these participants were not the only ones affected. Provincial government staff also emphasized restricted budgets as important constraints to the services that they would ideally deliver. Specifically, Omar, a youth probation officer with a restorative conferencing caseload observed: “If there are any constraints, it is always budgetary. For example, mileage is capped, which can be difficult when we need to meet clients around the city.” Natasha, a restorative justice conferencing specialist employed by the Ministry of Children and Family Development agreed, stating:

At one time, as a social worker, I was unable to access kids outside of my area because we had restrictions on mileage. I’ve never had a kid take the bus to [site name] to see me....but that’s how it can be. And the kids have real tangible barriers, like they don’t have bus tickets or they have a probation order that mandates school attendance, meaning that they could not possibly take transit to get to me after school ended but before I ended work. (Natasha)

Nathan stressed the impacts a lack of resources had on his work as a police officer in a school liaison capacity and for the community more broadly:

Nathan: I think there are a lot of good things in place, a lot of good ideas out there and a lot of different policies and theories, but unfortunately everything comes down to money, everything comes down to people and its tough. You could say, “oh, maybe the schools should try to do more...” but nobody has the resources right now. I don’t have the answer, I don’t know. I think if we magically double the amount of school staff and double the amount of police staff, you could make huge, huge progress, I believe, because you’re able to have an interaction and deal with the kids instead of just sloughing them off and saying, “Billy, don’t do that again, get out of here” and actually spend 10 minutes. Its no one’s fault, we just don’t have the resources to deal. Like I say,

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<sup>62</sup> Due to the variation in participant roles and experience, it may be helpful to refer to Figure 11 in Chapter 6 while reading Chapters 8 through 10 for additional contextual details of each participant.

with cut backs and stuff, I was one officer dealing with however many schools, twenty or thirty schools—I can't do anything. I go there and I you know, take Billy's pot that he brought to school and I go to the next school and tell Jen not to punch Nancy any more and... you're not doing anything, you're just putting out fires and not making any head way. So, ya..I don't know.

Lorinda: I think that says a lot. It's resources.

Nathan: Ya. Ya. That's always going to be the ballast, its never going to change. Unless we find some magical equation that's going to solve that, that's always going to be the way it is. Prioritize and that's what you want to do.

The following three subsections consider the theme of a lack of resources with attention to transitional programming and after-care for young offenders who are or have been subjects of community-based responses, the lack of availability of meaningful and appropriate programming, and the informal solutions that individual practitioners utilize in order to address these shortfalls.

### ***Transitional programming and aftercare***

In the area of community-based responses to youth offending, participants discussed a critical complication that occurs when services have been delivered in an attempt to keep young people in the community, and youth are subsequently “cut-off” for various reasons. As would be expected, youth who have aged-out of the youth justice system (i.e., on their 19th birthday) are no longer eligible for youth services. For this reason, transitional planning—to identify and begin services that help a youth transition out of the youth system and into the adult system—is intended to occur when a youth is nearing adult status, yet is still involved in the justice system. Several participants discussed this at length. Natasha, for example, highlighted the lack of attention paid to transition services for youth involved in community-based responses, and the associated negative results in the following excerpt:

Natasha: The idea is that well in advance of a youth's 19th birthday, we engage in discussions about how to plan for their transition. We discuss needs and services that are in place. In practice this is often done two days before the kid's birthday and then when kids don't get the services they require, the problem is really no longer in their [the youth justice worker's] hands because they [the clients] are now adults. And in many of these cases, the kids who are aging out while in the system are the most marginalized kids.

They have no significant people in their lives who aren't paid. They have no functioning natural support network because we have not worked to develop that with and for them. It has not been a focus.

Lorinda: What happens to these kids?

Natasha: They become involved in the adult justice system...We have this one kid who I call a real success story. And by that I am being completely sarcastic. He was not successful by any means. He aged-out and the reason I still know about him is that I now work with him as a parent. He has kids who now require social workers. He's criminally involved as an adult and the number of professionals who are involved with him at this point is...I mean, had we dedicated even part of those resources in him as a young person, I think we'd have seen a very different story. And I've spoken to the person who was his probation officer as a youth to see if they can share any strategies that they used to get through to him as a youth that I might use when working with him as a parent. But, I can't do any of the things he suggests. Because probation officers deal with things very differently than we do on the front-line.

For Natasha, the lack of transition services is a critical gap in youth justice services that has implications far beyond the individual youth client. Yasmin found the problem to be especially concerning because of the immaturity of youth clients on her intensive support and supervision program caseload who were not seen as developmentally or emotionally old enough to be treated like adults. She lamented:

I wish that the age [for transitioning from youth services to adult services] was like 20 or even 25, because they are so young at heart. And they're overwhelmed by all of these services, you know, social workers, probation officers, ISSP, and other support workers. And then when they're done, everyone is gone. How is that fair?? (Yasmin)

In the same vein, Larry made the following observation regarding the constraints placed on his delivery of intensive support and supervision work by his non-profit organization's MOU with the Ministry of Children and Family Development:

MCFD has a hard time doing some very difficult work and they do some really great work, but a lot of times age is a big one. But a precursor, because not everybody that is 19 is ready to go. I mean, I have two children myself, and at 19, they're not ready at all. I don't see them ready to be able to be cut off from fundings and other supports. But at 19, some of these youths, they're some of the most fragile, delicate youth that have had not a lot of breaks in life, and we're expecting them to be able to do this. That's just when

you throw in the kids who have mental health issues and MCFD, and in addictions and stuff. In some ways we are setting the stage for them, sort of functioning, starting all over again [referring to re-engaging in crime], but just we talked about that age and stages....So we're bound by the government MCFD...ages and rules and regulations, or follow them and they're there to help, and they do help but at times these rules do bind, restrict and hinder the work that there we're able to do...funding, is a big one for us as well. That's what that the project I mentioned earlier does—a three year pilot project, working with kids that are 19, 20, 21, 22, we lost that program, so now that program, when we have 19 year olds...they're finished, and we haven't been able to help them transition. (Larry)

In addition to the absence of age-related transitions, professionals felt that after-care—a set of services offered to youth who had successfully completed a community-based program on a court order—was likewise problematic.

Like youth who age-out of the youth system, youth who are successful in completing court orders are also no longer eligible for youth justice services. Although given the literature regarding the negative implications of formal social control in some cases (e.g., Alvi, 2008) one might expect that less formal monitoring upon a youth's successful completion of his/her sanction would be a benefit and would align with the philosophy of diversion, the interview data showed that these practices can materialize as important deficits when implemented. For example, Amanda, an intensive support and supervision worker, recounted an instance where a client was successful in abiding by his probation conditions and as such, completed his order. Program completion meant the youth was no longer funded to have an intensive support and supervision worker. Amanda told the story of this youth having "lost" funding for pro-social community activities due to his good behaviour. The paradox of this situation did not escape her youth client who she said observed, "Isn't it weird that I got rewarded for being bad and now that I've been good, all these things are taken away?" Yasmin offered the following example of a gap in services which brings to light the urgency felt by the youth worker:

I had a young man who finished probation at 17-and-a-half years old. And I knew there weren't a lot of programs available. And so I tried to connect him with a program downtown that does outreach. For the most part, once a probation order is done, we have to wrap things up. We can do some aftercare, but that highly depends on the kid. We don't really have funding for that. So, we can try to transfer them to another community agency if there is one. We tried to transfer him, but he was too old to go into Ministry care, so they wouldn't take him and I tried to get him on income assistance, but

he wasn't eligible for income assistance because he wasn't old enough – he needed to be 18-and-a-half or 19. And so, I had nowhere. I mean, what do you do with a kid like that? So, I dropped him off at the youth centre a couple of times and I went and spoke to my boss a few times. Our organization has care homes, so he came in there for a little bit. He ended up getting a job and then moving out on his own, but he wasn't making ends meet. And I saw him a month or so ago and he didn't have a place or anything. If he were 16...I would of, well this is unfortunate, but I would have told him to go commit a crime so he could get all of these services back. Because there is no preventative services. It's only after the fact. And it's a terrible way to look at things. It just is the way it is. (Yasmin)

Interestingly, if not ironically, as discussed in Chapter 7, prevention appeared to be one of the most pressing themes of the conversations in the House of Commons and the Senate regarding the YCJA (2002), and specifically the role of community alternatives to the formal justice system. In operational settings, however, community-based services are so heavily tied to the commission of an offence, that youth who are not on formal court orders may have difficulty addressing their basic needs.

The way that services are tied to criminal activity within the youth justice system may makes sense in developing a policy, but appears to be highly problematic when delivered in practice, causing a near crisis when services are removed. This is particularly problematic when other social services do not appear to adequately fill the gap. Given the numerous avenues of care and assistance investigated by Yasmin in the above example, one can only conclude that there are improper links in place to manage complex and multifaceted problems faced by young offenders. This is exacerbated when, in Yasmin's experience, youth programs would not take her client because he was seen as an adult, yet, adult programs also denied admission because her client was seen as a youth. While the delivery of services in the community may have an important role, particularly with the most vulnerable youth, a critical problem emerges when expectations that these youth cannot possibly meet are placed on them. Similarly as evidenced by his story above, Larry seemed to feel that these unreasonable expectations begin to set up some youth for recidivism. In some cases, the commission of further criminal acts will cause a youth to be dealt with more severely by the criminal justice system, but may be able to open the door to services that they so desperately need.

Sadly, it is not solely youth workers who seemed to have developed an acute sense that the successful completion of a court order may materialize as a disadvantage for some youth.

Amanda discussed that youth themselves recognize the challenges inherent in being successful on probation and with their intensive support and supervision program orders, and remark that committing another crime would help them retain the support that they wanted:

And, some of them don't want to get off probation. I've had kids say, "well, what if I just steal something? Then I can stay on probation..." and I'm like, "no, you've done really well and we want you to be successful..." [laughs]. And that's why it's really important to continue to support them – because you don't want them to do something like that just so they can keep the relationship. The hope is to be able to connect them with other adults in their lives that they can then continue to work with. (Amanda)

An additional challenge in relation to the delivery of much needed transition programs, according to Larry, is that services do not tend to have longevity when they are funded within the community. He discussed with me a program that had been piloted a few years ago to help young offenders transition from the youth system to adulthood that had recently lost funding:

What comes to mind is I was talking like just yesterday with somebody. Got a call from one of our offices asking, "This youth is going to be discharged in two weeks, we have no services involved with him, but he does have FASD. Do you still have the [name of transition program] program?" I said, "No, we don't, but if he's 19, you can try and put him on the case load...trying to...when does he age out?" And they said, "Well, he ages out in 10 days." "What does he have for a plan?" "There's no plan right now, there's nothing. Right now he's in a home. In 10 days they'll take his suitcase to the front entrance. He's finished." ...Not all kids that commit crimes that are going to be 18 are ready to go to the adult system....It's an issue. And not all kids that are 18, 19 may be physically, mentally, cognitive or socially to be able to move up. And that's a real social policy or social issue. (Larry)

Relatedly, in addition to providing services at transitional phases in a youth's life, another prominent concern expressed by participants was program availability, or rather, lack of availability in general as the following section will show.

### ***(Lack of) availability of appropriate programs***

The lack of appropriate programming factored importantly in decisions among professionals around whether and how to divert youth into the community. Luanne, responsible for taking Crown Counsel referrals to extrajudicial sanctions noticed that programs designed to

deal with specific types of youth deviance were few and far between. Like Larry's example in the previous section, further impacting extrajudicial sanctions was the problem that offence-specific programs (e.g., programs targeting specific behaviours such as graffiti and shoplifting) that had once received funding, would lose funding despite what was felt to be an established need for such programming in the community. As a result, youth on waitlists to participate were left without meaningful alternatives. For example, one community has at least two graffiti-specific intervention programs for young offenders. Luanne recalls that in one instance, a youth agreed to participate in extrajudicial sanctions and was referred to one of the two graffiti programs. By the time the program was operational and had space for him, the youth's extrajudicial sanctions agreement had expired. Because the youth had, in good faith, waited for several months to be accepted into the program, the probation officer signed off on his extrajudicial sanctions order because "we didn't [want to] penalize him for the inability for him to do the program because he intended to do it—it wasn't his fault" (Luanne). In this example, the youth was diverted from the formal youth justice system into a program that did not exist. While the youth's behaviour since that time remains unclear, the result seems highly disconnected from the intent of community-alternatives as set out in the YCJA (2002), and threatens to undermine the aim of meaningful consequences.

In the same community, Omar discussed a lack of community work service programs as having resulted in extrajudicial sanctions orders of 15 to 20 hours of community service over a period of four months, down from 30 to 40 hours previously. In both the graffiti case and the reduction of community-service hours, the result of the lack of program availability is that youth are not given a chance to receive meaningful consequences in their participation in a community-based measure. Nathan, a police officer, discussed a period during his early career when a community-based alternatives program that police had been trained to refer to, lost funding. During this time there was no replacement program. According to Nathan, this meant that youth could be warned or cautioned by police, and police could recommend a charge to Crown, but police could not divert youth into a community program:

Nathan: And when I came in [to the profession of policing], it was kind of a crummy time too, because we had the [organization name] society who lost funding I believe – I'm not sure what the problem was. Basically they were a diversion program and would be a separate entity in the community and would take these kids who had an issue and you'd bring them in there and they'd have a sit down and discuss the problems and they would

decide upon the punishment without going to the courts. It was a specific organization of where we were supposed to divert to. So, basically, if a kid did anything wrong, we would divert to them. Instead of writing a Crown package (a recommendation to lay criminal charges), we'd write a similar sort of package and give it to them and they would be in charge of bringing in the kid, bringing in the parents, bringing in the victim and possibly the police if need be. It was a particular style of program.

Lorinda: Kind of like a community accountability forum or something else that would fit under the umbrella like a conference?

Nathan: Ya. The organization changed names a few times and was really in flux when I got in there – so, we really didn't have an alternative justice program. We had me and the courts. Obviously working with the schools and the Ministry of Family and Children – but there as no separate diversion where we could say, "ok, this kid may need to be charged, but..." There was no place to pass those middle ground ones off to because we've already decided that courts are not appropriate.

Although the concept of meaningful consequences was an important theme in the archives as discussed in Chapter 8, such consequences seem to be difficult to achieve in practice for reasons including: the inconsistent availability of appropriate programming; the strong connection of services to criminal behaviour thus "rewarding" delinquency and "punishing" success; and the rigid structure of age-based programming. These challenges appear to be exacerbated by a plain lack of resources.

### ***Informal solutions***

As the literature predicted, a lack of government funding leads to important challenges in the administration of diversion at the community-level and the development of meaningful consequences for young offenders across the province. The data have shown that this prediction has come to fruition with a lack of appropriate and available programs, an insufficient focus on aftercare, and nearly absent transition services. Practitioners (and, according to practitioners, youth themselves) recognize these gaps as translated through the data. An important addition to the literature, however, is the acknowledgement that individual workers themselves attempt to devise informal plans to overcome and resist the challenges they face, including providing services free of charge. In addition to narratives around the severity of insufficient resources, participants discussed the strategies they use to compensate for financial

challenges; these adaptation stories have not yet been adequately captured in the literature and are somewhat concerning. For instance, a theme recognized very early on in data collection was that individual professionals (particularly those working in the non-profit sector) deliver services far beyond what they are paid to do through contracts and MOUs. Workers put in extra hours each week with no paid overtime, added to the costs of programs that the provincial government would not fund for individual youth, and bore the costs of aftercare in what several participants framed as informal creative solutions to practical gaps. A discussion of these strategies concludes the section on lack of resources.

Yasmin is employed for a non-profit organization that has an MOU with the Ministry of Children and Family Development to deliver intensive support and supervision services, as well as other MOUs with other branches of government for further non-youth justice services. The organization also receives funding from separate community funders to provide additional services to local youth who may or may not be criminally involved. In the following conversation, Yasmin explained how she dealt with a situation where after-care was required once a youth had satisfied his/her court order, but where funds were unavailable.

Yasmin: And with ISSP, we get all of our funding through MCFD. And my boss always says we're going over budget. But, I mean, we're not going crazy taking them shopping, we're just addressing basic needs. So, at the moment we're up for contract renewal and the aftercare piece is a big issue. Last year I did about 8 months of aftercare with a youth. That ended up being over 200 hours. And that's not something that we can bill for. We're only contracted to work 35 hours a week, but a lot of us work probably 45 to 50 hours a week. Because if a kid is having a crisis, you're not going to be like, "oh, sorry, my 7 ½ hours is up, go on, get out.

Lorinda: So, when you work overtime, is that coming out of your pocket or your organization's pocket?

Yasmin: My pocket.

Lorinda: Your own individual pocket?

Yasmin: yes, because they don't pay us overtime. I mean, we can build up lieu hours and stuff, but its normally not done. (Yasmin)

Our conversation continued as she discussed how, in addition to individual workers engaging in unpaid work, a successful adaptation she has utilized is accessing financial resources held by the non-profit agency itself (outside of the budget given to the agency through the MOU):

Lorinda: So, if you've got a kid who has to be involved in some kind of pro-social activity, has expressed an interest in cooking let's say, you've tried to get funding, from the Ministry, they say no, and you know that the program will be key, you may provide for that from a different pot of your organization's money?

Yasmin: Yes.

Lorinda: And that's probably from some community funder that has said "for the purposes of your organization and whatever you do..."

Yasmin: Yes. And if I know there are other key players, I may make a lot of noise and a paper trail of emails. I find that when there is that trail, it can be really hard to say no for them.

Lorinda: Okay, so you've come up with some strategies of your own that help impact the process a bit?

Yasmin: Yes. You've got to play the game.

For Yasmin, this strategy was framed as a strategy in a game where the players are those responsible for delivering services and controlling the finances, and the prize is care for young offenders. In this way, individual workers and the non-profit sector appear to subsidize the government in the delivery of youth justice services by providing services beyond what they are contracted to do, and accessing financial resources that have been raised through charity.

Similarly, because of the keen desire by professionals and their youth clients, Amanda outlined services that the organization she works for offers in order to help close this gap. The following excerpt discusses informal after-care that her community organizations delivers to youth (usually the same youth clients who are involved in the justice system) outside of their MOUs with the provincial government:

Lorinda: In terms of aftercare, if you are connecting with a youth once their order is done, is that still part of the MCFD contract? Or is that something that your organization just delivers on its own?

Amanda: As far as I know, it is something that we just deliver. Because the MCFD contract is ISSP [exclusively]...

Lorinda: And once that's done, then they're kind of out of the picture.

Amanda: Yes. And of course the kids who are on an active order obviously have to take priority over the kids that don't. But, I would never say no to somebody who needed help. And its funny, sometimes it'll be like six or seven months and you'll get a random call from a youth and they'll be like, "hey, want to go for lunch?" and that's pretty cool. I've had kids who I worked with 4 or 5 years ago find me on Facebook and send me a message letting me know they just want to say "hi". That's cool, you know, that the remember you. So, obviously you made an impact on their life in a positive way. And that's just how our agency deals with it. I don't know how other agencies or other ISSP workers deal with that...and its very much an individual thing based on what you want to do.

The narratives of the participants made it clear that perhaps the worst fears as expressed in the archives respecting resources and diverting offenders into ill-equipped communities, have indeed come to fruition in at least some cases. It is also evident that adaptations engaged by workers involve unpaid work and otherwise bearing the burden of delivering services with inadequate resources. Yasmin's statement exemplified the simple message conveyed in the practitioner narratives:

Everything comes down to budgets, its always a factor. This is what I keep hearing: "we can't send them there because there's no money...we can't give them this because there's no money...we can't do that because there's no money..." (Yasmin)

This theme of contracting organizations from the non-profit and community-based sector amid inadequate resources was identified in similar research—on the topic of criminal justice reform more generally—conducted by Woolford and Thomas (2011) in the province of Manitoba. Those researchers dubbed the phenomenon of non-profit partnerships with the provincial government to deliver a wide variety of welfare-based services to vulnerable and at-risk populations without adequate resources—"deputization"—a reference to a shifting of responsibility and work from the public to private sector. Woolford and Thomas used their findings from discourse analytic research on statements of the Manitoba provincial government from 1999 to 2009 to help contextualize the deputization of the non-profit sector: while on the one hand the shift in responsibility could be interpreted as driven by efforts to respond to the social/structural

conditions that increase crime (e.g., poverty) through a more holistic response involving the community, statements within their analysis only superficially identified such an aim. For this reason, the authors suggested that the goal of deputization was much more likely to be “broader management and responsabilization of targeted risky populations” (p. 130) within the neo-liberal approach to youth justice embodied by the YCJA (2002).

As discussed in Chapter 8, the narratives of communitarianism and managerialism—the discourses whereby communities are situated as a key site of response to youth justice issues—are evident in the archives. Within the interviews, and given the challenges associated with delivering services, the narrative of managerialism seemed to be the much more likely goal of community involvement in youth justice responses.

Several participants highlighted burdens in service delivery amid tight budgets unique to the non-profit sector. For instance, Irma alluded to the competition between organizations fostered by a scarcity of resources in the following excerpt:

In terms of being a non-profit, whoever is leading the way depends on how much money and things are coming in. So, it seems that there is less money coming our way, but there are more expectations in the work that we can do. This means that we have to be more creative with our time and with our money with less resources. Obviously the front-line people get the best sense of what's best for the youth and oftentimes we'll apply for grants and things like that that we feel would work and its not what they're looking for. And again, when the Youth Criminal Justice Act came out, there was this big transition to see how it was going to work, and whether the pendulum had swung too far to the other side away from the Young Offenders Act. So, its hard to say, because again – and I may be going on a tangent – but really, it all has to do with who's in power as to what is seen as important and what kinds of youth initiatives are supported. And again, so far its been good. But I know that more and more we're getting cut back. And its difficult because everybody is out there with their hook to try and get something and its “who can pitch the better pitch?” In order to get the money they need to show that this program is needed or required. (Irma)

Because of the short-term MOUs that non-profits are often a part of, and as a result of restricted operating budgets, non-profit organizations are frequently required to devote enormous resources to the acquisition of funding from other private and government funders to continue offering the services under their purview. As a result, organizations must compete with other similar organizations. Irma shared her experience wherein decisions on funding came down to

itches. For her, funding pitches often turn into sloganeering where organizations simplify or revise their goals and statements to meet those of the funder (described by Irma as “buzzwords”), because failing to do so could threaten the existence of the agency itself, or at least the jobs of individual workers, and tangentially, services to youth in need.

The notion of non-profit organizations applying “buzzwords” to the work that they do in order to access funding is discussed at length by Woolford and Curran (2012), who argue that non-profit professionals are sensitized to neo-liberal language (e.g., language pertaining to safety and risk) revered by government funders and accordingly, begin to describe their own activities by use of these words. Utilizing buzzwords is perceived as a means to access scarce resources to engage in their own objectives. Paradoxically, according to Woolford and Curran, these objectives tend to be motivated by welfarist principles. The data in Woolford and Curran’s research showed that terms such as “restorative justice” were employed regardless of whether the program was based on restorative philosophies. Though participants storied these adaptations as strategic, the use of the adaptations may reinforce the dominant narrative, interfering with the independence and potential for activism of the non-profit sector (Woolford & Curran, 2012).

An added pressure expressed by participants employed by non-profit organizations is that funding is often tied to measurable outcomes. Several participants noticed that organizations that were able to demonstrate their success quantitatively were rewarded with additional contracts and expanded budgets, while qualitative successes were not perceived as adequate to assist in establishing a good reputation with the funder to secure future funding. The institutional pressures that guided measurement caused at least three organizations to begin counting their cases with little regard for accuracy, and to focus on numbers and cost-effectiveness equations rather than how its clients experienced the program. These kinds of adaptations can be problematic, as Woolford and Curran (2012) argue, because they focus exclusively on value for dollar as a means of accountability, rather than specific clients and their receipt of care—indicators that can be much more challenging to measure.

Yasmin elaborated on the challenges presented by funding shortfalls and a way by which her organization and individual workers have adapted.

Yasmin: We need to engage the kids in pro-social activities and that always comes down to funds. We have somebody in our office that is a holder of the jumpstart applications for our agency. So, worst-case scenario, I can apply for funding through there. But, I find that if the kid is in care through the Ministry [MCFD], I know there are funds for that and I have found in my time here that very rarely – maybe once or twice – the Ministry has actually paid for a program so that a kid could engage in pro-social activities. In the rest, I've had to pull funding out of places.

Lorinda: Wow.

Yasmin: And that might be taking a yoga class or taking a fitness class or getting into some kind of cooking class or something like that.

Lorinda: And so, in those instances that they [MCFD] have kicked in, have there been something different about those cases to make that happen?

Yasmin: No. just luck of the draw. Because what they'll [MCFD] do is say "you have to ask the caregiver" and they'll [the caregiver] say "you have to ask the social worker" and they'll say "you gotta ask the caregiver." So, I just can't play that game. So, sometimes our organization will just pay for it. We don't have the funds to do that, but the kid really wants to do it, and this is going to give them a place to meet new people and to get away from that other group, then why not?

Like the transitional services for youth who have aged out of the youth justice system and the after-care services for youth who have successfully completed their court order, where gaps are present, non-profit organizations or individual workers themselves may help fill the need.

Overall, participants shared the perception that community-based responses to youth crime, whether formal or informal are widely used, yet suffer from severe underfunding. Yasmin and Amanda were puzzled as to why, in their perception, core funding continues to be directed into custody while custody centres in British Columbia are quickly emptying (and more recently, closing). The present lack of incarcerated youth in this province as compared to the overflowing facilities under the YOA (1985) seems to paint the picture that youth justice has indeed changed since the implementation of the YCJA (2002). However, at the time of the interviews, participants did not feel that funds are being reallocated into community-based responses. They felt that resources were being reduced across all youth justice-related services. Equally expected, it seems that local funding and resource issues have far more power in directing practice than does national, provincial or even organizational policy. Yasmin and Amanda both

referred to the 2012 closure of two girls' custody wings within the British Columbia youth correctional system to make their point.

In 2012 the girls' wings of the Victoria and Prince George Youth Custody Centres were closed, thus centralizing care for incarcerated female youth in Burnaby, a part of Metro Vancouver. When each of British Columbia's three custody centres housed both boys and girls, it was not uncommon for very few girls to be at either the Victoria or Prince George facilities (on some days a girls' unit housed a single female youth). Additionally, many girls were only in custody for a very short time. Decidedly, the low incarceration of youth in this province was as a direct result of the YCJA (2002) "working," and was a product of British Columbia's success over the past 10 years in reducing their population of incarcerated youth. From a practical and treatment perspective, having very few females at each institution arguably stymied programming for these female youth—it was difficult to offer consistent and appropriate programs for very few youth. Furthermore, spending resources on staff to treat and supervise this small group was seen as inefficient, particularly during a time when government cuts were common. As a result, executives within the Ministry of Children and Family Development made the decision to close the girls' wings at both the Prince George and Victoria facilities in early 2012. Girls with custodial sentences would be placed in the Burnaby facility (Ministry of Children and Family Development, 2012). Staff and the public were made aware of the girls' wing closures just prior to Bill C-10 receiving Royal Assent. Interestingly, as discussed in Chapters 4 and 7, Bill C-10 contained amendments directing judges to consider deterrence and denunciation in the sentences that they would hand down—a change with the potential to result in *more* or *longer* custodial sentences in some cases. Shortly thereafter, on July 3, 2014 Ministry of Children and Family Development staff began the work of transferring the remaining boys from Victoria Youth Custody Services to the two other youth custody centres in the province, preparing to close the entire Victoria Youth Custody Centre (this eventually occurred after the interviews had been completed). Amanda compared her impression of the implications of this shift within British Columbia—away from an emphasis on custody and towards an emphasis on responding to young offenders within the community—to her experience in another province where enhanced community resources existed as alternatives to custody:

Amanda: When I first started here, girls were going to jail for breaches. But, a lot of it was not really criminal kids, but those who were at a high risk of hurting themselves. That was something that was new to me. They're not supposed to do it, but it did

happen. Because at least you know that they're safe. And since the girls' custody wing has closed here, that has shifted again. I think as far as the types of kids who come into the system, its very similar. But as far as what was the proximity of the custody centre being very close, that made a big difference. Now, judges have said, "we're not going to send girls to custody on a breach because we don't want her going to the Mainland." So, we have noticed a big change as far as that goes. And, that makes sense, you should not be incarcerating a youth based on social needs or social risks. But, because I think it was convenient that it was here, it was happening. And that was new to me. In [province name], we had a lot more community resources...because we have the non-residential attendance centres. So, those kids could come 3 or 4 times a day and spend, you know, 2-3 hours a day with staff, but still go home to their home at night. Whereas here, we don't have that. We have full time residential programs, but not a non-residential. So, that was a shift for me.

Lorinda: So, where are those girls going instead?

Amanda: I think they're getting more probation. It still happens though, that they go to custody. I had a client who had like a million breaches and she was an addict, not a criminal. But it got to the point where they had to do something, because there was just complete non-compliance. So, it still does happen, but I think its happening less frequently and that they're ending up – not that our numbers have gone up – but we're seeing more kids [on ISSP caseloads], rather than criminal kids, especially with girls, more high risk –like high needs. Do you know what I mean? Does that make sense?

Yasmin shared her impression that the closure weighed importantly on the decisions judges made for girls who did not reside near the Burnaby Youth Custody Centre, and exacerbated a problem where judges diverted youth to under-funded, non-existent, or, as in the following example, overburdened community-based programs.

Sometimes...and its not that the judge doesn't care...but they won't look into other options besides custody. That's the biggest piece right now...It would be nice if the judges were on board with what's going on in the community. What I find is that if they're considering an ISSP order for example, they don't enquire as to whether we're all at full capacity and they sentence 5 more kids to ISSP orders. Well, that kid is going to have to wait for services because there is no availability left. And I don't think – well, I know that they don't really check in with anybody really. So, I'm not sure how they receive the information of what's available and what's not, what's appropriate and what's not. (Yasmin)

The result, according to Yasmin, is over-burdened youth workers and a lack of appropriate services for youth leading, in some cases, to continued offending behaviour. Furthermore, despite the reduction in custody spaces for girls, some girls will still be incarcerated, but for “high-risk needs” rather than specific criminality. In Artz and Amorim’s (2013) examination of how administrative offences for female youth are dealt with in British Columbia, they found that the unattractive option of custody was only exercised “when all else fails” (p. 59). As a result of poorly funded services for young offenders, custody was used in place of appropriate prevention and treatment services. Currently, the authors argue, “we [in BC] offer services only to the most desperate and carefully ration for how long we do this” (p. 60). Their findings were supported by the data in my research, both on the theme of not making resources available, and additionally, in the length of time we allow youth to avail themselves of these resources.

The issue of incarceration for protective reasons is an important one related to resources (because one of the pathways to custody seems to be engaged when there is a lack of resources to assist the youth in any other way), but also sheds important attention on drawing boundaries around what is a youth justice issue and what is not (e.g., addiction; mental health). This last issue will be taken up more fully toward the end of this chapter. It was the impression of Irma that in sentencing, judges are caught between two undesirable options: to sentence youth to custody—an option that is discouraged by the YCJA (2002) and by the Ministry of Children and Family Development’s closure of custody beds—or to divert young people into habitually absent community services. Front-line professionals in turn, find themselves trying to convince judges to hand down a custodial sentence to a youth who has breached a court or bail order, not because they believe in the aims of custody, but because workers in the community felt they had exhausted every available resource to assist the youth. The following discussion illustrates the frustration:

Lorinda: Have you witnessed occurrences in court where you felt that a community option would have been okay, but then a judge put a kid in custody?

Irma: No. No its always been the opposite.

Lorinda: Oh. Ok then you’re seeing judges more often lean towards community supervision types of things.

Irma: Yes, that's right. But its not always a positive thing for those type of kids that those sentences. It'll back fire a bit.

Lorinda: Can you elaborate a bit more on that?

Irma: So, I have another young lady on my caseload. She's committed 7 or 8 assaults and has never had any jail time. So, she goes around telling everyone that she's invincible and she can do whatever she wants...and, well, she can. And I think the last time she was sentenced; the judge had all of these reports in front of him and was told about all of these assaults. And was told about the options for treatment and he decided he was going to do what he wanted to do. And he decided to just put her on probation for another length of time.

Lorinda: What is your sense? Why is that happening?

Irma: There were a group of us there and we couldn't figure it out. Because if you don't consequence the kids, they're going to see that they can do whatever they want. With respect to this young lady, I feel that she hasn't been consequenced and so, she behaves that way in the community. There's nothing really that any of us can do...And what one of the POs thought was that had she seen the same judge over and over, it might have been different. This guy was new to the area and he just saw this cute little girl sitting there and he just bought into the appearance. And its interesting, when I've gone to pick her up at the police station, they have the same reaction, "oh, its just a cute little girl..."...after she's assaulted somebody, she shouldn't be giggling sitting there with you.

While the philosophy in dealing with youth offending seems to have shifted to incorporate community-based provisions, practice must be understood carefully in order to grasp the implications of the change.

Clearly, understanding the intent and practice of youth justice entails a very close look at the very basic aspects of implementation: resources and funding. While the policies of the YCJA (2002) that set out community-based responses to youth crime are attractive, their effectiveness in practice is at risk of being undermined due to several practical implications. As mentioned throughout this analysis, these responses are undermined because they are systematically granted only a small piece of the budget and face extreme funding shortfalls just to meet operating expenses (Wotherspoon & Schissel, 2001). "Despite the rhetoric of Canada's youth justice system framework, there is a striking lack of funding for, or commitment to, alternatives to formal justice" (Schissel, 2010, p. 157). While the data in Phase 1 identified some narratives in support of harsher treatment for what was perceived as more violent youth, data in Phase 2 has

shown that individual front-line professionals arrive at creative solutions to provide the best care for their youth clients as possible.

Because such an integral aspect of the YCJA (2002) is community-based diversion and achieving meaningful consequences, it is excruciatingly disappointing that the theme of a lack of available, consistent, and effective resources permeates the data so profoundly. One might expect that the growing pains associated with transitioning from the YOA to the YCJA (2002) played an important part in a lack of resources in the early 2000s, however, a decade later, it would be reasonable to expect the challenges to have been addressed. Most concerning are the ways that individual practitioners and agencies in which they work have had to adapt. Though it is encouraging to see professionals arrive at creative solutions and self-fund activities where they can, it is somewhat disheartening to see individual workers engaging in unpaid work, agencies re-directing charitable resources to services that are under the provincial government's purview, and the perception that if a youth wants more services, he or she would need to become more criminally involved. This is completely at odds with the stated intentions of the YCJA (2002) and certainly with the ideas of prevention and meaningful consequences.

### **Buying in or Selling out? Resistance to Change**

By their nature, the various measures of community-based alternatives have gatekeepers equipped with the authority to grant or deny program access (c.f. Abramson, 2003). Even before extrajudicial measure/sanctions or restorative justice practitioners have the opportunity to admit a referred youth into their program, a youth justice system professional (e.g., police, police, Crown Counsel, judges) must make a referral. For this reason the issue of whether, and under what circumstances, professionals are referring youth, is paramount to a discussion on the implementation of policy. The theme "buying in or selling out," began to emerge early during the interviews when participants shared stories about instances where the work they had done around community-based responses and/or restorative justice had been resisted by others in the field. Some participants speculated that the rationale behind such behaviour is three-fold: alternatives to formal processing at times conflicted with the philosophies of some professionals; referrals may be perceived as time consuming and onerous; and professionals were unaware or improperly trained on community-based responses.

***“...Do your horse and pony show”***

As discussed in Chapter 3, the technical implementation of the YCJA (2002) was a key concern within the literature prior to the coming-into-force of the legislation. Additionally, despite some promise reflected in official statistics regarding community-based responses in the early years under the YCJA, research conducted in the first few years of practice under the legislation documented important inconsistencies in the way community-based responses were delivered (Barnhorst, 2004; Hillian et al., 2004). This body of research recognized that for policy to be able to change practice, individual practitioners would need to be open to change—a vital consideration in understanding how policy directs local practice. The findings from the interviews indicated that some barriers to community-based responses are exceedingly persistent. Natasha, for example, discussed the tensions she experienced in attempting to introduce restorative justice conferencing into the Ministry of Children and Family Development, where her role involved visiting offices in various communities to deliver conferencing services early on in the term of the YCJA:

And it was difficult because any time I'd go to an office to convene a conference, they'd be like, "ok, you're here now to do your horse and pony show." The process was not necessarily taken seriously, and while there may have been good intentions, there was no follow through. That made my job difficult because I would build trust with a family and then beyond that, its out of your hands. They [other social workers who were delegated] would say, "you're trying to do social work and that's not your role." I was a social worker, but not in a decision-making role. And on top of that, because the social worker knows that the coordinator is a social worker, there was this hope that they'd...you know...deliver a message on the plan that the social workers wanted. And POs would do that too. (Natasha)

Similarly, the perception of Todd was that police reluctance to refer youth to extrajudicial measures programs during the early years under the YCJA (2002) was connected to their belief that “it was airy-fairy”—seemingly a euphemism describing the process as both impractical and insignificant. He said “...they [police] would see me and might think ‘ooh, here comes Todd! He doesn't have a gun and he doesn't get to drive a fast car...[laughs]...I think that's what many of them thought. And perhaps they were just playing that role because with the [police agency], well, it still is an all boys club. For them there was a real division between who was a police officer and who was a civilian.” He goes on:

I think probably if I were to take a random sample of ten police officers, probably only three of the officers would use the program. The other seven officers would just...close the file and wouldn't even bother because there was nobody looking over them. And often it was the older officers because they were done, they were tired. They weren't trying to impress anyone. And maybe the younger ones, who were having their files reviewed by their Corporal would do it so they could show that they referred to [name of a community-based program]. And this would show they were doing what they were supposed to be doing. And some of them were very verbal. They might say "no. I don't actually believe in this. What do you actually do in there?" or "when I referred Johnny, what did you actually talk about?" They don't—or maybe they pretend that they don't—understand the concept of confidentiality. I think that they did get the concept of the program, but that they pretended that they didn't. I think that they also thought that they wouldn't look like a real man if they just referred the case. But towards the end [of my employment] they began to. Either we were out of sight, out of mind. They were out on the road and we were in the office. They didn't have a policy of what they were supposed to do. The YCJA said "this is what you're supposed to do." But, if they didn't, nobody asked "hey, why didn't you refer this to the program?" And, so it was the case that some just didn't really understand it. Remember, we would only get an hour or two of training with them—and that was with the new members—which worked. So, the members that had been around for, you know, 10 years, they never got the training. So, for us to attend their briefings, they just never got it. They didn't believe in it. And I don't know, we needed to make them believers. And we had statistics...but it's so hard to measure something like that. And we can discuss what that looked like if you want – how we measured success. (Todd)

Archibald and Llewellyn (2006) discuss the possibility of ghettoization of restorative justice where there may be a sense that the "tough guys in the real justice system are only willing to refer soft cases to the girls in restorative justice" (p. 328). For these authors, the risk was one related to the disproportionate representation of female workers in the restorative justice field compared to referring police agencies as predominantly male. They also had a sense that restorative justice practitioners may be getting paid less, a particular concern given the structure of restorative programs primarily offered out of non-profit, community-based agencies where workers traditionally have less job security and long-term financial resources. Though I was unable to assess Archibald and Llewellyn's findings given my sample size and breadth of inquiry, the above excerpt from Todd does signal a gendered perspective where restorative justice is seen as soft, light and "airy-fairy," and perhaps feminine, curtailing the

transformative potential of such an approach in dealing with significant issues, and de-valuing the work of skilled practitioners. It is one that should be given further focus in future research.

Regardless of whether the practice of restorative justice is gendered, there was a sense that police are sometimes uninterested in referring youth to such programs, at least in Todd's experience:

I would ask officers "how come you're not on board?" And the reality was that if they had been around long enough and didn't have to impress anyone, it was much easier to just close the file. They didn't care about making friends with us! We would try to make the referral process as easy as possible – we even had an online referral system to make it more seamless. But they may not have thought of it in that way. However, once they used us once, they would use us again. It was almost as if they needed their Corporals to say "you need to make at least one referral in your first year." Because once they did it, they would do it again. And I think many of them thought: "Am I going to have to be part of a conference or a meeting? Am I going to have to be involved?" and they didn't want that, they felt they didn't have time. The [police agency] are so overworked and have such a caseload – its ridiculous. I feel so bad for them – its horrible.

I wish there was a way to make them more involved and to make them believers. My understanding is that since I've left, referrals have actually gone down just because well, when I was there, I was in their face a lot. I was telling them about the program and talking to them daily. And that would also be a problem in the case of program that are off-site—you almost need to have one person who is there that just talks to people. Doesn't even deal with the kids, but gets the referrals and then sends it to an outside non-profit once they have the case. Someone needs to be there. (Todd)

Todd spoke at length about the tensions he experienced in developing a strong restorative justice community-based responses program for youth under the auspices of the police. Eventually, he reported, the challenges created by a lack of resources, disengagement from police, and what he felt was quickly becoming inauthentic restorative justice practice, felt insurmountable. As a result, he not only left his position as restorative justice coordinator for the policing agency, but he left the profession of youth work altogether. Todd's comments reflect the perspective of a civilian working within a police agency, just one model of delivery of community-based responses to youth crime. Another model, where police are tasked with referring to

outside agencies is discussed in the following section. The theme of “inauthentic restorative justice practice” will be examined more fully in Chapter 10.

### ***“You’ve got to pick your battles”***

In speaking to police, the theme of resistance to diversion and restorative justice among law enforcement personnel was explored more fully. Two police participants identified time constraints as an important factor leading to their own reluctance and what they saw as the reluctance of their colleagues to refer to extrajudicial measures programs, even when programs were available. For example, Amy described her frustration when she began working as a police officer and attempted to divert a youth into a local community program. She described having been recently trained, and feeling that a referral would be appropriate for a youth accused of a minor offence. However, after having some referrals refused by a community program, Amy changed her behaviour:

The couple of times that I tried referring them [to an extrajudicial measures program]...I tried referring this one girl and they kicked her back. They said that her family support group wasn’t good enough. So they said “no.” And then another one, they [the community program] said they [the youth] weren’t taking full responsibility for their actions, so they kicked the kid back. Another time they [the youth] didn’t complete the program, so they kicked them back and we had to end up pressing charges [recommending charges to Crown Counsel] anyways. And for us to even refer to the program, we have to write a Crown [package]. So, its one of those things, “well, if I’m going to be writing the Crown, I’m going to end up going ahead and recommending charges.” And, a lot of the time, if Crown wants to proceed with, you know, a restorative justice program or another program, they’re the ones who usually refer. (Amy)

For Amy, these unsuccessful experiences in referring to extrajudicial measures made her “think twice before suggesting or recommending that the youth be sent to that program.” The fact that the same amount of paperwork was required regardless of whether policy planned to refer a youth to an extrajudicial measures program or to recommend charges to Crown Counsel, coupled with the experience of numerous refusals made the process undesirable to Amy. For these reasons, she discussed a preference for recommending charges so that Crown Counsel could decide whether a youth is subject to a community-based response.

Because, as discussed earlier, British Columbia has a unique charge referral process, police do not actually charge offenders as they do in other provinces. Instead, police prepare investigative material and recommend a charge to Crown Counsel who makes the decision to proceed based on a likelihood of conviction. However, even the recommendation for a charge brings youth into the justice system when they might otherwise be diverted. The practice of avoiding the consideration of diversion at the police stage is concerning and removes one level of opportunity for informal processing. Amy did, however, discuss a clear understanding that referrals to extrajudicial measures must only occur if a charge would otherwise be recommended—an encouraging acknowledgement. The first case that Amy identified as having been refused involved a young offender who did not have family support. According to Amy, the only program set up to receive police referrals in the community in which she worked is based on restorative justice principles and as such, requires family (or community) support before accepting a youth into its program. Restorative justice is but one way to offer diversion, and may not be appropriate in every case depending on factors such as offence, offender characteristics and victim (Abramson, 2003). In this case, because the youth in question was an inappropriate candidate for restorative justice, she was deemed an inappropriate candidate for extrajudicial measures, as nothing else was available to her. This is an especially problematic restriction with an unfortunate outcome.

Hall and Reed (1998) discuss the specificity of non-profit organizations, a characteristic of such organizations that is at least partly driven by their charitable status. The organizations, particularly if they are volunteer-run, adopt specific motives and manners of practice that may target a small, specific sub-set of the population. The programs and services delivered by non-profit organizations are often not designed to be general in application, nor are they typically capable of offering a large diversity of different programs. Further, non-profit organizations usually operate in small geographic areas, meaning that services and levels of accessibility may differ widely from one community to the next. It is very likely that the program in Amy's community had a clear mandate that restricted staff from accepting participants without strong community and familial support. In this way, unless other organizations in the community are developed to provide services to more vulnerable and marginalized youth, youth in that community may have much more restricted eligibility for community-alternatives.

In the above case, rather than make formal referrals to the extrajudicial measures program active in her city, Amy felt she was left with the choice between making use of informal police diversion or recommending a charge to Crown Counsel. “For youth who may be appropriate for an extrajudicial measures program, I don’t really have the time to sit down for two hours to prepare a Crown package...You’ve got to pick your battles...it would be nice in a perfect world to spend more time with kids, but its just not possible.” She discussed cautions and warnings and their availability to police in the following excerpt:

So, I think in [city name] personally, hardly anyone ever refers. Simply because if we go – let’s say it’s a shoplifting call, and its, you know, some fourteen-year-old kid who stole a lip gloss or something, a lot of the times, the LPO [loss prevention officer] won’t even bother calling us, they’ll deal with it on a personal level and they’ll only call us if it’s a multiple...if they’re a re-offender. So then, they’ll say, “This person is a re-offender, this is the third time we’ve caught them now. We want to press charges. We’ve already given them a break.” And they want to press charges and sometimes it’s the first time that we’ve dealt with them personally. We’ll take them to their parents. We’ll drive them and deal with it on a personal level as opposed to getting them involved because a lot of the time, we just don’t have the time to sit there and say, “ok, someone stole a lip gloss. I’m going to write a Crown [recommendation to charge] for this and recommend that they do some community service.” Its not in anyone’s best interests. I just don’t feel that the programs...they have good intentions, but I don’t think they’re utilized as much as they could be. Not in our community anyways. (Amy)

In addition to refusals, time constraints, and restrictions on who programs might accept, another concern for police was the loss of control over the process once they had referred a youth to an extrajudicial measures program:

And so, for the most part, I don’t know if people use EJM or use RJ very much because lots of times its not in the middle where it fits in and I think lots of people don’t want to take the time to do that. It’s usually the nothing—just giving a warning—or going through with charges. There’s not a whole lot that’s in the middle. So, for him [another officer], when he’s thinking about whether he’s going to do this [the RJ process], we’ve released him [a young offender] on a promise to appear. And just because we’ve issued a promise to appear, doesn’t mean we’re actually going to move forward and submit the charge. So, at that point the officer is thinking that he’s probably not going to go through with a charge. So, he’s trying to do the really informal thing by making him feel bad. This idea of letting him know he’d affected my life. Hoping to get that switch to flip in his brain where he realizes that “I’m horrible, I need to change this life.” Obviously in

the end, obviously we did do an extra thing in the middle. Whether or not that'll work down the line? Who knows? (Elaine)

Beyond policing—a youth's first entry to the system—resistance to community-based responses occurs at other stages of the youth justice system as well. For instance, several participants mentioned that judges rarely make use of conferences under section 19 of the YCJA (2002). For this reason, during the early days of the YCJA, conferencing specialists employed by the Ministry of Children and Family Development "...needed to drum up business and gather interest in the process [of restorative justice], kind of like a sales job. We did presentations to judges, Crown, defense lawyers and others to inform them about the process" (Omar). When asked to speculate on the reasons for resistance among judges, Omar said:

Well, all judges were lawyers before and their way of thinking is very traditional. In law schools there might be a day dedicated to something like restorative justice. I think that over time, as there is some turnover, maybe RJ will take a larger role. The judges that do believe in RJ tend to be more rehabilitation focused. They are perceived as more lenient. It isn't the case that when a judge offers up a carefully crafted, specific and appropriate sentence that they are thought on favorably. It's not like people say, "oh, they did a good job." Its like, "oh, they're easy. The sentence was a joke." It's the mindset of the system. Judges who are tough seem to be more highly respected. Even though we have much much less custody in the system now, we still see the mentality that "we need to get them. We need to nail these youth." (Omar)

It was Omar's impression that while some individual judges were more or less in favour of incorporating restorative justice principles into their sentences, there is something about the structure of the judicial system that discourages restorative justice in sentencing and maintains the dominant adversarial nature of the justice system. Furthermore, though more than a decade has past since the enactment of the YCJA (2002), Omar still perceived resistance to restorative or other community-based dispositions among judges. Similarly, Allison, speaking from her perspective as the Director of a restorative justice community program suggested that though there is "buy-in" from some judges about restorative justice measures for youth, many are simply unaware of the options available. The judge Allison refers to below indicated that he believes more cases should be going to restorative justice prior to court, however, he appeared unaware of the various sentencing dispositions available under the YCJA (2002) that are indeed restorative in nature:

I just wish that there were more restorative alternatives that were connected to the court system because I think that what we have through MCFD is fairly limited – the conferencing that they offer. I mean, the judges here in this community have never ordered a conference through a probation officer. Ever. So, those options of EJS are not being well utilized...in this community anyways. And yet, I'm speaking with one of the judges next month, and he said to me in preparation for that, "I'm going to tell everyone that you [referring to my participant] should be much busier and I should be much less busy. More things should come to you and not to me." That's fair, but when things are coming to that level, it would be really great that judges were more aware of the sentencing options under the YCJA that include those conferences. I don't see them being used here...Ten years old the Act is this year and judges still don't know about those things and many police still don't either at the diversion level. It's interesting...(Allison)

There is no doubt that practice tensions arising from experience, perceptions, beliefs, and mis-conceptions around the availability and appropriateness of community-based responses to youth crime threatens the implementation of the practices. Elaine, a police officer, discussed the lack of training she received on extrajudicial measures and processing young offenders:

Honestly, as sad as it is—and this may be because I'm a new officer, you don't get a whole lot of training on the extrajudicial process. If any. Like, at the police academy, I think we get maybe a day on youth. And its really just the Youth Criminal Justice Act..the Y – what is it called?

Lorinda: You got it.

Elaine: So, on that, we get a bit on that. But its more about the process of what you do when you arrest a youth. What things you have to make sure you're doing, like notifying a guardian and the processes of interviewing a youth. They don't really talk about other options.

Elaine went on to say that she is provided with a flow chart that details the process a police officer must follow when dealing with youth. Upon closer inspection, I found that the flow chart did in fact describe options for police: "no further action," "police warning," "police referral to community programs/agencies," and, "report to Crown Counsel." However, this participant noted that the flow chart does not tell police specifically whom to contact in order to make a referral, and does not indicate when each option might be appropriate given a particular set of circumstances. Elaine was frustrated that her efforts to find other community-based options

have not been successful, despite having approached senior officers for guidance. The next section more fully examines the theme of training that has wide implications for community-based responses.

### ***“I’m not prepared for this”***

Beyond resistance to community-based responses as a result of individual philosophical disagreements and perceptions that such measures are simply too time consuming, an important theme that emerged was that in some cases professionals are unfamiliar with the complexities of community-based responses. This is particularly important in professions where youth justice makes up a small part of a diverse occupation (e.g., in the case of policing, officers typically deal with adults, with young offenders constituting only a small part of their daily work unless they work in a youth justice area). Daniel, a senior police officer provided his perspective as to the reluctance among police to refer to community-based programs, and offered his thoughts as to why community-based responses, and extrajudicial measures specifically, can be challenging to implement in the policing context:

I think because we’re just so locked into...I mean, our poor officers. Really, it was a joke when I started. Policing was simple, it was not complex. I look at all of the different hoops and knowledge that these young people (novice police officers) need to have. Not only just to assimilate the information. But now, its like for six months somebody teaching you about how to play football. And then all of a sudden saying, “ok, you’re a wide receiver now. Go run your route.” And they’re going to say, “what the hell? Where’s the safety? The guy just knocked my helmet off and knocked me on my ass. I’m not prepared for this.” The enormity of the real-time application of very ambiguous situations causes them not to have...someone like me that would have, over the space of time, knowledge of the different legislations and interacting with kids and offenders and I’ve got the confidence and knowledge where I can say, “I feel more comfortable dealing with a kid in this fashion.” Someone just starting out might say, “I don’t want to get in trouble from my boss; I don’t want to screw up the investigation.” They don’t have that—they’re just so overwhelmed with information about due process that they don’t have a chance to say “well, what would be the best thing to do in this circumstance?” (Daniel)

Because police are trained to deal with very diverse issues in often high-stress situations, it is not surprising that younger officers may be overwhelmed with the contexts in which they work. The complexity of policing has increased exponentially over the past several decades and is

likely to become even more complex in the coming years (Institute for Canadian Urban Research Studies, 2014).

Daniel's comments regarding novice police officers feeling like they may "get in trouble" by dealing with a youth through formal diversion was echoed by both Amy and Elaine who, as police officers, felt that they would be reprimanded if they exercised a more creative, diversionary approach with youth. In this manner, each of these three participants highlighted the inconsistencies between due process, which seems to favour more formal processing, and referrals to community-based responses, a process that seems to favour informal, creative solutions. To this end, Elaine identified a few occurrences where she or her co-workers had administered informal cautions or warnings that they felt were appropriate under the circumstances, but that they "wondered whether [they] might get into trouble for" (Elaine).

Nathan, having spent several years working as a school liaison officer, discussed how he arrived at his practice philosophy of providing informal diversion when working with crime-involved youth. As the following quote shows, though he initially thought recommending a charge for youth criminal activity was an appropriate measure, he soon realized that this would result in a stay of charges—the decision by Crown Counsel to discontinue prosecution—(that may be a result of a Crown caution) at the court stage. However, his impression was that such stays occurred as a result of court backlogs rather than a change in the philosophy of the justice system towards more informal community-based resolutions. He described the outcome as a practical one occurring as a side-effect of tight budgets, rather than a system-wide change in social philosophy around community-based responses:

In the youth criminal justice system that's what they want us to do—they want us to make a lot of attempts to try to correct this problem prior to taking it to the courts. So, the amount of cases that I had that went to trial are very slim. Prior to going into school liaison, just working general duty, you're learning a lot as you start your job. It's a big mystery of what policing is and what's accepted in courts and what's not. So, I remember, when I first started, I thought, "I'm a police officer, my job is to arrest and bring them towards the courts." So, a kid throws rocks, breaks a window. I arrested him and I charged him [recommended a charge] with mischief because that's what a police officer does. I wrote my Crown package and spent however many hours preparing it and sent it off to Crown. And they said, "it's probably not in the best interests of the kid, we're going to stay these proceedings." And that's the end of it. So, after learning how the Youth Criminal Justice Act worked, that ok, I need to do more of preventing this, or diverting it

as opposed to going criminal, that gave me a better understanding for when I went into schools. So, by the time I got into school liaison, I probably forwarded one charge in a two-year period. Just because—and not thinking that the courts are going to ignore it—while they are backlogged, its just the way it is and we can't do anything about that. And personally, I don't feel its [criminal proceedings] really going to help. My job is not to put people in jail, but to stop that behaviour [crime, harm] from happening and if I can do that informally, I'm going to do it. (Nathan)

Nevertheless, like his peers, Nathan discussed informal solutions such as warnings and cautions, rather than referrals to extrajudicial measures programs in the community because of a lack of availability of effective programming. Prior to becoming a school liaison officer, Nathan engaged in recommending charges for youth and realized that nothing came of the charges. It is not clear whether any of the cases he recommended for a charge were diverted; instead, what he saw was nothing being done by Crown or the courts and youth ending up with no consequences. As the following excerpt shows, he favours informal approaches as a result of feeling that he had more control over the process:

When I started off...it tough...its nothing against the court system, but when you're trained as a police officer, you're trained in a really specific way. You're not really trained to focus on social issues going on. You're trained to deal with more black and white. You committed a criminal offense under section 232...whatever...My job is to arrest you and Charter you, put my court package together and that's what you do. So, you do that a few times and you realize that it doesn't make it to trial most of the time. It gets stayed – its just not in the public interest or whatever's the issue – and you get a bit jaded. You say, "ok, I've done all of this work and nothing is happening here." It might be good for some kids to go to court. It might help them, it may for some – but, now you're doing all of this work and nothing is happening to them at all. Like, ya, they've been arrested and it was negative and they don't like police, and they don't like the school, but nothing happens to them. There's no apology letter, there's no charge, there's no community work, there's no nothing. So, you do that two or three times and then realize that this is absolutely pointless. I'm basically pissing this kid off and beside that, nothing happens...there's no repercussions. Six months later he gets a piece of paper saying nothing's happened and that's the end of it. So, they [young offenders] say, "well, I can do whatever the hell I want now. Nothings going to happen so, why would I change what I'm doing if there's no repercussions?" (Nathan)

Despite the finding that my participants tended to favour the use of informal warnings or cautions instead of referrals to community programs, it appears the experience in some

communities has been markedly different and that in some communities, as community-based responses and the YCJA (2002) have become more entrenched police are increasingly referring youth to community-based responses. Allison works as the Executive Director for a restorative justice program in this province that receives police referrals. She offered the following:

In 2012 we hit 100 referrals. Six or seven years ago we had 20 referrals. So, that is one of the things you can take away from your research—and we can certainly provide you with specific numbers. I don't have them with me, but our referrals increase exponentially every year and the demand for our services increases every year. And I think—and we're probably getting ahead of ourselves—but I think that one of the main reasons for that is awareness of police officers. Now they're understanding more about what the YCJA is and what their obligations are under that. So, out of the 100 files, I'd say 90% of the cases were young people. But, if I had to speculate about why many programs have seen an increase in the last five years, I believe it's something around more awareness of the legislation that's come from their higher ups. So, their NCO's or whoever is supervising them are now more aware that this is not an option. This is what they HAVE to do. They HAVE to divert young people out of the system. They don't really have a choice in the matter and that was not even on their radar until, I'd say, the last five years. I mean, certainly in 2003, 2004, 2005, they were doing the same thing as they had always done. And my question now—I know that they're dealing with youth much more informally, we're seeing more cases, but there's also fewer cases being dealt with through warnings and cautions. And I'm really interested in how that's being tracked because nobody knows what's going on there. We can tell you our stats, but there doesn't seem to be a way to track all of the other diversion—informal warnings and cautions—that's going on, which is troubling to me...

In contrast to what three of my police participants—who identified various reasons for engaging in informal diversion as opposed to formal referrals—discussed, Allison felt that *fewer* cases were being dealt with in her community through warnings and cautions. She discussed a growing inclination among police to make formal referrals to her restorative justice program, as compared to the first few years under the YCJA (2002). These divergent perspectives are likely attributable to differing practices and experiences across communities. Not only are community programs quite distinct in terms of availability and criteria across the province, but police agencies are highly variable in how they administer policing given various cultural attitudes across the 11 independent municipal police agencies, one First Nations policing agency and the Royal Mounted Canadian Police across British Columbia.

***“Lost in translation”***

Daniel discussed his role in conducting training presentations to all detachment personnel on the implementation of the YCJA (2002) when it was introduced as an important one in helping lay the foundation for a shift in policing practice in the community in which he worked. He discussed his interpretation of the law and his expectations of how it would work in practice. At the time of our interview, however, he reflected that what he hoped would have been put in place was not:

Daniel: And actually, the stuff that I read, and my understanding of the Act, and its very interesting in my view, really, I think that the intention, particularly when they clearly articulate the principles in the Act and it was kind of an unusual creation of legislation—I think there are aspects of it that I don’t think have ever really been realized. One of the things I really took is a recognition that the machine of youth justice chews people up, and dismantles people, and destroys people. It’s ineffective and really not a favorite mechanism to pursue. And they threw in two key facets I thought: one for the police and one for the judiciary. Either extrajudicial measures, or extrajudicial sanctions. The way I understood the application, or its intended application was that there would be an onus on the police to specifically articulate that they had considered extrajudicial measures for every time they interacted with a youth. To the point that when I was presenting to the officers, knowing that this was just brand new, I said, “I recommend that you put a paragraph at the outset of anything you’re reporting to Crown Counsel. Because if you have not done that, at any point in the process including sentencing, a judge could say, “wait a minute, has extrajudicial measures been considered for this young person?” and if the question couldn’t be answered with any conviction, he could actually say, “well, I’m going to suggest an extrajudicial measure.” From what I’ve seen in its application, that has never really been realized. And I don’t understand how. Somehow the judiciary hasn’t got it and Crown Counsel hasn’t got it. I thought this was going to be a non-negotiable, do not pass go, you must do this. Because to me, I thought that the intent of the legislation as a pretty direct stipulation would end up really saying, “if a person is a kid that doesn’t get it and cannot end up reconciling what they’ve done, then we’re telling you that the kids that do, we’ve got an offer and that’s extrajudicial measures, extrajudicial sanctions. Get them the hell out, out of the system, fix whatever’s going on and hopefully they never come back.” That was how I envisioned how it was supposed to go. But, I don’t think that’s happened.

Lorinda: so, what has happened?

Daniel: What I assumed was going to be a very ridged application of the insistence that police take a robust look at extrajudicial measures, it's almost passing and it's just gone to more procedural quality and the integrity of the investigation to see if we can pursue the charge. It hasn't really switched to say, "before we even look at that, have you tried to divert this kid out of the system?"

Daniel's instructional and supervisory role within policing during the early years of the YCJA (2002), put him in a unique position to reflect on the goals and intentions of the legislation and to get somewhat of a bird's eye view of what was happening operationally without dealing with young offenders himself. When I asked him to speculate on why the implementation did not occur in the way he thought it would, he said:

Daniel: I was expecting Crown was going to be the first one that was going to slap us silly. That was my anticipated outcome. Because I said, ok, I'm providing direction to the officers, I was running a team of officers on a 12-hour shift. They understood my expectations in terms of the reports to Crown, so they're adhering to it. But, as with anything, where you're the one that seizes the responsibility of learning something and then passing it along, you tend to be more sensitized to it. And I expected a lot of other officers would get stuff bounced. It wasn't happening. I would see a report and say, "you didn't do anything about extrajudicial measures." And they'd say, "oh, you don't have to worry about that." And it was just a very slippery slope and the system just sort of said, ok, here's the legislative intent, but we're going to actually find our own centre. The momentum of the system is actually going to overpower the legislation. I was expecting to hear these very upsetting narratives from officers saying, "you know, I got screwed over, I had this charge that was going ahead, and it was a solid charge..." you know, the typical: instead of looking where you should have done better, externalizing it saying that the judge was an idiot or the Crown was an idiot or the system was an idiot, you know, bellyaching commentaries that you run into. And I heard none of it. There was no angst, it was business as usual, which I don't get. Because then I thought, even if Crown doesn't miss it, we're surely going to have judges that are saying, wait a minute, I don't see anything about extrajudicial measures. I have never ever heard a conversation ever where that discussion came up. Where somebody had something bounce back and there was a concern that that it [extrajudicial measures] had not been discussed. It certainly isn't part and parcel of the ongoing dialogue.

Lorinda: I'm really surprised that its such a small referral number.

Daniel: It just doesn't make sense. It [the small number of referrals] should have been scandalous. We should be having Crown Counsel reports bounce back constantly. We just went through a managerial review. They did our quality investigations, they ended

up speaking to our Crown prosecutors and they said that relationships have never run better, the quality of investigations is fantastic, very receptive of anything we have to say. Zero. No Nothing. No criticism. Nothing about, “there’s issues with how you’re dealing with young people and sending charges out.” It’s almost like it’s become lost knowledge. Legislation came out and then...I don’t know if you’ve read it or if you were on top of it when it first came out, but it was so unique. That’s why I was drawn to it because they gave a philosophy and a preamble of what the intention was and I’m saying, “this is so unique, its never been framed that way.” So, as opposed to a lot of times when you have decisions and you have to go through it and you get the law-makers, particularly the Supreme Court, kind of says, “what the hell were they trying to say?” This, they said “we don’t want to have that confusion. We’ll tell you what our intention is: we’re trying to get kids the hell out of the system. That’s our purpose and here is the actual implements to achieve it.” They even went as far to say, when it came out, “we expect each community will have some mechanism to deal with it.”

Lorinda: It’s interesting to me because it seems like the communities you’ve worked in do have the community resources to deal with it...

Daniel: Yup...but there’s something lost in translation there.

Unlike Nathan, Amy and Elaine, Daniel found that a lack of availability within the community was not the foremost reason police were not referring to extrajudicial measures. Instead, he identified the overpowering momentum of the criminal justice system as a key contributor to what he perceived as an important disconnect between the intention of the YCJA (2002) and the operation of youth justice in the communities in which he worked.

In the same vein, several participants noted that there was something “lost in translation” with respect to community-based responses under the YCJA (2002). To illustrate this phenomenon, two participants compared diversion within the youth justice system to changes around domestic violence in the criminal justice system. The comparison is seemingly an appropriate one as policies around both issues designate new procedures for each stage of the justice system, and incorporate the community in service delivery. Allison pointed out:

When police change things like domestic violence, the change at the practice level happens immediately. Boom. Mandatory charge policies. That’s just one example. So, why...what makes this legislation [the YCJA] so different? Is it so vastly different? Was it too big? Was it too overwhelming? I don’t know. It would be really interesting to try to get a sense of why the translation to practice isn’t happening still to date. (Allison)

For Daniel, the reason for the disconnect between policy and practice governing community-based alternatives under the YCJA (2002) was not necessarily because of the breadth of change required by the YCJA as Allison had speculated, but instead owed to the gap between the policy-making and operational settings, and a lack of oversight. His perspective is revealed in the excerpt that follows:

And I always try to anticipate the consequence of some kind of a change. Like all of the stuff on domestic violence, I knew that as soon as they got it together—our practices—I was very directive on how they were supposed to do risk assessment as part and parcel of the intake of victims. You know what? I saw how it [the YCJA] was rolling out and I said, “this is going to be an implementation failure. We’ve been patting ourselves on the back that we did such a good job with the notion of policy.” But, if you’ve done any sort of policy analysis, the devil’s in the details with this kind of stuff. If you haven’t got really stringent oversight for implementation, it starts to follow itself. Systems are organic. We find our own way. And I think that people get so deluded. Just because the policies are in place, you’re completely out of touch if you don’t end up getting some understanding of what is happening at the ground level. Because you’ll end up posturing around thinking everything is okay. And that’s scary. And yes, with respect to youth justice, there are parts that work—but in terms of how it *could* work, and how we *could* save a whole amount of money and wasted time and grinding through a system approach—we could become way more effective. It’ll put strain on the community because obviously if you have some kid with needs, and you don’t have the resiliency in the community to provide support mechanisms to get that kid turned around, well, then you’re stuck. (Daniel)

Although allowing communities to create their own solutions under the YCJA can be useful in promoting community-specific solutions (Hall & Reed, 1998), Daniel’s discussion reveals that it can also be disastrous if the system comes together in a piece-meal fashion where striking gaps persist.

The narrative accounts examined in this section point to a vital gap created under the YCJA (2002): The narrowing of the net of youth justice where some police choose not to formally divert youth or to lay charges, but instead to offer informal warnings or cautions, and youth are unable to access appropriate services for their lack of being system involved. This means that probation officers and intensive support and supervision workers may not come into contact with delinquent youth until they are highly criminally entrenched, and have either escalated in their offending patterns, or have met the informal strikes threshold which may exist at three offences or more, depending on various factors. Rather than being entrenched in the

youth justice system (an occurrence that the crafters of the YCJA set out to avoid) it is worth examining whether youth may become further entrenched in criminal lifestyles prior to accessing help. There is some concern that these youth, who may be particularly vulnerable, may evolve into a population that is much more complex to assist. While doing nothing may be a perfectly defensible diversionary strategy, one that is enmeshed in the community-alternatives goals of the YCJA (2002), such a strategy should only be arrived at purposely, rather than as a result of a deficient system. Because, as the earlier part of this chapter illustrated, formal-criminal justice system involvement is often the “key” to services, we need to open up pathways to care and treatment if we are to restrict pathways to criminal justice system-involvement and have any meaningful ways to address prevention.

As the next sections demonstrate, the notion of carving out the boundaries of youth justice is integral to this discussion, particularly as we are seeing a *net-narrowing* within youth justice in British Columbia. While it may not be appropriate to widen the net, it is imperative to examine a widening of the other nets of social services to address youth who are no longer conceived of as appropriate targets for youth justice interventions. For example, if a young person receives a warning or caution and is diverted away from the youth justice system, can they be addressed within another net of services? This concern with youth who are in-between justice system and other social services is discussed in the next section.

## Edge Issues

For policy issues to be the subject of solutions, lines need to be drawn that help to delineate between what the subject of policy is, and what is not (Colebatch & Degeling, 2007). So too, these lines are carried out in policy implementation when specific sectors of government have responsibilities for specific aspects of service. Unsurprisingly, in practice, these lines are not easily placed. Regardless of how a problem is defined, the way this problem is interconnected with other related concerns is exceedingly important in crafting structural and system-wide responses. Social problems such as youth crime do not lend themselves to being defined in isolation from other pressing social concerns like poverty, homelessness, mental health and addictions (Golden, 2008). However, the process of policy-making places demands on policy-makers to define a specific problem.

For many participants, the area of youth justice is much larger than a concern solely about delinquency. Accordingly, a key theme throughout the data was a concern with where the boundaries around youth justice, as a policy issue, were drawn, and how the setting of boundaries implicates practice by creating fractures between policy aims and achievable outcomes. This theme was displayed in two branches: (a) a recognition that the law, as a blunt tool is unable to deal with complex and contextual social realities, and relatedly, (b) concerns that issues at the edges of youth justice are seen as nobody's problem and are marginalized.

### ***“She doesn't have a place to sleep at night”***

Larry spoke at length about the youth clients he sees who have very complex problems that occasionally result in offending behaviour. From his perspective, community-based responses to youth crime still occur after-the-fact and do not address prevention from the outset. This is despite the narrative of prevention and addressing the root causes of crime that occupy such a central role within the archives and the YCJA (2002) itself. Larry discussed his belief in providing care and tools to young people early, before they become involved in offending. But for him, this preferred approach can only be realized if the problem of youth crime is very broadly defined. On the issue of youth justice, he said:

The first thing that came to mind is vacuum, and it does have the ability to be able to work and provide some programs like deferred custody...but then there's also the air of a vacuum or silo where some of the kids—youth that enter, I know we discussed some of this stuff already so, I don't want to be too repetitive—some work on...better in some ways, but we work with youth that have these issues that are already in the system. How can we—and it's not the document's fault. Its not the YCJA's fault, but it's more of a—I guess we go back to that whole thing about how we work with this document, so there's more prevention—and maybe we should elaborate on that: Okay, so we've got this. How can we talk about these issues? Even if we took the measures and sanctions because we don't want to—or police...warning. Even more, all of these things that I thought was fantastic is having police in the community, they go to community centres to talk, so they know police...to talk about things. I mean, that's happening, but we're still getting these kids measured, sanctions, charged off you go. Either end. How can we put into place more infrastructures around it to support it? Because it's restrictive. Because I don't think those kids grow up thinking, "I want to get involved in the criminal system," and if they do, then we need to be looking at that as well. And the parents don't wake up—I don't think parents wake up saying, "I don't really love my child, I want him to

be in the youth justice system.” Instead, I think these parents deep down care...for their kids, and they want what's best for them. But if they don't have the ability, for whatever reason. That's where the policies, procedures and...ministry...comes into play. So this thing needs more things around it, more supports around it to be able to make kids more successful so we don't have to use that [YCJA], because its overly relied upon sometimes and we need to give it another shot. (Larry)

Larry expressed his belief that social problems and responses should be developed with attention to context. Though strategies of diversion and other community-based responses have been used to define some behaviours as not a part of the youth justice system, there has been inadequate recognition of the connections between how things “fit together” within the operational structure of the youth justice system. For this reason, despite the practice of utilizing community-based responses once a youth has committed an offence, there appears to be inadequate attention paid to the situation youths are in prior to committing offences. As Larry submits, these issues may be beyond the scope of the YCJA.

Like Larry, many other participants worked with youth affected by concerns framed to be at the periphery of the youth justice system—what I came to call “edge issues”—such as poverty, addiction and mental health concerns. Despite a focus on diverting youth from the formal system, many participants suggested that more attention needed to be paid to youth contexts *prior* to offending. A particular complexity is that it is these marginalized youth who, once they do commit a crime, are seen as less appropriate for available community-based responses for numerous reasons. One participant remarked that criminal behaviour for many young offenders should be understood as a symptom of other factors rather than an isolated problem. Co-morbidity of mental health concerns and addiction with offending behaviour presents a particular challenge to the implementation of community-based responses to youth offending.

Yasmin: I have a youth on my caseload right now. She's been on my caseload for four years. She's very highly addicted to all sorts of drugs, heroin being one of the most pressing ones. She's been in care all through her life, she's gone through, I believe, 25 foster homes. So really, I don't even know how these kids have a chance when they've already suffered through so much. We've sent her away to programs, given her all sorts of treatment and tried to help her in the community and we're finding that its just not possible. We just don't have the resources to help her. She said her addictions are too strong. The last thing she said to us was “you guys want me to be normal, I'm just not

normal, this is my normal." She is currently in jail and her probation actually expires in February and she's aged out. So, ya. Its bad. It tears on my heartstrings a little bit...We've done everything we can. And we've met to discuss what we may have missed, what more we could have done.

Lorinda: So, where do you...do you see her ending up in the adult system fairly shortly?

Yasmin: Ya. Yes. Or worse.

Lorinda: In a situation like that where you brought together all of your efforts and it just didn't work, can you think of anything that you would have liked to do that you were unable to?

Yasmin: from my end, probably not. And from the perspective of the POs [probation officers], the youth need to buy into a program for it to work. And so, the only thing we didn't try is having her attend a program in our community. We could have had her live in a halfway house and attend the program. Because, when they're away in a program, they're fully structured, they have full supervision. And then you kind of just let them go back to their communities and their re-involvement [in anti-social behaviour] is bound to happen. And we don't have something like secure care here—that is something that could have probably really helped her.

Earlier in this chapter, I discussed a lack of resources and particular problems young offenders had in accessing services when they were on the cusp of aging into adulthood. A particular concern is when offending behaviour interacts with homelessness and poverty, which it very often does.

Yasmin discussed a situation where a female youth was referred to intensive support and supervision services and experienced difficulty in accessing housing. Though the youth was participating in programs during the day, as a result of not having secure housing, she was working in the sex trade during the evenings:

Yasmin: And it's interesting because I was at income assistance the other day with a client and I knew this was going to happen. They said to me, "why isn't she in Ministry care?" She had just come on my caseload and I said, "look, she's homeless, she's been homeless for the last couple of weeks, she just came on my caseload, we need to get her on low income assistance so she can find some housing." And they were just like "well, you need to phone the Ministry..." And I know quite a few people at the Ministry, so I phoned and said, "I'm at the low income assistance office and they're saying that they're going to have to phone you for you to say no...blah blah blah..." And so she said "ok, give

her the phone" and I handed it to the income assistance person and she [income assistance] spoke to her [MCFD] and finally said, "ok, I see, she's too old." And I was like "ya, I already told you that." Then she says "well, we can't approve this right away." And I'm like "she's homeless, she's been homeless for 2 weeks." So she asked me what she'd been doing at night. "She's been working on [the street]. That's what she's been doing to make money right now." She's doing all of these good things during the day, but she doesn't have a place to sleep at night, so she's working. And then finally she went and talked to a supervisor and then told me that she'd let me know on Monday. Well, this is Friday, so I ask what she's supposed to do in the meantime. "oh, take her to a shelter." So I say, "the youth shelter won't take her because she's not a youth and the adult shelter won't take her because she's not an adult. Where do you expect her to go?" and she says, "well, we can't help you. Phone us back on Monday." So, I asked her if there was someone she could phone, like a friend or family member. And she finally found someone she knew from way back and stayed there over the weekend. And on Monday she was approved and we got her a place by Tuesday or Wednesday.

Lorinda: So how has that worked out?

Yasmin: She's gotten assistance and has gotten a place. But that hasn't stopped her from working on the street. She says "I've been doing that forever." So, that's the next piece we'll be working on...For the kids that are lower functioning, they don't really grasp what is happening. For her, she was like "whatever, what's another few nights on the street?" She didn't really grasp the issues around safety and that. For me, I was considering calling the child's advocate office. Because I can't just drop her off and say "ok, have a good weekend!" Things like that are really hard, just to leave, because I think about it all weekend long. And I'll go back to talk to my boss and they will stress the importance of boundaries. But, its kind of hard to do. They're human beings.

Recall from Chapter 3, intensive support and supervision services are typically ordered for youth who are known to have complex challenges that require enhanced individualized attention and monitoring from a youth worker (De Gusti et al., 2009; Roberts & Bala, 2003) in addition to being on a probation caseload. For this reason, it is not surprising that a client on a court order may both lack housing and be involved in the sex trade. What is surprising, however, is the difficulty in accessing services to address the basic needs of a young offender, such as housing and personal safety. In the above example, the intensive support and supervision worker herself experienced difficulty in advocating on behalf of her client, despite the fact that such services provided by intensive support and supervision workers are designed to connect youth with available community-based services.

Amanda also experienced frustration in what she perceived as critical gaps in services—in her experience, with youth who suffer from mental and developmental health issues. She felt that because youth with mental health issues are under-served in the health system, they are shuffled into the youth justice system as means of last resort. Problematically, the services these youth are able to access through intensive support and supervision programs are often inadequate to address the mental and cognitive deficits they face. Amanda said:

And the other struggle for me has been working with kids who have severe mental health problems. Because there is a severe gap in services there. So, they end up in the criminal justice system—which is not really where they're supposed to be and you can't necessarily get them services. Those are the kids who, because they have cognitive deficiencies, they don't understand what it is that they're doing. So, they haven't gotten the services that they've needed, now they're in the criminal justice system, all of these people are telling them all of the things that they're supposed to be doing and they just can't navigate that. I have a girl right now who has severe FASD [fetal alcohol spectrum disorder] and she is just horrible to me. And I just don't ever feel like I'm getting anywhere with her. She spends most of the time yelling at me, and won't sit in the front seat [of the car] with me and it's just become this really unpleasant relationship. And honestly, we don't know what to do. (Amanda)

The problem of offenders afflicted with fetal alcohol spectrum disorder is discussed at length in the literature, where it is widely accepted that affected youth are resistant to rehabilitation and treatment and are vulnerable to lifelong challenges (Popova, Lange, Bekmuradov, Mihic, & Rehm, 2011). Particularly concerning, and as expressed by several participants, many youth in this province are unable to get a timely diagnosis identifying their disorder, other developmental disability or mental health issue, thus further restricting their access to appropriate services. This issue is taken up more fully in the section that follows on “net narrowing.”

### ***“But, there’s no food in the house”***

In addition to complex issues such as poverty, housing and mental health that complicate the delivery of youth justice services, in the excerpt that follows, Larry described very basic necessities such as food that may be unavailable to some young offenders.

I was talking to an ISSP worker yesterday, and she was talking about a young girl that she's got on her caseload. And the young girl is picked up on a charge. Picked up charge and she's got an ISSP worker now. They've got a fantastic relationship...Talking about food. She's got everything sorted out in the custody, all this ISSP work and in the section with which they're working—you know. But, there's no food in the house. Worker sees that and the worker is trying to feed her every time, and I'm trying to get her to acknowledge that we need to work with Dad to get some food in the house...No work's been done while she was away [while the youth was in custody] to work with Dad or any other supports and the other siblings in the house who are younger than her, to get stuff. So now, I've got an ISSP worker, and this is not really in her mandate...It's not really her mandate at all. And she has to say: "okay, what other services can we do? Is there a food bank?" No, the dad is too proud for food bank. Mom's passed away. Dad's too proud for the food bank, because he thinks that people won't think he's done his job or is doing his job for his kids. Will the kid take help for food or food bank? No, because her dad will find out and get angry with her. So you can see how the kid was [conflicted] and so there's a custody piece. We've talked about that. But in this case, home is a problem, because MCFD is not involved and there's no MCFD flags going up. So there's some work for her while she's trying to get this kid to her court-ordered appointments, help to get that kid to school, help to deal with her addictions, and then worry about these other kids in his family...So there's the other pieces that must be plugged in around the YCJA. What will happen then is—what will happen a lot is we have one sibling, and then we get the next sibling, and then we get the next sibling. So it's hard to function and then the older one will get pregnant, have kids, and we'll get those kids too. (Larry)

Although youth justice services “kick in” when a youth commits a crime, young offenders and the families in which they live, typically have many more complex challenges that must be addressed beyond individual offending behaviour. Though community-based responses and non-incarcerating sanctions are designed to address offending, offending, as depicted in the operational narratives, may be a symptom of much more challenging-to-address problems. As the above example demonstrates, until provisions that address the whole child<sup>63</sup> and the

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<sup>63</sup> Though not a theme in and of itself, it should be noted that British Columbia's attempt to unify youth issues under the umbrella of the Ministry of Child and Family Development (MCFD) brought the responsibility for youth corrections into the same Ministry that deals with child protection (youth corrections had once been part of the Ministry of the Attorney General) ostensibly to capitalize on the benefits of integrating all services for children and their families (Armitage & Murray, 2007). However, as one participant, Luanne stated, youth corrections may have an uncomfortable place within MCFD. She said, “In MCFD on the whole, probation officers are only 8 or 9% of the ministry. We are ghettoized. Because we are now under the umbrella of MCFD, rather than corrections as we were before MCFD was created, you pretty much need a social work degree to get into management. You need to be designated. But, POs usually have a background in criminology or sociology. Since it all became integrated, POs were moved like pawns on a board where some offices were left with only a single PO. At this time, there were

contexts in which they live are put into place, and until youth justice is more widely defined to encompass factors that contribute to and exacerbate criminal behaviour, the potential of community alternatives in terms of long-lasting rehabilitation and crime prevention may be left unrealized.

Relatedly, and as described in Chapter 8, factors that may contribute and otherwise relate to youth justice were discussed at length throughout the archives, mainly as “root causes” to be attended to in order to achieve crime prevention outcomes. In fact, dialogue around the “root causes” was an important part of the narrative during Parliamentary debates on the YCJA (2002) where community alternatives were positioned as measures that could help identify and address the very factors that contribute to delinquency. In those discussions, there seemed to be a keen awareness that the problems contributing to delinquency must be addressed if we are to take a preventative approach to youth justice. In practice, however, the issue of offending behaviour seems so narrowly defined that programs are not designed to address factors such as poverty and food security.

While Larry discussed a predictable cycle of dysfunction where siblings and then their children follow in a similar delinquent lifestyle, Amy noted that within the policing environment, she often comes into contact with children who are involved in criminal behaviour prior to reaching the age of 12 (and therefore, not subject to the YCJA):

We usually have contacts on them since they're not even teenagers. A lot of them start off between 10 to 12 [years old] I would say. You become familiar with their parents because their parents usually have, whether it be some sort of addiction to alcohol or drugs, so normally, we're always checking on that residence for some sort of noise complaint, or disturbance and we're in contact with them and the Ministry [MCFD] and the children pretty much on a regular basis. So, we come to know these kids, or you'll find them wandering on the streets, you know, bullying or causing problems and they basically have a criminal record before they're even eligible for any of these programs in the first place. And if their parents are severe alcoholics, or have a drug problem, it's hard to ensure that the parents will be supervising the children if they're going through any

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integrated team meetings where we'd have to listen to a bunch of social work cases that we didn't have anything to do with. They didn't know about what we did. Gradually we have scratched our way. But for me, I like this office because there are no social workers here. All of that integration was because of the Gove report..."(Luanne).

sort of program. So, they're kind of a write-off in that sense. And those are the kids that we typically deal with the most. (Amy)

Amy recognized that prior to age 12, she could not refer a child to a community program for their anti-social behavior, but would instead connect with the Ministry of Children and Family Development. Once a child with multiple police contacts before age 12 does age-into the youth justice system, diversion at the police level may be inappropriate because the youth are unsupervised without the presence of capable adults to support them or to monitor their compliance. She discussed how these youth would typically receive a charge recommendation depending on the offence they committed.

The theme of complex, multi-problem youth was present in most of the interviews, as professionals encountered these youth in community programs, receiving court-ordered services (e.g., intensive support and supervision orders), and often as the subject of no services at all. Concerning, some participants felt that their caseloads had become more complex under the YCJA (2002) as compared to the YOA (1985). For example, when asked whether her caseload had changed after the implementation of the YCJA (2002), Amanda remarked: “we’re seeing more kids with—rather than criminal kids, especially with girls—with more high risk...needs...homelessness, drug addiction, prostitution, sexual exploitation, physical, mental and emotional abuse, neglect, lack of education, lack of employment skills. And also things like low self-esteem, depression” (Amanda). Because youth with very complex conditions are not typically appropriate for many types of diversion, although they may be considered appropriate for intensive support and supervision programs while on probation as an alternative to custody, they may be fast tracked into the formal system. On the otherhand, youth who do manage to complete court orders such as intensive support and supervision and probation, but who suffer from mental health issues, may not receive the help they require as Yasmin discussed in the next excerpt:

In discussions with my co-workers, it’s clear that we have quite a few [youth] who would fit into the “difficult to deal with” category and have some mental health issues. It’s great that they get to see someone in forensics, but they can only do so much there. One of my co-workers who had a client who was 17 ½ or 18 and had a hard time trying to transfer him to adult mental health, and it was like pulling teeth. It was very frustrating. Things weren’t moving. Things were just not getting done. And, sometimes there’s not a lot you can do when there’s mental health issues. It’s unfortunate, but that’s really a gap

in service and they fall through the holes. It's really sad, I used to work in a group home. And unfortunately, I've kind of grown up with these kids. I saw them in the group homes from nine to 12 years, and now I'm seeing them on my caseload now that they're in the criminal world. With one of the kids who had mental health issues, he became heavily involved in meth. Even though I wasn't involved—well, I was and then he was on probation. And the social worker knew that I was involved in that I had known the kid for a really long time and that I was trying to advocate for services. But the social worker was telling me that he didn't want any services, he was refusing. And I was thinking, "well, you're the guardian, you need to make that call." And because there were some mental health issues, and the meth didn't help. He's turning 19 next month and the social worker is probably pretty happy that he'll be off the caseload. Then he'll just be left on his own. And, there's a lot of them. (Yasmin)

It was clear from the interviews that many youth were the subject of community-based services, but due to the complexity of their cases, they were unable to be rehabilitated or otherwise effectively treated. Like the discussion earlier in this chapter surrounding the issue of resource allocation and the lack of wrap around after-care and transitional services, the failure to provide adequate and responsive services to multi-problem youth is a vital concern among professionals. Specifically, and perhaps complicating the delivery of community-based responses even further, Yasmin felt that because some youth were able to access informal diversion, they were often much more criminally entrenched by the time they did access intensive support and supervision programs and other more intensive programs. These youth were older and less likely to respond to assistance before aging into the adult system. There also seemed to be a concern that as the youth justice system is now, we are waiting for youth to display more extreme patterns of behaviour and to become more chronic and persistent prior to being allowed to access specific treatments and services, a problem that some participants felt is exacerbated by community-based responses to youth crime.

Accordingly, there seems to be some evidence that in light of non-interventionist strategies designed to divert youth into the community, youth may suffer when adequate and appropriate community-based resources are not in existence to offer them meaningful consequences and treatment. The archival data revealed that "edge issues" were very much a concern within the House of Commons by the mid 2000s. For this reason, and as discussed in Chapter 7, in 2007, the Conservative government introduced Bill-423 in order to expand the availability of custody to treat addictions:

I remind the members of the House about a conversation I had with a constituent...She was a mother who wanted her son to go to jail for a series of incidents, including a theft charge, so he could receive treatment for his drug addictions and be saved from a life of more serious crime. The current *Youth Criminal Justice Act* makes no provision for someone in her son's predicament. She was told by the judge that his criminal record was not long enough for jail, so nothing was done. Several months later he found himself again before a judge, restrained in a straitjacket due to a drug-induced psychosis. At that point, finally, his record was long enough to merit addiction treatment...Had Bill C-423 been law at that time, police would have had the ability to recommend drug treatment instead of judicial proceedings...This law will save lives. (Harold Albrecht, CPC, December 10, 2007, case 075)

As discussed throughout the archives, the solution to the inability to access services as presented by Bill C-423 was seen as equally problematic by some other speakers. The tensions rose in particular as a result of custody being presented as the alternative to community-based treatment. The tension in how to address issues at the periphery of youth justice was particularly complex as the next excerpt shows:

We do believe that there needs to be far more investment in the early intervention methods that certainly the witness before me spoke about, in terms of early intervention, supportive mechanisms, social services, educational services, health services—all of the things that have been cut, services that when they are not available to provide support, their lack actually contributes to young people ending up in the criminal justice system. **We don't see that as a place for this legislation and in fact think that the changes proposed by the Youth Criminal Justice Act to push those cases out of the criminal justice system and into an appropriate service, whether it's mental health, social services, or educational services, are supportable and should continue.** (Kim Pate, Executive Director, Canadian Association of Elizabeth Fry Societies, June 15, 2010, case 103)

As the next section demonstrates, the phenomenon of *net narrowing* is extremely problematic within British Columbia's operational youth justice system.

## Net Narrowing

There was wide agreement among participants that since the enactment of the YCJA (2002), fewer youth are being formally processed in the youth justice system and, relatedly, many youth are diverted at the early stages; fewer youth are being sentenced to custody

because they are either being diverted earlier or sentenced to community supervision. This is consistent with the statistics on youth justice presented in Chapter 1. The risk, however, inherent in any diversion policy is the phenomenon of “net-widening” (Alvi, 2012; Roberts & Bala, 2003). As discussed, net widening represents an important disconnect between policy intent and policy implementation and may occur for example, when justice professionals who might otherwise offer an informal warning to a youth, place a formal charge so that the youth can be eligible to take part in an enforcement-based restorative justice program (Prichard, 2010).<sup>64</sup> While there may be benefits to the program, in some cases the decision may increase youth involvement in the formal justice system (Hudson & Galaway, 1996).

As was expected given the literature, nearly all of the participant narratives highlighted an important contradiction in community-based responses to youth offending that emerged in practice. However, the contradiction was very different than what has been the outcome of earlier research. In my research, formal entry into the youth justice system was framed as an important doorway to much needed services; being kept out of the system, therefore, often means that these resources are inaccessible to youth in need. This amounted to something more akin to “net *narrowing*” rather than the widely discussed “net widening.” That is, a key narrative in response to the perceived lack of funding for necessary services turned the idea of diversion completely on its head: as this chapter has shown, professionals shared story after story about formal youth justice involvement being one of the primary pathways for youth to access much needed/desired services; in other words, youth justice system involvement is a window of opportunity.

The idea of net narrowing deeply contrasts with the literature on the phenomenon of net widening where authors offer concern that diversion techniques could cause more youth to become involved in informal processing that would have, under the YOA (1985), been given an informal response, such as a verbal warning. Allison expressed frustration that some parents of young offenders find formal justice system measures more helpful than diversion:

The key is keeping people out of that formal justice system to be hopefully something that is more community-based...to try to prevent them from entering that revolving door that is the justice system. One of the things that I find a bit frustrating though, is

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<sup>64</sup> It should be noted that some researchers have ruled out the phenomenon of “net widening” as impacting on Canada’s youth justice system under the YCJA (Carrington & Schulenberg, 2008).

that some parents want their children to go through the court process because there's resources that can be accessed there that can't be accessed outside...or there's probation conditions that compel a young person to attend a specific program or have a curfew. And, EJM doesn't have those teeth. (Allison)

Similarly, Nigella emphasized that youth on probation have improved access and funding for assessments as compared to those without a court order:

I've noticed—and I guess this is because I have had a lot of clients who have had FASD. I'm not sure if you know much about the testing facilities. But there are only two, I think, here in BC. And the waitlists are extremely long—it can be over a year. And it's really expensive. So, let's say you're on probation, its [the FASD testing] paid for, however, sometimes youth will be on the waiting list the entire time they're on probation. And then they just get accepted once their probation is over. At this point its no longer covered [because their probation has ended]. So then they don't end up getting tested. And, without a diagnosis of FASD—because it can manifest in so many different ways—that tends to be a big problem. So for us, its very hard to get the youth in for those assessments. That's a big struggle. For most of the youth, if they don't get the assessment while they're on probation, they never will. (Nigella)

Nigella elaborated with a discussion of the link between provisions of service during formal justice system involvement as a result of funding restrictions:

And I think this boils down to funding—a lot of the services offered to youth are offered while they're on probation. And, the minute they get off of probation, there's not...well, there are some services that they could get through the Ministry [MCFD] and if they're not a Ministry youth, they could get a one to one worker at a community centre, but they work in very different ways. And one of the things we try to do is to set them up with people in the community who they could work with when their probation ends. But essentially, when probation ends, they will end with a one to one worker. Sometimes they have been getting bus passes through probation, but then that ends and they have very little access to funds. There are a lot of things, I guess financially, that they can get while they're on probation. Because they're told "ok, well, you committed a crime, let's thrown these services at you..." And there are the youth who get off probation and experience a hard transition because most of their workers are either through probation or somewhere else. And that's where their funding is. (Nigella)

The painful reality that was illustrated throughout the data is that as much as the emphasis within the YCJA (2002) on community-based responses to youth offending was seemingly premised on creating more effective and tailored responses to delinquency and focusing on

prevention, in operation, non-interventionist strategies may actually make much-needed services harder to reach.

In a related example, Irma acknowledged the strengths of the present system and the flexibility with which she is permitted to interact with her clients, but was concerned that given increased diversion, young offenders are not processed within the formal youth justice system soon enough in their offending behaviours. Given that formal processing works as a window of opportunity for service access, front-end diversion from the formal system also diverts youth away from much needed rehabilitative, diagnostic and treatment services. For Irma's intensive support and supervision caseload, that translates into fewer youth, but a concentration of youth who are deeply entrenched in anti-social behaviour with more serious and chronic offending histories. Because these youth have typically been subject to front-end diversion at a younger age, they are also older by the time they are processed formally. According to Irma, this greatly reduces the potential impacts professionals who deliver community-based responses at the latter stage, like intensive support and supervision, can have on a youth's life before s/he ages into the adult system. She said:

The extrajudicial measures and things like that that are in place really help us in terms of the work that we can do with the youth. It allows us to be creative and its not just a "go to jail card" or nothing. It allows us to be really creative in our practice and how we are able to work with youth. Again, there are limitations though. I've noticed that with the Youth Criminal Justice Act, we're noticing a lot of changes with the youth who are coming through the court system. Their numbers are decreasing. Caseloads are low on many areas. On the probation side, as well as with us [ISSP]. We're seeing less and less kids going through custody and going through the system which, people could argue is a good thing, but, at the same time, in terms of our program and our ability to support kids, it can be difficult. They might come to us too late and there's only so much work we can do before they fall into the adult system.

Lorinda: Right. So, would you say that the caseload you're getting now is different than it would have been a few years ago?

Irma: yes.

Lorinda: what makes the caseload different?

Irma: Females have always been low. They're especially low now. We're seeing different types of youth coming through so...I mean, its hard to say. I'm not sure whether its

police charging or not. We may have been getting more first time offenders in the past and we are now getting kids who have been through EJS, done restorative things and now they're coming through. They've already got a history. Not to say that they're harder to work with, but they've already got some things against them and had we had an earlier intervention, we might have been able to stop a couple of those other charges or things that happened to them in their life...And oftentimes there could be a kid who could just benefit from, you know, a youth worker. So, you're kind of like "oh, commit a crime and then you'll get support!" [laughing]...It doesn't make sense.

In Irma's experience there exists an inevitable absurdity around restricted access to support: the idea of a youth committing enough offences to "deserve" services—clearly this is inconsistent with the goal of prevention. Similarly, Elaine offered concerns from a policing perspective. She stated that because of her belief that becoming involved in the formal system allows youth to access services that she believes they need, she refrains from diverting youth with mental health issues.

Elaine: If it had anything to do with a youth who had drug or alcohol issues or a mental health issues, I also wouldn't do it [divert them]. I find—and the frustrating thing that is in the youth and adult systems is very obvious mental health issues and/or drug and alcohol addictions. Lots of the time, the only way we can get them help—especially when it comes to mental health issues, is by arresting them and by putting a condition on there that says they need a 30-day psych remand or asking for psychological testing or asking for drug and alcohol programs. Because we deal with people regularly and its in and out of the hospital. We don't have any help from the hospital. And as much as you hate to do it, some people very clearly whatever they have done is as a result of their mental health state. The only way they're going to get help is by charging them.

Lorinda: Yes, and I've heard that before: the notion that getting charged actually opens the door to services that people need.

Elaine: And you'll come across so many youth with MH or addictions issues who don't want to participate in programs and they completely drain our resources. The only solution sometimes is to find something you can arrest them for so you can give them conditions—even though you know it's not going to do anything. It sounds bad...you become very cynical very fast in this job.

In a sense, Elaine demonstrated her aim to help youth by putting in motion a process that she hoped would not only give youth access to services that may be best for them, but would also compel them to participate. In the same breath, she noted, "You know it's not going to do

anything..." making visible her own deep frustration with the process, a sense of exasperation that seemed to underpin several of the interviews.

As discussed in Chapter 3, the British Columbia consultations engaged in as a part of the Federal Government's Roundtable review of the YCJA (2002) identified an emerging problem in this province: the appearance that youth in custody are offered superior resources than those who are dealt with in the community. My findings support that this may have persisted, and has perhaps worsened in the past five years. Natasha found that "[a]s social workers, we will often advocate for a charge for this reason. In thinking about the most marginalized youths, we might say to POs: 'can we breach them?'" In this sense, professionals look for youth to become further involved so that they can access resources that seem otherwise unavailable. Similarly, Amanda found that most treatment programs for youth are justice-related, meaning that youth are required to be charged with a criminal offence before they can be admitted. In contrast, there are few social programs, and where they are available, they may be geographically unaccessible, overburdened, or may be cost-prohibitive given that their fees must be paid by youth or their families, rather than the province who covers the costs for charged youth. She said:

I just think its really sad that a lot of the time a kid has to get charged with something before they can access a service. And parents will say that a lot. They'll say, "I tried and tried and tried..." and it wasn't until they [the youth] got charged by the police that people started to get involved...And when I worked at the non-residential attendance program, they would hear about us and we would have parents call and try to refer their youth. And it's the hardest thing, because we're like, "we can't take them because they're not on probation." And they're like, "what do you mean?!? So I should tell him to get charged with something??" And, well, no. But the reality is that we can't under our legislation take this youth if they're not on probation. And I think that that is just sad. And we are lucky here, we do have the [youth outreach program], and they work with kids. They work with a lot of kids who are street-entrenched youth who don't have to be on probation. And kids in this community are fortunate to have them – but they only have so many workers too and they can only carry so many kids. And they're carrying caseloads of 20-25 kids, they're overloaded. Resources are limited. (Amanda)

Like the issues identified at the outset of this chapter regarding transition services and aftercare, the related challenge of net narrowing appears very much to be related to inadequate resources, with a system that now triages youth so that only the most chronic and persistent offenders may

access needed services. Such a system fails to recognize the potential of community-based programs and fails individual youth in need.

Yasmin noted that although the YCJA (2002) specifies that custody is used sparingly and that more emphasis is to be placed on community sentences, that perhaps the pendulum has swung too far in the other direction such that some youth continually receive community sentences. As an intensive support and supervision worker, Amanda expressed concern that police and the courts were not taking the offences of this youth seriously and that policies around diversion and community sentencing were being used overused in some instances.

Amanda: So, it still does happen, but I think its happening less frequently and that they're ending up—not that our numbers have gone up—but we're seeing more kids, rather than criminal kids, especially with girls, more high risk—like high needs. Do you know what I mean? Does that make sense?

Lorinda: It does. And maybe we can talk a little bit about what kinds of needs those are.

Amanda: Everything. I mean, the biggest one is support—just somebody who's there for them. But also homelessness, drug addiction, prostitution, sexual exploitation, physical, mental and emotional abuse, neglect, lack of education, lack of employment skills. And also things like low self-esteem, depression. And those are so common in the girls that we get. Just so common that it's sad. And then they end up in the criminal justice system and unfortunately that's when they start to get services when they get caught up there. And that's not ok, but it happens that way. And it's not ok. Because then they get...it's just not ok. I have this one girl, like I said, who's an addict, and she only finally got services when she stole something and had a charge of theft and then she breached and breached and breached and breached because she's not able to—when she's using—follow any conditions of any sort. And then she ends up being on probation for three years when, you know, she's not a criminal.

The stories told by participants illustrate how instrumental formal justice system involvement is, particularly for the most extremely marginalized youth—those with mental health issues, cognitive disorders, and those who lack community supports. As a result of net-narrowing, professionals sometimes work towards creating the situation where the youth *is charged*. The result is that for reasons beyond the control of the youth, marginalized youth are less likely to be conceived as appropriate targets of diversion. Due to their complex needs, these youth will have fewer opportunities to be successfully diverted, and fewer opportunities to

be diverted at all by practitioners responding to the reality that charges provide a window of opportunity.

## **Out-Sourcing Youth Justice Service Delivery**

The involvement of community agencies in the delivery of youth justice services has a long history. Recall the discussions in Chapters 3 and 4, where under the YCJA (2002), more non-profit organizations were contracted in youth justice service delivery than ever before in a culture of partnering strategies and decentralization. An intention documented at length within the archives was that the solution to the problem of resource allocation in the youth justice system was to be solved under the YCJA (2002) by the redistribution of resources from custody to the community as Anne McLellan emphasized numerous times in her speeches before Parliamentarians. She said,

One of the results of this legislation, once it is implemented, is that the provinces will save money on the detention side. They will have fewer young people in detention; therefore, those resources can be reinvested. We are hoping that they will free up those resources and redirect them to the front end, which is the youth programming. (Anne McLellan, Lib., September 27, 2001, case 019)

It was clear, however, that such re-distribution sat uncomfortably with other Members of Parliament and also among Senators. For example, Liberal Senator Jerry Grafstein found the system of distribution of power over the criminal justice system to the provinces inappropriate amounting to a “wholesale delegation of the criminal power...” (December 4, 2001, case 031). While Grafstein’s concern was with respect to the federal government delegating too much power to the provinces, in practice, British Columbia has contracted much of the work of community-based responses to youth crime to non-profit organizations in individual communities through memorandums of understanding that position the province as a manager rather than deliverer of services—a theme embedded in the narrative of managerialism as discussed in Chapter 8.

The shifting of criminal justice, and particularly youth justice services to the community was again dealt with during the debates on Bill C-10, *The Safe Streets and Communities Act*:

Currently across the country, the criminal justice infrastructure particularly, but not limited to its most populous communities in the Canadian north, is critically overburdened. Indeed, it's a common necessity in these jurisdictions to prioritize cases for the limited capacity of the justice system and to triage the rest out of the court system by way of diversion programs, plea bargaining, and withdrawal of charges. As it is currently resourced, the criminal justice system cannot fully and consistently carry into effect many of our criminal laws. That's the context for these amendments. We expect that the systemic impact on the ground with respect to these changes will be an increase of overall workload, substantially because the trial rate will increase. In the absence of significant tangible new resources to support this new workload, these changes will exacerbate what is already a dangerous situation of work overload. The lion's share of the new workload that will be created by the amendments of Bill C-10 to the Criminal Code and the YCJA is going to be borne by the provincial criminal justice system. (Jamie Chaffe, President, Canadian Association of Crown Counsel, October 20, 2011, case 120)

In theory, community-based non-profit organizations are important sites of youth justice responses in that they offer the ability to deliver community-specific, tailored services. According to Woolford and Curran (2012), this process of “service offloading,” (p. 52) is usually justified as a measure of community building. In practice, community-based alternatives are not always drawn around specific communities, but instead may be based on the same issues and definitions accepted in the mainstream system. For instance, programs are still characterized as successful based on mainstream definitions such as recidivism, they still centre on mainstream identifications of “offender” and “victim,” are often still run by mainstream justice practitioners, and are subject to funding schemes that prevent communities from creating their own programs. On this vein, Irma highlighted to competition between non-profit agencies for a scarce amount of resources. These resources are provided by private funders as well as government branches and are typically short-term and based on a specific area of service.

I have definitely seen, though, in terms of being a non-profit, whoever is leading the way depends on how much money and things are coming in. So, it seems that there is less money coming our way, but there are more expectations in the work that we can do. This means that we have to be more creative with our time and with our money with less resources. Obviously the front-line people get the best sense of what's best for the youth and oftentimes we'll apply for grants and things like that that we feel would work and it's not what they're (the funder) looking for. And again, when the Youth Criminal Justice Act came out, there was this big transition to see how it was going to work, and whether the pendulum had swung too far to the other side away from the Young Offenders Act. So, its hard to say, because again—and I may be going on a tangent—but really, it all has

to do with who's in power as to what is seen as important and what kinds of youth initiatives are supported. And again, so far its been good. But I know more and more we're getting cut back. And its difficult because everybody is out there with their hook to try and get something and its "who can pitch the better pitch?" In order to get the money they need to show that this program is needed or required. (Irma)

The necessity for sloganeering and buzzwords is realized in the non-profit sector, as they are required to either internalize the rules of the game (to ensure organizational longevity) or adapt in some other way. Todd, who refused to adapt, left his profession entirely. Irma and Allison showed a reflexive understanding of the language and setting in which they were immersed, and worked to framing their programs to fit the needs of the funders. Both recognized that the use of buzzwords tends to reinforce the rhetoric, but discussed that there were no alternatives.

A related concern that I discussed earlier in this chapter is the fact that non-profit organizations are more likely to offer services above and beyond their agreed commitment. Woolford and Curran submit that,

"this too often means that official value is not attributed to service provider activities that go above or beyond the objectives set out for a particular accountability program – a problem that in part stems from the fact that funding in increasingly target towards specific programs and not offered for general nonprofit agency activities" (p. 47).

In my research this resulted in a charitable approach to youth justice services where individual workers provided services free of charge by working unpaid overtime, and organizations diverted general funding from other areas to help fill gaps that they identified in youth justice. There are a few implications of this shift. The first involves the ability of governments to manage service delivery amid financial pressures and scarce resources. Arguably, out-sourcing is a useful strategy in that it is a much cheaper method of service delivery for the government who must allocate resources in the most efficient manner. The other side of the coin, however, is the capacity of the non-profit sector to take on this level of service provision. As my research has shown, when a lack of resources limit services, the non-profit sector tends, in some cases, towards a charitable delivery of services to close the gap. Thus, the phenomenon of net narrowing is accompanied by a charitable approach to youth justice where needs are commoditized. A parallel implication is that non-profit organizations are less able to carry out

activities associated with social justice aims as they are tasked with individualized treatment, addressing risk and managing their practices such that they can guarantee themselves continued partnerships with government.

Clearly it is much more economically efficient to contract community-agencies to provide youth justice services, however, as Golden (2008) stresses, socio-environmental concerns and fiscal concerns are really two sides of the same coin. Any strategy that categorically prioritizes budgets social justice will demolish any potential effective strategies might have. Likewise, any strategies that concern purely socio-environmental factors outside of a fiscal context will be impossible to implement. Instead, these two things must be achieved together.

## **Conclusion**

I have presented and examined the key narratives that flowed from interviews with youth justice professionals in British Columbia throughout this chapter. Key findings include: (a) an overall lack of resources dedicated to youth justice services including a lack of accessibility of important services absent a charge and during transitional phases; (b) challenges associated with very complex problems on the “edge” of youth justice and; (c) the phenomenon of net narrowing. The YCJA (2002) is said to be based on a trifurcated system where low-level, minor offenders are addressed with minimal or no intervention through various levels of diversion; repeat or moderate offenders are dealt with by probation or some other intermediate sanction including short stays in custody; and serious and violent young offenders are dealt with using custody and adult sentences. Most youth fall into the low-level category, while lengthy terms of custody and adult sentences are used infrequently within the youth system (Kuehn & Corrado, 2011). My research found the trifurcated system to be particularly problematic for low-level offenders and those offenders who eventually become repeat or more serious and violent offenders because access to required services has become dependent upon entrenchment into the system. Paradoxically, the very problem that the YCJA set out to correct—the over incarceration and labeling of young offenders—has resulted in a tangible narrowing of the net where services are scarce and limited in their application (e.g., aging out and completing court orders result in service-removal). In their recent British Columbia study, Artz and Amorim (2013) presented complementary data illustrative of the fact that, “...we offer services only to the most desperate and carefully ration for how long we do this...” (p. 60). I have found that the complex

web of causes and effects related to this practice of restricted services involves a lack of confidence from police as to the diversion measures available to them, inadequate training within youth justice more generally as to program availability and a lack of multi-system cooperation on what has become a population of young offenders afflicted with complex, multi-dimensional socio-environmental risk factors that are increasingly being defined as “outside” of the youth justice system.

On the surface, practice innovations seem appealing particularly because community provisions and more informal processing appears to relate well to more novel and less structured responses. A key area for concern, however, is how some of these costly practices are being funded, and whether some practices end up subsidizing what is widely considered to be within the realm of public services. My research has shown that in some instances, individual practitioners address the gaps between policy intent and policy implementation by providing services for which they are unpaid. Because issues outside of youth justice are not quickly being addressed by any other youth serving system, these youth are chronically under-served. In an environment when the rights of the child are being entrenched into various systems throughout the world, youth justice service delivery in British Columbia seems to rest upon a narrative of charity. The chapter that follows examines more closely a complex set of problems resulting from the seeming convergence of diversion practices with the philosophy of restorative justice that is met with resistance.

## **CHAPTER 10: Communitarianism and Restorative Justice in Diversion**

*You can lead a horse to water, but you can't make her drink. ~proverb*

### **Chapter Overview**

As the fourth of five analysis chapters within this dissertation, in this chapter I consider the deeply problematic links between community-based responses and restorative justice (as established in the literature review and as mentioned in chapters 8 and 9) that emerged throughout the interviews. Under the umbrella of community-based responses to youth offending, “[w]hile diversion strategies focus on avoiding the negative consequences of involvement in the justice system, restorative justice strategies attempt to heal the wounds caused by crime” (Hillian et al., 2004, p. 345). In Canada, youth diversion programs are now the foremost venue for restorative justice in many locations (Bazemore & McLeod, 2002; Davis-Barron, 2009) owing to what many would argue are the restorative functions implicit in diversion. Despite philosophical connections between restorative justice and diversion, however, some of the practical offshoots of blending diversion and restoration were found to be especially problematic as this chapter demonstrates. Participants involved in law enforcement often found the restorative justice programs available in their community to be overly limiting, and responded by making conscious decisions to avoid future referrals (see also Chapter 9). Those participants who worked in the restorative justice field, told stories of considerable pressure exerted on them by senior management to perform the role of a front-end alternative for high volume, but less serious delinquency cases (e.g., shoplifting) with very little recognition of the role restorative justice advocates suggest the practice can play in repairing harm in more serious cases. To contextualize these findings, this chapter refers to the emergence of communitarianism as examined in Chapter 8 as a backdrop. In this chapter, I explore the important finding that in British Columbia community-based responses to youth crime are very often equated with restorative justice, an operational interpretation that can be problematic.

## Restorative Diversion?

Without a doubt, the YCJA's (2002) emphasis on community-based responses as a way to address youth crime has further entrenched restorative justice practices across the country (Charbonneau, 2003). This has been particularly so on the front-end given that police in Canada, and in this province especially, have embraced restorative and community policing since the 1990s (Bazemore & Griffiths, 2003). As discussed in Chapter 8, however, the restorative aims of community-based responses did not take centre stage within the archives. Instead, in their discussions of community-based responses, legislators tended to position these strategies as routes to three key results: cost-savings for the federal government; meaningful consequences for youth and; locating responsibility for minor delinquency within the community—at least as it was discussed in the early stages. In response to the criticisms that had surrounded the YOA (1985), community-based responses were depicted as the solution to the over-incarceration of Canadian youth.

Recall the discussion in Chapter 8 regarding one of the most pressing themes that arose throughout the archives in the early part of the data around the costs associated with implementing the YCJA (2002) given its complexity. Concerns over costs were compounded by the diversionary strategies that would make many justice activities the responsibility of the provinces and communities rather than the federal government. Politicians and bureaucrats alike, as well as other witnesses in committee hearings voiced apprehension about the financial impacts of these programs and the ability of the provinces to provide them.

As much as communitarianism—the discourse of locating the responsibility for addressing crime and disorder within the community—formed a key ideal within the archival data, it seemed to be framed as a panacea with underlying logic as follows: if we can just get the community involved in addressing the needs of its victims and offenders, we can improve the state of youth justice. Furthermore, it was implicit that by turning minor offenders towards the community, resources could be more strategically allocated to address the more persistent offenders. The result was a call towards contracting out services where possible, and focusing scarce resources on a more intensified problem that requires state intervention. This business model of youth justice has failed to consider the problem that complex social issues do not fit neatly into these types of frameworks. In her 2003 research on a restorative justice program in British Columbia, Abramson found that police tended to equate the specific restorative justice

program she examined with diversion despite the fact that diversion programs “are not based around the philosophy of restorative justice and entrenched in the contemporary retributive system” (p. 396). The consequence, according to the author is the impression that restorative justice can only be used for minor, first-time offenders, and that significant losses and harms can not be considered. There is some evidence that this thinking has continued in this province more than ten years later, particularly given that in some communities, restorative justice programs are used exclusively as diversion programs, and that non-restorative programs do not exist in every community. The following two sections consider the outcome of communitarianism in the operational youth justice setting focusing on fragmentation and the unique strategies employed by professionals to resist the unjust outcomes.

It is important to understand that given the availability of alternative measures under the YOA (1985) and the long-standing practice of police diversion, many communities in British Columbia already had some type of program or organization that could address the need for community-based responses to youth crime when the YCJA (2002) was introduced (Hillian et al., 2004). This history helps to explain why some communities have entrenched restorative justice programs. As the interview data illustrated, in some communities, however, these programs were, and continue to be, restrictive and unavailable for some young offenders depending on offence characteristic (e.g., in some communities municipalities have ruled out restorative justice for violent crimes), youth support (e.g., restorative justice programs may demand community support whether from family or other pro-social adults—some youth do not have access to support systems aside from government care) and/or victim wishes (e.g., some programs will not run without the presence of the victim). Furthermore, as discussed in Chapter 8, resources tend to be scarce and community-specific, meaning that offenders will only be able to access particular programs depending on the community in which they reside. Community-based responses under the YCJA were left open such that individual provinces, cities and municipalities and police agencies could implement the measures in the way best suited to their community members (Barnhorst, 2004). Particularly because there were already many programs in existence across Canada, this strategy had the potential to enhance operations already in existence. The result, as experienced by some participants, works a bit like a patchwork of services where program eligibility is based on residence. Larger communities tend to have access to multiple programs based on different philosophies, whereas some smaller

communities have only one type of program where youth can be referred. In some communities, for example, restorative justice operates as the sole program that accepts police referrals.

## **Restricting Access to Alternatives**

In practice, front-end diversion programs in communities are typically structured in one of two ways: police have memorandums of understanding (MOUs) with one or more non-profit community organization(s)<sup>65</sup> such that the organization will accept police referrals for diversion or, police may have an “in house” diversion program run by civilian staff. In several communities, participants noted that the available diversion programs were limited exclusively to restorative justice programs. This was particularly concerning when it is expected that not all youth and youth cases that may be appropriate for front-end diversion are appropriate for restorative justice. Elaine’s discussion of her contact with a female youth who had committed a minor property offence is illustrative of this. She said,

I had a shoplifter. I think she was 15. 15 or 14. I arrested her for shoplifting, she had no criminal record, she had no PRIME files, like no nothing like that. I ended up phoning her mom and having a conversation with her mom who said, “she’s a straight-A student.” More recently she had started smoking pot. I found pot on her—which I just seized from her, I didn’t do anything about that—which is common when it comes to pot. But, I had a whole conversation with her mom and I ended up making the overall decision that I wanted to go the restorative approach with her, however, I couldn’t do it because the store wouldn’t participate. Like, the store manager is not going to go, on a day off, and not get paid to go and participate in this program. So, it was kind of, either I do absolutely nothing and I just say, “don’t do that again. Your mom is coming to pick you up.” Or I go with criminal charges – which I clearly didn’t want to do...(Elaine)

Because the youth in this story did not have a criminal record and had the support of her family, Elaine perceived her to be an appropriate candidate for participation in a community-based diversion program. In the community where she works, however, the only available program follows a restorative justice approach that demands the presence of a victim who is willing to take part in the restorative process:

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<sup>65</sup> Like non-profit organizations in general, these organizations may have contracts with or grants from the provincial government as well.

[Restorative justice organization name] wouldn't take [her] because of a lack of victim, I asked around and talked to the senior people on my shift and nobody was able to provide me any other option, which is why I came up with this letter of apology...because the other options weren't there for me. (Elaine)

This excerpt highlights a key concern for youth in communities where the only community-based program police may refer to follows a particular philosophical approach. In these instances, if a case does not meet the criteria for a restorative process, the youth is precluded from participating in formal diversion at all, leaving police to choose between doing nothing, administering a warning or caution or referring the case to Crown Counsel.

Given the requirement that all police referrals to extrajudicial measures programs must otherwise be able to support a charge (Bala, 2003), I anticipated that the limitations as a result of restrictions for community-based programs might result in *more* charges being forwarded to Crown. In contrast, police participants discussed “inventing” their own informal measures, or doing nothing at all. It was the belief of several police participants that the charge approval rate by Crown is so low that forwarding a charge that was not sufficiently serious would not be approved and would “be a waste of time” (Amy). As a result, participants tended to simply warn these youth until their offending patterns became more serious to warrant a charge. This practice would allow police to circumvent the restorative justice programs that would not accept these youth and focus on policing activities that they felt were more pressing. Elaine elaborated:

I was under the impression that if I wrote a Crown package, I could write in there that I wanted to seek extrajudicial measures...and somebody told me that I have to refer them to [program name]. So, I don't even know what the process would be—or if that is acceptable. And I don't know whether that is due to a lack of training or lack of awareness. And then on top of it, [Big City] seems to have a lot of resources that we just don't have. (Elaine)

Similarly, Amy's experience with the program in her community was that eligibility was predicated on having no criminal record, meaning that they “rule out all kids with a criminal history.” She found this practice overly restrictive, especially given that “the youth we typically deal with the most” tend to have a minor criminal history.

In contrast to the police who felt that appropriate community-based programs did not exist in their community, one senior police officer discussed the creation of a restorative justice

program, that he had been instrumental in supporting, that constantly had few youth clients. The following excerpt shows that while on the one hand general duty officers feel limited in the programs they can refer to, on the other, philosophy-specific programs may have difficulty in reaching youth clients. Daniel reported:

When I was in [city Name], we had something called [RJ program name]. And again, when this [the YCJA] came up, this system, it opened up the door for a kind of mediation with a bunch of other tool belt items, like restorative justice, but not an absolute necessity to adhere to that one practice. And what I said to my officers, I said, "we are uniquely positioned in this community. We have something that fits in exactly with extrajudicial measures. You come into contact with a kid, make a referral and see if it works. Document how that's actually worked." And one of the discussions is around what if a kid doesn't actually do it? I've said, "then detail it in the file. Because when you research the next time, you might say, I've considered it. However, the last time the person had a chance, they didn't take the chance and the opportunity and as a result, my position is that we should go ahead with a formal process." But, the program was constantly desperate for referrals. And its an ongoing struggle. In another city in which I worked, we came up with a model, and that was that it must be restorative justice. Meaning that we wanted to have an intervention for youth, what's the best intervention? So, it was restricted to restorative justice, which can be extremely time consuming and labor intensive. But the referrals, I tracked over the course of five years, and generally, in my little community of 40,000 people with 53 officers, generates about 14,000 calls for service, and the most referrals that were ever generated to [RJ Program name], was 20 and the low was 11. So, something isn't happening. Something is falling through the cracks...I think it's a lost opportunity quite frankly. (Daniel)

The juxtaposition of these two perspectives highlights both the very different experiences of police in referring to, and crafting, community-based responses to youth crime depending on the community in which community they work (and perhaps whether they are general duty police or hold senior positions), and also the challenge of maintaining services appropriately tailored to the community. While it is unclear exactly how this translates to the experiences of young offenders, it does point to the presence of some gaps in operational youth justice that may be exacerbated by the adherence to specific philosophies of practice when alternatives are not available. The following section considers the problem of fragmentation given the conflation of restorative justice and diversion from another perspective.

## “Restorative Justice...Check!”

In addition to some of the operational challenges surrounding referrals and acceptance criteria, there was some evidence that restorative justice, as a mechanism to provide community-based responses to youth crime, was felt to have become a popular catch phrase rather than a genuine practice. Todd, who ran a restorative justice program within a police agency, expressed skepticism that restorative justice was being used at all within the agency, especially when it was positioned as the sole diversionary response available in that community. He said,

The main problem with it being in-house, the restorative justice program was really grassroots and at the time it was becoming more popular. The main concern for us was the fact that our caseloads were large... The [police agency] was fluffy in the sense that they wanted to say “we have a youth intervention program, or a restorative justice program.” They wanted to use those key words in the [police agency]. So, when they’re doing their paperwork and saying “this is what we do in the [police agency]” they could say “restorative justice.” They wanted those words “restorative justice” because it sounds really good. And it does sound really good and it is a good idea and I understand it comes down to funding and it is a lot of money. So, when I was there, towards the end of 2006, they were really trying hard to switch – and this still hasn’t happened today, its really been a battle – the counseling positions to just all restorative justice. There wasn’t going to be this two-pronged part [of counseling *and* restorative justice] and it was just going to be restorative justice. Well, restorative justice doesn’t work in every case. And restorative justice conferencing takes a huge amount of time. (Todd)

Todd’s experience underscored the challenges with offering restorative justice from within an enforcement environment, a theme that will be discussed more fully later in this chapter, and as the exclusive extrajudicial program option, a theme that expands on the previous section.

In addition to the operational challenges in creating, funding and referring youth to restorative justice programs, the programs are intended to achieve meaningful consequences for young offenders who are willing to take responsibility for their crimes. However, in practice, some participants held the belief that young offenders choose restorative justice as a less onerous alternative to restitution and/or facing charges. For example, Elaine told the story of a young person who had broken the window of a local youth centre with several other youth while they were all intoxicated. The incident had been caught on the centre’s surveillance video,

meaning that it was clear that the youth who was accused by my participant was indeed responsible for the vandalism.

And I explained to him – I basically laid it out for him and said, “it's a broken window, you have a few options. Either you can pay for the damage, you can participate in this restorative justice program, or, I'm going to go forward with charges.” And again, in giving him that option, my thought was already that I'm going to want to do the restorative thing. I can't give that as an option and then really go with charges. It's not all that ethical. And of course his mom was already on board. We had had a conversation about it, and they had had a conversation about it and he had already agreed to do the restorative justice program. I don't even know what the outcome ended up being. The thing with that is the staff member at the [youth centre name], the lady – the coordinator that ran the program, the youth program there – when I talked to her she had said, “if you identify this kid, we really don't want to go through with charges.” So they had already said this and she was very on board for the restorative program. It was actually her that suggested it initially. It was one of the things that she had said to me. I think that what they ended up agreeing on when they met with [restorative justice program name] – I was not there, it was the [youth centre name] staff member – the youth and his mom. And I think they agreed upon something like 80 hours of community service or something, and he would go and help with gardening or something. I don't know if he ended up completing those hours, but he seemed okay with participating initially – even though he still never took responsibility, he still never said, “oh ya, I did that.”

L: So, he didn't take responsibility?

No, he was like, “oh, ya its possible that I did that...but I was really drunk.” So, he never actually like, full out said, “yes, I did that.” He played the “I-don't-remember-doing-that” card. But I showed him, I showed him the video and said, “this is you throwing this rock.” And he didn't have any way of arguing that it wasn't. But the frustrating thing with that is that in the end I don't know if he participated and did the whole program. So, its almost like it went over his head. The only reason he agreed to do it was because he realized the options he had in front of him and knew, “either I do this, or I get charged.” Though clearly I would not have proceeded with charges after giving the RJ option. (Elaine)

In our discussion, Elaine elaborated on the fact that formal diversion in the community that she worked in was very limited, with programs being of the restorative justice variety only, and also the notion that youth are presented with an either/or scenario: either they pay restitution, participate in restorative justice or charges will be forwarded. Similarly, Todd recognized a

practice where although youth were told that their participation was voluntary, it was also made clear that failure to participate would likely mean formal processing:

Even though the program was voluntary, and the [police officer] was supposed to let them know it was voluntary – we told them that through our training. However, the members would say “this is a voluntary program...but...if you’re not part of it, then I may have to proceed with charges.” So, its not really voluntary. So, then when the kids would show up, I would say “well, this is a voluntary program, and you don’t actually have to be here, but just so you know, I don’t share information with the members, the information you tell me about is confidential but I do work with 2 other counselors who I will share the information with...” And I would just joke around and say “three for the price of one!” And things like that where I would try to get them at ease. And a lot of kids would say “what happens if I just leave right now?” and I would say “ok, you can leave right now, you have that right, but just so you know, I have to report that back to the member. I don’t know what the member will do, but I have to let Sgt. Smith know what’s happened.” (Todd)

In the earlier example, the fact that Elaine did not know the outcome of the youth who broke the window underscores another variation across communities in the delivery of community-based responses to youth crime: in some communities programs are implemented by the policing organization and in others, they are administered by a community organization that might be restorative justice-specific, or may follow some other alternative. According to some participants, and consistent with the literature, while police-led programs are advantageous in that they rarely turn down referred youth (as opposed to the example above where the absence of a victim resulted in a youth being denied participation), it can be exceedingly complex to offer a restorative justice program from within an enforcement setting (White, 2008). Abramson’s (2003) findings from her study of a British Columbian police agency, showed that police tended to equate diversion with restorative justice and described restorative justice as a program for use with first-time offenders in order to reduce the number of youth involved in the formal youth justice system. The interpretation that Abramson found to be common among police contrasts with restorative justice as a philosophical approach that rests upon repairing harm for all types of conflict where loss has been significant, and views restorative justice more as an administrative option (see Chapter 3). Abramson (2003), who conducted a survey of police in a British Columbia municipal police department reported,

“the responses of officers indicate that, although they are dissatisfied with the effectiveness of the formal youth justice system, they are reluctant to refer any but the most minor cases of youth offending to the restorative justice program. This is due, in part, to the tendency of officers to equate the restorative justice program to a diversion program, a confusion that results in limiting the potential of the restorative justice program to effectively resolve situations where there has been significant harm or loss (p. 397).

For Abramson, this perspective found among police is entrenched within the retributive adversarial system, rather than within a grassroots restorative alternative, curtailing the transformative potential of restorative justice. There is some evidence in my data that reflects this theme as well, but as both Amy and Elaine discussed, police were given the impression that the programs were only for first-time offenders who had family support because other referrals to community organizations had been actively declined by the organizations themselves. This signals a significant tension between restorative justice and community-based responses to youth crime, particularly when the two processes are conflated, or when options are scarce.

Todd was responsible for implementing a restorative justice program to accept police referrals in one police agency over the course of the first three years of the YCJA (2002). Civilians with social work (not necessarily restorative justice) experience began and continue to run the program where my participant worked. The following excerpt illustrates the tension that Todd experienced between traditional police goals and restorative justice ideals.

So, up until 2006, they [police officers] were still talking about the Young Offenders Act. So, they didn't really understand what they were supposed to be doing and what the program consisted of. And, in dealing with the [police officers], they are very macho and “we don't want to send you to this program because you're going to hold hands with all the other kids and sing Kumbaya and its going to be a touchy feely thing..” and a lot of them were too macho to send the kids and thought we were just kind of airy fairy. You know “what are you going to do? We need punishment!” When in reality, the nice thing about the program being around since 1995, they [program staff] were really on the right track. They were ahead of their time because they were looking at other measures of dealing with these types of situations whereas a lot of the other municipalities didn't have anything. So, it was either do nothing at all and “CH” – the term for closing a file here was “CH” – or forward it to Crown and see what happens. And, most of them wouldn't do that because the issues were so minor and the [police agency] is so

overwhelmed with files and way too much work. They would even have a hard time when they would make a referral to us [the restorative justice program] to even fill the form out. Even when we were pulling all the police files and going through the police file and determining what could be done. (Todd)

For Todd, the contradictions of housing a restorative justice diversion program in a police setting were concerning enough to lead him to believe the best way to deliver the program would have been external to the police agency:

As far as I'm concerned, we should have been out-of-house. We should have been at a different location. We should have almost been a non-profit organization that was dealing with the files. That would have been ideal for the kids because it would have made them feel a lot more comfortable showing up at an offsite location as opposed to showing up at a police station. And even though our offices were at a location that they [youth] didn't have to parade past them. Although, at one office they would have to parade past the [police] to get to the [our] office and all the officers would look at them, you know, thinking, "oh, you're a bad kid." So, you're shaming them. And that was not what we wanted to do, but that was the only option we had with location. So, non-profit, out of the police station, off site, would have been ideal. It would have been really really good. (Todd)

As mentioned in Chapter 3, the YCJA (2002) does not mention restorative justice *per se*, focusing instead on diversion and community-based responses to achieve meaningful consequences for young offenders. Furthermore, the archival data examined in Chapter 8 showed that restorative justice was not a dominant theme in the House of Commons and Senate, and instead has been framed as one in an array of tools in the youth justice community-based responses toolkit. Mark Umbreit (2001) has discussed the potential for restorative justice processes to become marginalized, where the risk is that as such processes become more widely accepted, there may be a tendency to invoke them to achieve the goals of the mainstream criminal justice system (e.g., reducing prison overcrowding, enhancing administrative efficiencies) rather than to achieve the restorative goals underlying restorative justice including repairing the harm to the community. The potential for this is clearly present in this province given the perspectives of my participants, however, as the next section will show, restorative justice professionals often put measures and practices in place to resist being co-opted by what are viewed as mainstream goals. Obviously, such practices present important challenges in the area of community-based responses to youth offending, particularly in communities where non-restorative options are unavailable.

## **“We Didn’t Want Our Program to Become a Dumping Ground”**

The result of blending and equating diversion and restorative justice, as explained by the participants is that on the one hand, restorative justice professionals develop stringent criteria such that they can continue to adhere to restorative philosophies (this practice may involve compromise, and organizations that are not completely independent may be further constrained by having an MOU with a municipality in which they agree to accept police referrals with few restrictions). On the other hand, some police respond by making the decision to address youth offending outside of the formal diversion process altogether by issuing warnings and cautions. While the latter is not necessarily problematic given informal police diversion is expressly encouraged under section 6 of the YCJA (2002), it is concerning that these informal measures are sometimes arrived at through frustration and a perceived lack of appropriate community resources, rather than intentional decisions made to implement the YCJA. These outcomes have the potential to threaten the principles of the YCJA, specifically proportionality, meaningful consequences and accountability.

The data in this dissertation shows that while restorative justice is often positioned as a mechanism to improve the efficiency and cost-effectiveness of the youth justice system—rather than to repair harm within the community—practitioners constantly develop measures to resist scope creep. Perhaps a key strength of restorative justice being offered by community groups is that in some cases they maintain control over the cases they accept and the processes in which they engage. Consequently, while there might be pressure to tailor restorative justice towards very minor cases, such as shoplifting as examined above, participants who worked in restorative justice programs discussed strategies that they employed to ensure that the referrals they accepted could (and should) be addressed within the parameters of restorative justice. For example, because the involvement of supporters (typically family members) is so important to the restorative process, Omar is “hesitant to do a conference with no supports except if the youth is more mature.”

In her work in a restorative justice program that accepts police referrals, Allison discussed the tendency for police to refer every minor offence to the program despite the fact that the program is not designed for this.

They want to send us every shoplifting case involving a young person and we've said, that's what things like informal cautions are for. We know that that intervention is effective in many cases. So, when we get a shoplifter, we like to ask more questions such as: why is it that you think we need to take it to this level – using restorative justice? We see the opportunity for police to use more discretion as being a more positive thing, if they're using it in a good way. But, we don't need to see every file that's not going to court. They have lots more tools under the YCJA to be able to do something, especially in [city name] where they're not as stressed for time as other communities like [city name] where they would have no time to do the informal stuff. But, we encourage them to use restorative justice in their approach to policing. We don't need to see everything. If we took everything, we'd see even more files, but we do encourage the use of more informal cautioning when appropriate. (Allison)

In addition to coaching police to utilize cautions and warnings as mechanisms of front-end diversion as and when appropriate, Allison emphasized her resistance to accepting cases that would not otherwise be proceeding with a recommendation to Crown Counsel to charge.

One of the things that we ask on our referral form is: If restorative justice didn't exist, would you send this to court? Which I think is a really useful question because it gets at chargeable and non-chargeable, right. The vast majority of our files are chargeable offences...whether or not Crown would approve the charges, obviously is up in the air. But, there are still officers here who throw everything at Crown and let Crown work it out. We've been told that! So, whether or not they'd actually be charged, is a question at the Crown level. But, when we ask them that, and they say, "yes, we would send this to Crown," we believe that this tries to address this question of net widening. (Allison)

In contrast, the way in which other youth justice professionals respond to resistance by restorative justice programs to take a high volume of low-level offenders can be found in a story told by Amy, a general duty police officer. When asked whether she had the occasion to use diversion or extrajudicial measures programs in the community, she replied,

"I've only tried to use it maybe a handful of times...I tried referring this one girl and they kicked her back. They said that her family support group wasn't good enough. So they said no. And then another one, they said [the youth] wasn't taking full responsibility for their actions, so they kicked the kid back..." (Amy)

An important finding is that in at least one community the only extrajudicial measures programs that accept police referrals are based on restorative philosophies. For this reason, two police officer participants found it challenging to make referrals, as many of the cases that could be

diverted to extrajudicial measures did not fit the restorative justice program requirements. In this sense it is problematic that for whatever reason, restorative justice and diversion have become conflated. It is expected that this community is not anomalous in British Columbia.

### **“How Can We Cut Funds?”**

While some participants worked in settings outside of the formal justice system allowing them to resist accepting cases that did not seem to fit into the scope of their program, others who worked within police agencies or under the purview of the provincial government were considerably more susceptible to being required to broaden their scope in order to better support the police agency—particularly in light of declining resources and increasing costs of policing. For example, Todd found that although the restorative justice program he helped to develop was grounded in a restorative philosophy, in practice it very quickly became a catchall program that lacked the appropriate capacity to actually create transformation in youth clients and the surrounding community. He said:

So, the City Manager is looking at “how can we cut funds” and the Staff Sargent is looking at numbers and members and stuff. So, we have to be in someone’s portfolio – we were under youth services. And I understand that, but they have a lot of other, more pressing issues to deal with. So, we pretty much ran it the way we wanted to run it, and did what we wanted to do, which was great, but if we wanted to make it bigger or better or expand, or do more training, we couldn’t because we didn’t have funding for it. So it always comes down to funding. When we should have been having about 25 cases per month, we’d have about 60 active files – at one time! Because there’s a lot of times when the kids just wouldn’t show up. We started to become almost probation officers it seemed like. We would say “ok, come in and check in...okay, you’re still doing ok?”

“yep”

“you haven’t been in trouble?”

“nope”

“I see there’s nothing on the police system about you—good for you, right on.” And then we’d move on. So, it wasn’t really what we wanted to do, but it was just because we had so many referrals. We were doing more and more. We were trying to get in more training

and police were starting to take us a bit more seriously during the period between 2003 and 2006. And they started to send us more referrals and a lot of the same members would refer new kids and it was great. But then, when we got the conferencing piece thrown at us, we kind of had to let that [growth] go. We had a person who was doing full time conferencing, which was great, but eventually, he left. And the position sat empty for a long time. And then that piece was lost. (Todd)

Given the community nature of the program that Todd worked in, the response to declining enforcement and municipal budgets was to move the program from a funded one into a volunteer-run intervention, further underscoring the charitable aspect that often underlies community-based alternatives.

My understanding is that now they've replaced the program in the city. While there is a coordinator, the rest is all volunteer-based. So, the volunteers are running the conferences. To me, I think that's a horrible idea. I understand the idea of "get the community involved" but not to run a conference. To run a conference is very challenging and the prep work – nobody can do that off the side of the table. I mean, the prep work alone, I found to be the most important part. The notion of meeting with the police, meeting with the victims, meeting with the offenders – because that was where you actually pulled it all together. That was where a difference was made. (Todd)

Whereas Allison expressed a desire to be able to take on more serious cases to realize what she saw as the full potential of the restorative approach, Todd expressed concern that the program he worked in could become a "dumping ground" for cases that the police did not want to deal with. Furthermore, because, as described by Todd, some programs responded to a lack of funding by switching to service provision by volunteers, the credibility of these programs as a viable alternative to deal with serious criminal offences and significant harm and loss is at risk of being further undermined. Omar, an MCFD employee suggested that due to a lack of funding:

Some of the people who are doing RJ in the community are very untrained. They are community groups being run by volunteers. There is a vast lack of funding. There is an onus to get things done with no money. In fact, aside from our program, there are no community RJ programs in [city name]. (Omar)

According to Natasha, where a lack of funding leads to volunteer-run programs that cannot possibly deliver strong and transformative responses to youth offending, and where restorative justice is depicted as a program designed to deal with low level minor offending, the consequences are acute:

I don't believe that diversion is necessarily working....I don't really buy it. I've done this work going on ten years and I have not seen it [diversion] be very powerful. And where diversion is in the form of RJ, very few kids are suitable for restorative justice. And the way that restorative justice is run in BC, it requires a tremendous amount of funding and education...but its not there. Programs are run by volunteers or when they are paid, they are the first programs to get cut. (Natasha)

As an alternative, Allison discussed the tension she felt concerning her organization's decision to limit the referrals they accept because the funding is not there. In the scenario she depicted, her restorative justice program was in threat of being used as an inexpensive alternative to the costly formal system, particularly when no other options were available for youth.

I essentially entered into a pact [laughs] with some other programs that we really felt strongly that unless the province was going to fund us to do that, it wasn't serving anyone to take those referrals for free. We felt it was undervaluing our work and...it just...if we opened the doors to take Crown referrals, we would be totally overwhelmed. So, its an understanding. There are programs that have decided to sign memorandums of understanding with Crown and to accept Crown referrals, and that's their decision. And so for us, and some other programs, we've decided that we're not going to do that until there's funds available. It just, as I said, devalues the work and overwhelms us to the point that we shouldn't be doing this work for free. What we're providing is a tremendous service to the court and to the community and we shouldn't be undervalued for that.

Its not without controversy. And I mean, it breaks my heart. I get calls all the time, particularly from [city name] Crowns that say, "this case is perfect for RJ." They want it. There's nowhere to send it in [city name], particularly if you're an adult, right, there's nowhere. With a youth, you can send it to youth probation. But, if you're an adult, we have to say, "I'm sorry." We've been proposed with lots of different ideas. Defense lawyers have offered to pay for it, those kinds of things. That raises ethical issues because then you've got these two tiers of justice so, it's been a struggle. So, we continue to try to advocate publicly that the province needs to fund this. The municipalities fund us because what we do at the pre-charge level frees up police resources and prevents crime at that level, that's our argument. But, at the Crown level, they [the municipalities] shouldn't be paying for that because they don't fund the court.

It's funny too, because we say, "oh well, we're reducing court costs because these people aren't ending up in court." And literally, the municipalities say, "that's great, but that

doesn't matter for our bottom line because we don't pay for those any way. Tell us how it benefits us."(Allison)

In contrast to participants who worked for police or government, the setting in which Allison worked had the independence to resist referrals that were deemed inappropriate for restorative justice, and also those that she felt would be overly burdensome for the program. The tensions illustrated in this excerpt are well documented in the literature and reflect the mainstream justice goals of completing a higher volume of cases in contrast with the restorative goal of delivering high quality results with benefits for participants.

Mark Umbreit (2001), in his elaboration of the potential for the "McDonaldization" of restorative justice, has written about the risk to restorative justice processes as they become more popular and more heavily entrenched via policy changes such as the YCJA. Umbreit's argument is that the focus may easily slip from one of repairing harm to one of reducing the use of the expensive formal justice system, thus undercutting the potential of restorative justice programs. His McDonaldization metaphor is particularly appropriate as the emphasis shifts to a quick, cheap, easily consumable process that can deal with a high volume of cases. There is some evidence that McDonaldization of restorative justice is a tangible threat in British Columbian practice around community-based responses to youth crime, particularly owing to the conflation of restorative justice with diversion and the emphasis on cost cutting and the delivery of these programs within traditional law enforcement settings. This is exacerbated by some of the misconceptions held by police that restorative justice is only appropriate for minor offenders (misconceptions that have been furthered by the practices of some restorative justice organizations that have been unable to accept more serious offenders).

The criticisms of the Canadian situation can be contextualized by referring to the work of Woolford (2009) and his framing of justice and politics as inseparable entities. As discussed in Chapter 3, Woolford finds the traditional definitions of restorative justice (inclusive, repairing harm) to lack precision, in that they fail to adequately differentiate restorative processes from the qualities of the adversarial system. Due to its nature, restorative justice is often subject to the whim of the government holding political power of the day—local politics influence whether restorative justice is accepted or not. This puts restorative justice in a peculiar position where it can be "co-opted" (p. 18) and used by dominant political players for traditional political gain—instead of transformation. As the interview data reveal, the merge of restorative justice and

diversion when they might not necessarily “fit” does not best serve youth, victims or the community more widely. Employing restorative justice within the confines of diversion means that restorative processes cannot be developed to take on more serious and transformative issues and will be consigned to dealing with high frequency, low level crimes on an individual basis rather than examining social issues that factor in more collectively. Encouragingly, the data also show that there is resistance to this narrowing of restorative justice. However, equating diversion and restorative justice also has negative impacts for diversion, particularly in locales where the only diversion programs are restorative: if youth themselves and/or aspects of their case make them inappropriate candidates for a restorative approach, they should be able to access a non-restorative program.

Woolford remarks on the importance of “assessing the political context in which restorative justice operates” (2009, p. 22). He suggests that neo-liberal governance is the dominant model of contemporary societies. With a desire to implement cost-effective responses towards minor crimes, the neo-liberal governance strategy inherently desires community-based restorative programs. This desire, however, is uniquely grounded in cost-effective crime/social control, and is at odds with restorative justice’s claims and goals of transformation. Conversely, when it comes to major crime, the neo-liberal state responds harshly with “tough on crime” policies. The model of the neo-liberal state’s intervention is only compatible with restorative justice insofar as restorative justice can deal with small-level crimes, and does not advocate for transformation. In all, the fears of Woolford are conceptually similar to the criticisms of the Canadian youth justice system as propelled by the YCJA (2002)’s bifurcation. More troubling, when a crime is dealt with restoratively, the mainstream definition of harm is invoked and continues to privilege certain types of social harm over others.

Neo-liberalism “discourages activities that target unjust social conditions rather than risky irresponsible individuals” (Woolford & Curran, 2012, p. 46). What I see is that community-based organizations, whether they deliver restorative justice responses or diversion strategies are discouraged from macro social pursuits on social injustices (e.g., poverty) and instead must develop policies and practices that will become cost-saving techniques. For example, Allison stated that she will typically include the cost savings to the formal youth justice system for each youth who is addressed through her restorative justice program in any reporting out she does on the program. For her, she perceives this as one of the most important signifiers of success that

governments are looking for (rather than addressing a social justice issue or repairing harm). These measures are as a result of non-profits becoming a key part in delivering services once offered by the state and will focus on individualized matters rather than social justice.

## Conclusion

This chapter has examined the struggle to offer youth justice diversion services in light of a complex relationship between restorative justice and diversion. Diversionary techniques are premised on the notion that involvement in the criminal justice system can have negative repercussions, and accordingly they discourage involvement in the system. Restorative justice, in contrast, attempts to repair the harm caused by crime by encouraging meetings between victims and offenders, and reconciliation (Hillian et al., 2004). Although the YCJA (2002) promotes the use of extrajudicial measures and conferences, they are not mandated (it is only the *consideration* of extrajudicial measures that is mandated); the YCJA (2002) and policy discussions surrounding youth justice are also silent on whether diversion must be based on *restorative* principles. Accordingly, while the approach might be useful, nevertheless “it may be misleading to sell such extrajudicial measures as restorative either in terms of their process or their outcomes” (Roach, 2006, p. 186). This chapter has examined how this conflation occurs in practice, how these issues are negotiated and sometimes resisted by professionals and the implications of braiding diversion and restorative justice. Finally, the case has been made that goals around efficiency and expediency have led to a colliding of practices that may not always be united. The next chapter considers how the efforts embodying an ethos of care serve to complicate and contextualize the delivery of youth justice in British Columbia.

Consensus does not exist in the literature on whether a change in youth justice was actually the policy intent of the YCJA (2002), or whether the illusion of change was included only for good optics instead of directing action. Several clues within the legislation and within practice undermine the policy intent and, in the words of some academics, ask us to question whether the YCJA (2002) merely attempts to please Canadians through language rather than action (Hillian et al., 2004). Hillian et al. (2004), for example, interpreted British Columbia’s conferencing policy under the YCJA (2002) as overly constrained by budgets and lack of resources, and not focused enough on community resources—a contradiction in itself, given the

community-based nature of the legislation. Likewise, the data I have examined show that community-based responses to youth offending on the whole were enacted as part of a communitarian ideal that was supposed to solve many youth justice concerns. However, the result has been more than merely a lack of dedicated resources, but also an ever-increasing gap in services as restorative justice practitioners are resisting the crime control ethos and while simultaneously occupying the bulk (in some communities) of diversion programs. Furthermore, the philosophy of restorative justice is sometimes circulated like currency where its mention means funding dollars and where its goals are depicted as achieving efficiency (not transformation) in youth justice.

The inclusion of these competing principles within the YCJA (2002) causes Woolford to remark on the importance of “assessing the political context in which restorative justice operates” (p. 22). He suggests that neo-liberal governance (characterized by a swift downloading of state responsibility in favour of corporate gain, a concept that was elaborated upon in Chapter 5) is the dominant model of contemporary societies. With a desire to implement cost-effective responses towards minor crimes, the neo-liberal governance strategy inherently desires community-based restorative programs. This desire, however, is uniquely grounded in cost-effective crime/social control, and is at odds with restorative justice’s claims and goals of transformation. Conversely, when it comes to major crime, the neo-liberal state responds harshly with “tough on crime” policies. The model of the neo-liberal state’s intervention is only compatible with restorative justice insofar as restorative justice can deal with small-level crimes, and does not advocate for transformation. This perspective argues that the inconsistency is indeed purposeful.

The next chapter, the last one in which I discuss the analysis and findings from this research brings together the themes from across the interview data, and presents how professionals undertake their roles from a place of trying to “do good.”

## CHAPTER 11: Negotiating and Re-negotiating Doing Good: An *Ethos of Care*

*It is an eternal obligation toward the human being not to let him suffer from hunger when one has a chance of coming to his assistance. ~Simone Weil, 1949*

### Chapter Overview

As the last of five chapters on the analysis and findings, this chapter presents an overarching theme—the *ethos of care*—that plays a central role in the policy/practice nexus. Early in the interview process, I began to recognize the importance of care as a meaningful theme in the narratives of the participants. However, it was not until data collection was nearly complete that I recognized the extent to which this phenomenon shaped how professionals approached their work in the youth justice field. In fact, during one of the last interviews, I engaged in a conversation with Natasha on what she considers to guide her practice:

Natasha: A sense of justice...and I will add to that, fairness too. And in a large sense...like in the karmic sense. Now that sounds silly – but do you know what I mean?

Lorinda: Yes. Tell me a bit more about that.

Natasha: And my manager would not want me to say that.

Lorinda: What would your manager want you to say?

Natasha: Policy! But as I see it, there is inherent risk in anything that we do. If we get caught up in the idea of risk and don't take chances, we risk further marginalization. For instance, if people show some possibility of change, they deserve a chance. But, in practice, we are not really allowed to say why we really make decisions. So, you've got this whole group of people who go around saying this and that about how they make decisions and its not until you really talk to people that they tell you the real reason—which for me is this concept of justice.

And though Natasha thought it was “silly” when she said karmic, this has become an important consistency in my data—not something I expected, but a theme, across many of the interviews.

This sense that professionals make decisions around community-based responses to youth crime because of something greater or *beyond* the direction of policy emerged throughout all of the interviews. This constitutes an appeal to social justice or an ethos of care. The response of Natasha was a straight-forward version of what many of my participants had discussed through the hours of interviews I had already conducted; what Natasha called “karma,” was a theme that had saturated the interviews with references to justice, ethics, care and “doing what is right” as the beliefs and meanings that underlie youth justice practice. Until my interview with Natasha, I had made memos about participants practicing based on their own personal beliefs. During the coding process, I began to realize that the personal beliefs described came together as more of an ethos—a set of guiding beliefs and ideals—and were connected in that participants constantly concerned themselves with how to achieve some greater good in their work, in their communities, and in the lives of their clients. Participants were not only concerned with helping individual clients—as might be expected from those who work in the human services profession and in law enforcement—they were concerned with beliefs in humanity, their perceived duty “to the other” and in the overarching acquisition of social justice.

Though under-theorized in the literature, what I found in my research is similar to what Baines, Charlesworth and Cunningham (2013) described as a “social justice ethos” (p. 9). Baines et al. undertook an international case study of several non-profit social service organizations in Australia, Canada, Scotland and New Zealand in order to understand how the organizations evolved in the context of increased managerialism and the introduction of performance measurement across the sector as a way of initiating market-like conditions. They found that despite some of the shifts in the sector towards individualism and greater emphasis on outcome-based models of management, altruistic practices survived due to the beliefs and values of individual workers and what the authors called “a shared project of caring in an uncaring world” (p. 16) that often involved personal sacrifice in order to care for others.

As this chapter will show, the ethos of care is also at the core of policy discussions around community-based responses as revealed by the archives, but takes a different form from the interview data. Specifically, the archival data narrated the act of doing good from the perspectives of moral and social development (of offending youth), a concern with the root causes of crime and a concern with how to achieve “just” results for youth and the community. In

contrast, the ethos of care narrative emerged throughout the interview data with an emphasis on four themes: (a) an awareness of one's own impact; (b) the importance of establishing relationships and developing connectedness; (c) concerns around injustice and; (d) the importance of small gains. These findings can also be understood in conjunction with those presented in Chapter 8 highlighting the gaps in service that individual workers filled without compensation.

## The Ethos of Care

From many of the interviews, it is clear that the YCJA (2002) sets the stage or “opens the door for effective practice” and does not direct practice specifically, given the wide discretion professionals are allotted. For example, several youth justice practitioners from front-line workers, to restorative justice personnel, to police, knew only vaguely about the contents of the YCJA, and stated that it only applied to their practice in that in their view, it was consistent with their beliefs that custody should be used as a last resort. When asked about the YCJA, Larry reported,

I guess...to be honest...it's really an act that I'm unfamiliar with. Or rather, not as familiar as some [people]. It's an improvement from some of the other documents and literature over time...I like some of the stuff...in the Act or some of the Act itself that protects kids. The idea that the youth justice system is not to be used as a place to house kids and to take care of their mental stability and mental health, and that other services need to be in place. (Larry)

This is not entirely surprising given that all participants played some role in community-based responses to youth crime, whether at the pre charge or post charge stage. In some of these organizational structures, most notably within non-profit community organizations, local policies that operationalize the YCJA are set, meaning that practitioners themselves might not have an ongoing requirement to be familiar with the legislation. Instead, they would only be required to know how the Act has been translated into their specific setting. I wondered, if not legislation and policy, what is it that *does* direct practice? An overwhelming theme was the underlying quest to “do good.” Larry shone light on this aspect of doing good and the necessity to practice with the fundamental belief in social justice:

Every youth, young child, even adult, has a right to have a safe place, have a safe place to live, deserves to have food, deserves to be protected...And then I guess...I guess a tough [approach] to take is [the belief] that...nobody lives beyond support or repair because as soon as we believe that, then where are you going to be...? (Larry)

“Doing good,” then, was recognized as a primary concern to participants throughout the data as they structured many of the stories they told me around their aims to “do good” and negotiate the meaning of that. The following sections discuss the ethos of care as it emerged throughout the interview data. Despite the wide range of professions represented by participants, as the remainder of this chapter will show, there is some uniformity among participants in their discussions of how best to address youth crime and of the role that care and compassion play in the type of work that they all do.

### **Awareness of One’s Own Impact: “I Can Actually Make a Difference”<sup>66</sup>**

A critical facet of the ethos of care as described by interview participants was the notion that individual practitioners had the ability to make a difference in the lives of—often exceedingly marginalized—young offenders by providing a tailored and creative solution that could help the youth succeed and/or to help address harm to a victim or wider community. In this vein, care involves reflexivity in practice and a keen self-awareness of one’s own impacts and potential impacts on situations in which they are embedded (Gregory, 2011).

The opportunity of assisting youth in the community was particularly central in the role of Nathan, a school liaison officer. As the following excerpt describes, he had to shift his approach to young offenders away from his police training and towards a style that would better address the contexts in which the youth found themselves:

When I started off...it’s tough...its nothing against the court system, but when you’re trained as a police officer, you’re trained in a really specific way. You’re not really trained to focus on social issues going on. You’re trained to deal with more black and white. You committed a criminal offense under section 232...whatever...My job is to arrest you and Charter you, put my court package together and that’s what you do. So, you do that two or three times and then realize that this is absolutely pointless. I’m basically pissing this kid off and beside that, nothing happens...there’s no repercussions. Six months later he

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<sup>66</sup> Quote from Nigella.

gets a piece of paper saying nothings happened and that's the end of it. So, they say, "well, I can do whatever the hell I want now. Nothings going to happen so, why would I change what I'm doing if there's no repercussions?" (Nathan)

Nathan discussed the informal measures that he had the discretion to invoke when dealing with a young offender as being the most meaningful in many circumstances, especially given the social context of a young offender.

You need to...it's the social things that lead to these problems...that's what needs to be addressed. Once a kid gets to the level where he is doing criminal behaviour, you've kind of missed it. There is something that's caused that to happen and once they're at that level, I think it's really hard to get them back. And I think if there's a child that breaks a window, and you automatically put that kid through the court process, they're going to be jaded right off the bat. They're going to think, "here's this police officer, they've arrested me and they've put me in the back of a police car. It's not a pleasant experience. I'm going to the courts..." I think that's going to basically set a precedent where they're angry, they're not going to like police, they're not going to like school, they're not going to like administration. And, they're already jaded and that's their path. Whereas, if you talk to a kid who breaks a window and say, "hey, really? You shouldn't do that." Make a connection, talk to them and say, "ya, you make mistakes, it's not the end of the world. You need to apologize for it." For me personally, I would appreciate that more than being arrested and dragged through the court process. And I think for that kid, for most children anyways, especially youth are going to appreciate that and say, "ya, I realize what I did and I understand that it's wrong." A simple conversation can correct that behaviour right off the bat as opposed to the negative thing of arrest, police, fingerprinting, court. If it's all negative stuff that they have to deal with, they're not going to come out with a smile on their face at the end of it. (Nathan)

This excerpt underscores Nathan's awareness of the impact his response will have on a young offender's interaction with the youth justice system and the importance of developing a connection with youth.

In a similar vein, Irma emphasized the most fulfilling aspect of her role as an intensive support and supervision worker as the ability to craft creative solutions that are meaningful in creating a positive shift in the community and in the lives of individual youth.

The ability to be creative in our youth work in the community and with those serving those sentences. Focusing on the EJM and the sanctions and the restorative piece, that really kind of allows the youth to – well, there are ways that they can take ownership in

dealing with that and so, rather than just sending them to jail for X amount of time, and then just being on probation, allowing them to have those other options were they can give back to the community or participate in programs, really can bring positive change in their life. So, I think our program is amazing. And obviously I'm going to say that, but I really do appreciate the general aspects. Having worked, not only with ISSP, but being a youth worker in general with kids who just need that extra support. I think any resource – especially when its free for kids – and we try to find people to work with kids who really connect well with them to build those relationships and they have to be positive role models. (Irma)

Likewise, Nigella explained how offending behaviour is typically just one aspect in a youth's life that is problematic and that individuals in her role have the ability to address some of these larger, contextual issues that could not be addressed from within the court or correctional system.

For a lot of youth who are committing crimes, there are a lot of other aspects in their lives that are going wrong. And sometimes, that may not constitute ministry involvement and they essentially don't have any supports to help them say "ok, this is how I can get through this..." I mean, there are lots of community centres you can go into and talk to people, but that's also really nerve wracking for a teen -- either male or female – to go in randomly and say "ok, I don't know what to do" to an adult who might not necessarily be as friendly right off the bat. We work on the bigger issues, usually. Sometimes we don't have success, but sometimes we do. (Nigella)

Although most participants discussed how their work impacted individual youth and provided a more meaningful response in contrast to the formal court system, several participants discussed the impacts of their work with youth on victims and the broader community. For example, Luanne spoke about financial compensation that was part of the outcome of a restorative justice conference and helped to establish the feeling that the appropriate reparations and responsibility had resulted.

In one case, a youth got in a fight and knocked out someone's tooth. The dental work will cost about \$1500 and the victim does not have insurance. The youth is unable to pay the whole amount, so we agreed upon \$400. Its important that the kid feels they've done something and that the victim feels they've done something [as compensation]. (Luanne)

In addition to specific consequences, several participants considered their impact through community-based responses as one of changing the outcome for a particular youth,

whether they were able to make a small change in a youth's life, as will be discussed later in this chapter, or whether they were able to break a cycle of re-offending. For example, Larry emphasized his impact on the lives of young offenders with FASD through a specific program that would help develop conditions that this particular group of youth had the ability to meet.

The FASD program was working with youth in the youth justice system who, well, the probation officers had given them conditions that they needed to follow and those conditions weren't being met by the youth. And it was decided that there was a reason that they're not doing it, so they developed a partnership with the [organization name] to get these youth assessed to make sure that they could work with them and set conditions that were appropriate. And so, in knowing that the youth had FASD, they would develop appropriate conditions to make it more successful. So instead of the youth committing one crime and being charged for one crime, like break-and-enter, and then having breaches then for the next several years, [the assessment allowed them to] come up with conditions that were appropriate so that they [the youth] could be successful. (Larry)

Several participants shared stories that illustrated their personal beliefs and how these informed their practice. For some, key aspects of the YCJA (2002) corresponded with their own views about rehabilitation and diversion and for others, their beliefs around how people should be treated went much further than policy and procedures. Nathan, a school liaison officer discussed having to make decisions as to where to spend his limited time and expend his effort given that he was the sole school liaison officer for thousands of youth:

Whenever I had free time, I concentrated on one high school and I concentrated on one classroom in that school which dealt with more of the kids who are basically struggling. They're having issues. Most of them are poor, some learning disabilities, drugs, alcohol. Most of them, if we can get them to school, for two hours once every two days, that's awesome. That was basically the goal: to get them to school in any way. Just try to teach something. So, I would spend most of my free time there. It was a handful of kids, but that's what I focused on the most. (Nathan)

For Irma, an intensive support and supervision program supervisor, her role was one of an advocate where she emphasized her support of youth navigating the system and discussed how she could help put into context some small, realistic successes.

And we often get invited to ICMs – the integrated case management conferences. We can advocate for what the kid is already doing. And often, when a kid goes to a meeting, and its all about them, they shut down and don't want to talk. Sometimes, there are things that are not very nice being said. So we can help advocate. We might say, "yes, ok, its true that you didn't get home on time all ten times, but you did it eight out of 10 times..." (Irma)

As evidenced by Irma's excerpt, small, manageable gains were perceived as integral to the practice of community-based responses to youth offending. Equally, gains that could not be immediately achieved were also pointed to as important aspects of the work participants did. For example, Larry discussed making a difference over the long term and inspiring change.

A lot of the things that we're working on, in the moment, don't make a difference and they may not make a difference on the six months ISSP...when you're an ISSP worker and you're working for somebody for six months, a lot of the things that you're delivering, and the messages, may not in the moment make a difference, but down the line somewhere – the kid is going to do something or make the choice to not do something... (Larry)

Another example provided by Luanne illustrates the benefits of flexible responses that can be tailored to best meet the youth client, and simultaneously emphasizes the discretion she has in her work such that she can craft responses that are "fair" given a youth's attitude.

I love the fact that I can create a custom made plan for kids that will end up being much more effective in keeping them out of the system. And if something is not working, we can change it. We make creative solutions. For example there was a kid who was short three hours of community service. He needed it to be done before the court date. We decided that we would give him partial credit for his travel time. In his instance he had to travel for quite a while to get to his placement, so this seemed like a fair solution. However, if he had not had a good attitude, we would not have needed to do that. (Luanne)

These findings demonstrate the acute awareness participants had regarding the positive impacts they could make with their youth clients and the broader community. These findings also demonstrate how professionals balance a number of interests when practicing from their ethos of care. Rather than developing solutions and approaches that are lenient, they spend a good deal of time identifying the individual strengths of youth clients as well as the contexts in

which they live. They also consider overall fairness and meaningful, achievable change as well as inspiring success over the long term.

Throughout the interview data discussed throughout Chapters 9 and 10, and also throughout the archival data, the topic of funding and resource shortages was an important one presenting many of the obstacles that professionals faced. Despite the numerous accounts of instances when a shortage of funding or program resources negatively affected youth, many participants shared positive examples of cases where youth were helped with the provision of appropriate programs and interventions. In the following example, Amanda discussed a case that she selected as a particular highlight of her intensive support and supervision work:

She was an addict—crystal meth addict—very, very bad addiction and she went to one treatment. She...was originally on probation for theft and some minor shoplifting stuff. She was sent to one treatment program back in February and then she just left. And she was in and out of custody constantly and just complete non-compliance. She would go AWOL for weeks at a time, and then she would turn up. It was scary some of the things she was involved in. She recently got into a treatment program [name of the program] and she just came back for a home visit last weekend, and she looks great. She is totally committed to the program, and she wants to finish it and she was telling me that people had been offering for her to smoke a joint when she was home and she had said “no” and that was such a big thing for her to not. You know, she was saying “I didn’t even smoke weed!” Because that, that’s huge for her. And just listening to her talk, she’s saying all of the right things and she just looks so good. She graduates in May and she’s done her probation. So, the hope is that we will be able to transition her into some sort of supportive recovery. So, she is an example of one of our aftercares. I feel that I was a pretty central part in getting her to treatment. (Amanda)

As this section has shown, participants emphasized their own role in making an impact in the lives of young offenders, victims and the larger community. As Irma said, “we create better human beings...” These findings suggest that community-based responses to youth offending provide the opportunity for unique and meaningful consequences to be developed that take into account the very specific contexts in which young offenders live. In instances where young people are not able to meet the specific consequences developed for them, professionals are able to craft more appropriate and tailored solutions. In this vein, these responses are positioned to address some of the overarching challenges youth face. What the above findings suggest is that individual practitioners have the ability to foster specific caring connections which may help to promote change in individual youth, and which are grounded in compassion. In the next

section, I examine a related component of the ethos of care—the emphasis on human relationships and developing connectedness.

## **Human Relationships and Connectedness**

According to Gregory (2011), “the ethic of care emphasizes human connectedness and the value of relationships” (p. 66). Because approaching young offenders within an ethos of care foregrounds social context, it places much less importance on individual responsibility, instead highlighting the connections and relationships that can be fostered between youth and other community members including family and youth justice professionals. All of the participants emphasized the importance of connections, especially those that they could build between themselves and a youth, and within the community. For many participants, in cases where they could not achieve a tangible outcome such as desistance from criminal behaviour, the connection/relationship that resulted from their interaction with a young offender was framed as equally, if not more, important. As Yasmin discussed,

There was a girl on my caseload about three years ago. She was probably about 13 or 14 years old and every time things got rough, her mom would kick her out. She ended up on probation because she stole a chocolate bar. She said she was hungry and she just didn't care. On the positive side of things, she got all of these services. So, we tried to get her back on track and to help the relationship with her and her mom and met with youth forensics to do some family mediation. We took her into a care home for a while to give mom some rest, and a bit of a break. We tried to work towards getting her back in the home. We tried that a few times and it didn't work: mom would end up kicking her back out and you know, she got herself into some major drugs, she started hooking on [location name] for a while. She finally had a warrant and was arrested and put in jail for quite some time. And I always keep myself involved while they're in jail, because at least it gives them a connection. Eventually she came back out, I got her back into school, tried to get her back on track, she then went away to a program for 6 months, and we still kept in touch. When she did come back to the community, she got into foster care – our organization can care for these kids for a max of about 6 months. So, we figured it was probably time to get her into care. Mom agreed, so it was voluntary at the time. So, she got into care and into a foster home, and stabilized and has pretty much turned her life around and gotten off probation. She's in grade 12 now and is thinking about applying to post secondary school at the local college. So, things like that really give us some faith. (Yasmin)

Despite the fact that the youth's behaviour escalated after Yasmin had first met with her, through continued contact she was able to become part of a web of services for the youth once she was released from custody. The theme of relationships and connectedness also relates to a belief that young offenders deserve to be treated with compassion regardless of their delinquent behaviour, and a belief held by most participants that young offenders have the capacity to change. Participants believed that through the creation of human connectedness, something that many young offenders were perceived to lack, offenders could come to better realize their impacts on others and their own ability to change. In this way, participants approached their work from a place of hope.

Usually in collaboration with the PO, or the social worker or anybody else involved. Its like, "ok. This is not working, so what can we do." And sometimes it's in trying to get them something recreational or pro-social. Instead of focusing on things like school and employment, because those things are just not going to happen, we decide to take a different route and try to get them involved – whether that's signing them up at the gym or getting them into art. That sort of thing. And that's the beauty of the ISSP role, we can really do anything within reason. So, ya. Coming up with alternatives. Not necessarily working just on goals, but even just forming a relationship with them. And with some youth, I'll meet with them and that is what we're doing: we're going for a walk, or we go to the gym or sometimes we just go and walk on the beach, that sort of thing. (Amanda)

Despite the numerous occasions that participants recounted where they had been unable to support a youth to make a positive change (recall findings from Chapter 9 where participants discussed youth who had gone on to deeper entrenchment in the justice system and those who had spiraled more deeply into addictive behaviours), participants remained hopeful with each client.

Relatedly, Allison discussed a case where the resulting relationship was between a victim and three young offenders after having participated in a restorative justice conference.

My highlight right now is the three young men who broke into a house in their neighborhood and nobody was home when they broke in, but somebody came home [while the break and enter was in progress]. Obviously it was very impactful. And for that family to come together with these three boys and their parents was something...it was quite something. And, in that case the victim was adamant that she wanted nothing to do with these boys in the future. And, like 25 minutes into the conference, she's inviting

them to her home to do yard work with her and her sons. I just sat there and was blown away by that. And the youth were blown away. And every weekend I would get the call from the victim saying “Yes, they came. Yes, they worked hard.” And that happened and the case was closed and you know, I just think about how that could have been so different. Break and enter is a very serious crime and how those young men not only got an opportunity to make amends for it, but they developed a connection that they would not otherwise have had with this family. And, the ability to process the shame they were feeling in a positive way, and being able to give back was really inspiring. And, I don’t think that those kids would ever do anything like that again. (Allison)

In this example, Allison framed the consequence for the breaking and entering—the resulting yard work—as an opportunity for the youth to make amends and to respond in a positive way to the shame that they were feeling having committed (and been caught for) the offence. The restorative solution in the above example contrasts with a punitive response that would have been disconnected from the victim and community.

Combined, these excerpts suggest that broader relationships and connections are paramount within narratives of addressing youth offending and in inspiring a change in youth behaviour. Further, these stories help to show that community-based responses may facilitate the creation of situations where building these connections is possible. For Irma, the opportunity to provide support in a meaningful way has been a key asset of the ISSP program in which she works.

The ability to be creative in our youth work in the community and with those serving those sentences. Focusing on the EJM and the sanctions and the restorative piece, that really kind of allows the youth to – well, there are ways that they can take ownership in dealing with that and so, rather than just sending them to jail for X amount of time, and then just being on probation, allowing them to have those other options where they can give back to the community or participate in programs, really can bring positive change in their life. So, I think our program is amazing. And obviously I’m going to say that, but I really do appreciate the general aspects. Having worked, not only with ISSP, but being a youth worker in general with kids who just need that extra support. I think any resource – especially when it’s free for kids – and we try to find people to work with kids who really connect well with them to build those relationships and they have to be positive role models. (Irma)

Relatedly, both Daniel, a police participant, and Larry spoke at length about the shift that they believe still needs to take place in responding to youth crime with compassion within the community rather than punitive penalties. For Daniel, this means that “we shouldn’t be looking at the individual, we should be looking at creating health in our community.” In the next section I examine a third theme that elaborates on the ethos of care narrative: the notion that community-based responses to youth offending provide the opportunity to respond to social injustices that manifest in youth offending behaviour.

### **Concerns of Injustice: “This is the Hand They Were Dealt”<sup>67</sup>**

Most of the participants stressed their beliefs that the youth they work with are, for the most part, enmeshed in social realities that prevent them from choosing to be pro-social—or at least realities that make anti-social behaviour much more attractive than law-abiding behaviour. For example, nearly all participants discussed mental and developmental health issues, poverty, homelessness, and addictions as challenges that their clients typically faced that made them more difficult to deal with, and that resulted in criminal behaviour. At the same time, participants tended not attribute 100% of youth offending to these contextual factors, most citing that youth were indeed responsible for their own actions and should be held accountable. However, as Yasmin discussed, a key belief is that the choices that youth make are products of their social context.

I always think that they’re born and they may be born to bad parents. They didn’t make that choice. And I think about my girl who’s gone through 25 foster homes. I find that some of these parents aren’t equipped to handle some of the things that come up for their kids. I don’t know if they’re not getting enough training that they need to keep their kids in their home, I just find that when things get tough, they kick the kids out. And when their heart isn’t in it, and things get tough, they kick them out. And, for a kid who’s been kicked out 25 times, the message is that when I do something bad, I’m unloved. And they’re just going to kick me out. So, I’m going to go steal a chocolate bar or commit crimes. Everybody, we all, have choices. I feel that these kids just don’t have the tools to make the right choices. Does that make sense?...and I mean, I do get angry sometimes if they’re just doing something stupid and it’s on purpose or something. You know, taking pictures of themselves committing crimes – then I feel that they had

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<sup>67</sup> Quote from Yasmin.

choices. But some of these kids, they don't have choices. This is the hand they were dealt. (Yasmin)

Similarly, in reflecting on the problem of youth offending, Daniel emphasized the responsibility of those around a young person, rather than solely the responsibility of the individual:

But there's resistance there – we don't want to ask the hard questions. That's the problem – we need to ask “why is this kid doing all of these terrible things?” I remember [a locally produced film]...And it shows this Aboriginal guy who just starts breaking down. And he talks about getting into problems. And he talks about it from a different perspective. He says, “who did anything about this kid who was breaking into houses? Who was asking why is this kid stealing booze? Who asked why this kid was walking around at 2am?” and this guy had had a rough life and had done some awful things. But you could tell that the emotion was intense. The pain that he felt the child was going through and I'm sure he was relating to stuff that the kid had gone through. But, people don't like to hear that. I actually think it hits too close to people. It really forces them to reconsider how they conduct themselves in life. (Daniel)

Part of the ethos of care as narrated by several participants is the availability of second chances. As was expected, particularly among professionals who work within various levels of community-based responses to youth offending, an emphasis on second chances was a common theme. For example, Todd discussed working with the belief that most of the youth he dealt with were good kids who made a mistake:

The term 'offender'...I think it's a strong word...And kids make mistakes. Even though they've caused an offence, it seems to me that sometimes kids are kids and they make poor choices. And in that case, it's a poor choice by a young person. Maybe that's what we call it. And maybe they've been more involved in the past and have tagged every single wall in Vancouver. And in that case, maybe they are offenders. They are repeat offenders. But in most cases, they are good kids. Its not good – when you're working with kids to say to them “you're an offender.” And that goes back to the way I work with kids. The wording is key. (Todd)

Likewise, Yasmin tended to locate the problem of young offenders in the poor decisions that youth make, with the overall view that the youth themselves are not “bad kids.” She expanded on the challenge when second chances turn into third, fourth and fifth ones in a discussion around the act of providing as much care as possible with the hope that the youth will be left with the skills and resources to succeed.

I love the youth I work with. I feel that everybody deserves a chance. I don't think there is such a thing as bad kids, I think they just make bad choices. Sometimes if they've grown up in families who have had addiction issues or experienced abuse, it's not really their fault that they're here, it's the hand that they've been dealt. And so, I feel that if I can give them that second chance and do everything in my power to help them. It keeps me going and it gives me faith that they can change. Sometimes it sucks when it's a cycle and you just keep going over and over the same problems with the kids. And it gets frustrating because you want what's best for them, but they haven't yet hit their rock bottom to realize that. So, I have to always remind myself that we're planting the seeds and hopefully they'll blossom later on. (Yasmin)

Nathan, a police officer discussed the strategies he witnessed in the school system where specialized schools allowed youth to break the rules more often in order to avoid expulsion which, he pointed out, only serves to further disenfranchise already marginalized youth.

You get to learn the kids and you know what they're like. Some of the schools I dealt with are for problem kids and you deal with that school very differently than you would a school that was more mainstream one where you've got middle class, upper class families going there as opposed to a school where there is broken up families. A kid brings marijuana in there – this is their last shot really at an education. So, you're really going to give them a million chances. You're going to do everything you can to get them through unless it's something serious. Other school, maybe not so many. Maybe a couple of chances and then we're going to suspend, we're going to expel. Whatever that school deems is necessary. (Nathan)

As Larry explained below, there is a delicate balance between developing understanding for the circumstances in which a young person lives and making excuses for their behaviour.

You see some of the social realities that are affected or they're exposed to. And so then you have the ability to take a step back: when a kid is 15 years old and has done something...to be able to say, "Hum, 15 years old, 15 foster homes, addictions, mental health, where they've come from. If you take a step back and remember when working with the younger kids some of their...and then not to make an excuse for it; they're responsible for their own actions, and I understand that, but put in those same situations, lots of others...put in those situations, it can happen to lots of kids. It can happen to kids that are -- that we work with, it can happen to them -- so then what it is, okay, they're here *now*, so let's put things in place now to make a difference. And then also I think driving that is also then the ability to look at – how do we go back -- to prevention

models, and that's why [organization name], for example, is a program -- or an organization that I work very hard to be involved in, is looking at some -- they recognize that and then they put in programs like the [program name] which is a program working with the younger kids, giving them a volunteer mentor to hang out with them a couple of hours a week, to make a difference, develop that relationship, and then in some ways monitoring kids to make sure that "okay, this kid needs some support." "What do I need to do to make sure that they're not going to go down that same road, what kinds of things can I put in place" (Larry)

The challenges confronted by participants, for example, persistent reoffending behaviour, youth resistant to change, and deep-seated socio-economic and developmental deficits, were paired with numerous strategies to help youth succeed. Participants told stories about hope for a young person to change and "doing everything you can to get them through" (Nathan). A consistent theme underlying these discussions was a complex understanding of a young offender's personal location that helped to provide context and understanding. Importantly, participants emphasized that context did not completely re-allocate individual responsibility. As the next two sections will show, the understandings participants had of social problems helped to frame their action in dealing with young people.

### ***Practice activism***

A related theme that further contributed to the ethos of care, was the practice that some of the participants engaged in as a response to their concerns about injustice that youth experienced. This came to be described and labeled as practice activism: participants told stories about actions and behaviours they engaged in over the course of delivering community-based responses, that resisted aspects of the system that they felt were unfair to youth, filled gaps in services with assistance needed by youth and concerned themselves with a system of rights and justice at a much more overarching/macro level than the youth justice system. This theme is taken up within this chapter as it relates to the ethos of care, and builds on the content from Chapter 9 under the heading "informal solutions" where practice activism was framed as an operational response to a lack of resources. Recall, a key strategy discussed in Chapter 9 as a response to the lack of and/or fragmentation of resources was engaging in unpaid work. This adaptation was especially prominent in the strategies of non-profit sector employees and is consistent with the findings of Baines et al. (2013). Baines et al. reported that the provision of work for no pay and the provision of personal resources, among other strategies, to adapt to

service provision where funding had run out, permeated their findings on work in the non-profit sector in the United Kingdom, Canada, Australia, and New Zealand. Baines et al. came to call this a “modus operandi for women in the sector” (p. 11) examining the disproportionate representation of the theme among female rather than male participants. Further, they found that managers, in fact, relied on their employees to work beyond their pay in order to meet organizational targets. Unlike their research, my findings did not allocate extra work to female employees only, nor were managers excluded from the ethos of care as it was uncovered in my research.

In many senses, participants acknowledged the political nature of their tasks. As discussed throughout this dissertation, the idea that those responsible for implementing policy play an important role in the policy-making process has been well documented (Kjorstead, 2006; Banks, 1999; Banks, 2012). This was reflected in the narratives when participants discussed stories of how they undertook actions and duties far beyond the scope of their specific powers under the YCJA (2002), local policies and service agreements, and directions from their superiors. Despite the challenges discussed by participants, many (but not all) framed themselves and their colleagues as having power to help—and in the face of tensions or challenges, as able to be creative and overcome.

So, essentially, ISSP complements the work being done by the probation officers. So, they set out the guidelines and we're the ones that are in the community supporting and facilitating that work to happen for that youth. Our big component is that we work from a strengths-based perspective. So, we really try and focus on what is positive and what's good and happening in the youth's life. And we focus on that and focus on those strengths. And, we devise a program mutually agreed upon with them. We don't just say “this is what we're doing for you, these are your goals.” Obviously, there are some conditions set out by the court that they have to participate in, such as community work service or whatever it might be. We try to build it so that it's a relationship that they want to have with us and we can focus and strengthen what's already positive in their life.  
(Irma)

Interestingly, participants only very rarely framed themselves as powerless to some of the challenges they faced (of under-funding; of bureaucracy).

Some participants incorporated examples of their own power to challenge the system in their narratives and others told stories of not knowing what to do or lacking power. According to

Banks (1999), this variation typically depends on a number of factors including an individual worker's personal values and their perception of the values of their employing agency and or nature of their work. Banks suggested that workers who see their personal values as connected to their work life tend to view their roles as avenues from which to inspire social change. On the other hand, professionals who perceive their work life and their personal values as separate will tend to view their role as someone who is supposed to carry out the policies of their organization. Furthermore, Banks argued that professionals who work for non-profit or voluntary organizations that have specific advocacy or activist goals will more easily be able to perceive themselves as capable to inspire change than those who work for state influenced organizations (e.g., police) or the government itself (e.g., MCFD).

Similarly, in a study regarding the implementation of social policy in Norway, Kjørstand (2005) found that professional decision-making and actions are "influenced by individual appropriation of professional values and practices and how these are amalgamated to the individual's personal experiences in the practice of social work" (p. 205). Though many of the workers in that study did adhere to agency policy, they often made personal ethical judgments informed by their own ideals and values or drew on and supplemented the basic meanings of institutional policies with ideas consistent with their own notions of how best to help youth. This allowed them to exercise what Kjørstead (2005) calls "professional courage," by moving beyond rules and policies to incorporate their own practical wisdom.

### ***Creating the category of the diversion-eligible youth***

The constructions of the young offender and how this in turn relates to the regulation of the young offender was examined in Chapter 8 as it was reflected in the archival data. Throughout the archival data, it became clear that the way youth in conflict with the law were described, understood, and storied by participants was strongly tied to views of how the youth should be responded to. Unlike the archival data, the interview data presented a greater diversity of views around the young offender. This was not surprising given that professionals who deal with youth on a regular basis would be likely to have much more detailed and grounded impressions of them in contrast to politicians who are, by design, contemplating generalities for the problem of youth justice. The following excerpt begins to highlight how professionals tended to understand youth on a very personal level. For example, Daniel

characterized his approach to young offenders as driven by his own similarities with young offenders in the following story:

I was a frequent flyer as a teenager. Nothing serious where I was hurting anyone, but I was breaking stuff, I was stealing stuff, broke into a place that was storing some trailers. Smashed the hell out of all of the stuff, smashed beer bottles, threw snowballs at cars on the freeway, and I'm a police officer. The only difference between me and somebody else is that I ran faster. If I had been running slower, or if I had been more dim-witted, who knows—I could have been labeled as a bad kid. Some people might have called me a "prolific offender." And I say, "to all of you males...virtually all of you have done this stuff because it is a right of passage. Guys, for whatever reason do this stuff. Socialization, genetics or a combination thereof." And I think that not understanding that this is part of the growing up process, the more we end up isolating and making people different...it's a struggle. (Daniel)

Notably, this excerpt not only normalizes some degree of deviance, but also illustrates the participant's perspective that only luck—and perhaps physical fitness—stood in the way of him falling into the category of "prolific offender." The "it could have been me" aspect of the narrative helps to frame associated justice responses because it forces us to consider how we might wish to be treated if we were in the same position; the narrative resists "othering" young offenders because, they are just like us.<sup>68</sup>

Natasha recognized the structural barriers facing the bulk of her clients and the idea that "young offender" is a much more fluid category wherein youth requiring services may be younger than 12-years-old:

Many youth don't have any family, they are managing their own finances and most of them live outside of the traditional care system—meaning that they reside on their own. The system isn't designed to be effective as a prevention system. When we see these kids, they have so many barriers to service. Often they aren't able to access services or

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<sup>68</sup> In 1971, in what has been considered his most influential work on moral philosophy, John Rawls (1971) developed the "original position" scenario. The scenario, Rawls' attempt to bridge equality and freedom into justice, depicted a group of individuals faced with the task of selecting the style and form of governance and structure of a society that they would inhabit. The key to this deliberative process is that the individuals do not know anything about themselves; they work behind a veil of ignorance. They know nothing about their own intelligence, race, skills or religion. For the reason of the veil of ignorance, Rawls argued that it would be irrational to create a society in which anyone occupies an unfair position. He imagined that the thought-experiment provided by the original position was the elucidation of the standpoint that should be held when deliberating about social justice.

even know what services might be available or how to get to them. Or, they are so dysfunctional that they are unable to relate to others to be able to take advantage of any program that they might access. And at one time, as a social worker, I was unable to access kids outside of my area because we had restrictions on mileage. I've never had a kid take the bus to [site name] to see me....but that's how it can be. And the kids have real tangible barriers, like they don't have bus tickets or they have a probation order that mandates school attendance. And they tell me: "I can't go to your program because it takes place during school." Additionally, there is a perception that kids aren't criminal until they are teenagers. But we know that we have kids who are 9 or 10 years old who could really use some resources directed towards early intervention. When I worked in Scotland, we had kids at 9 or 10 taking advantage of the resources we had available. Our system is not like that. (Natasha)

Additionally, as exemplified in the following excerpt, many workers resisted labeling their clients as criminals and offenders in some situations. For example, Amanda recalled a time when on her caseload,

I had one girl, she was Aboriginal, and she—parents are both alcoholics—nobody in her family has ever graduated from high school, she was registered in school but not going, she was charged with stealing food from the grocery store, and she was also charged with stealing snow pants from Walmart. So, relatively minor offences. She had not had a lot of structure in her life. I met her just after she was moved out of her house, into a [program name] home. [Program name] is a curfew monitoring program, and they also have homes where youth can reside. And she has enrolled in school and I met her just after that. And she was a really sweet girl, really nice and smart, but she had just not had any support. I mean, her parents loved her but they just weren't able to provide what she needed. And she ended up—I worked with her for about 8 months—she graduated from high school and was the first person in her family to do that, and got into the Indigenous leadership program at [college name]. And then she finished probation. She did breach once in the early stages – that was the [theft of the] snow pants. And unfortunately by that time she had turned 18, so it was an adult charge. But, they did a diversion with her, so she had a bunch of things: she had to write an essay, do work service hours in order to have a discharge basically so she wouldn't have it on her record. She finished probation in the Fall and was going to transfer into the welding program with hopes of possibly going to Alberta to work—I guess lots of money. The last I heard, she was doing great. She moved out on her own, her band paid for her education as well as her rent for 8 months while she was in school—so she had that all covered. And she moved into a nice little house with her brother ... She stands out, definitely. I mean, she was not a criminal, she was ... It was really neat. I took her to her grad, because she didn't want her parents to go and she wanted me to go, so that was cool. (Amanda)

Resistance in applying the label of criminal or offender to those clients who are subject to community-based responses is consistent with the findings of Maclure et al. (2003) in their interview research with diversion practitioners in the province of Ontario under the YOA. In their research, Maclure et al. found “consensus among the interviewees that many youth who commit minor offences are not by definition criminal, but rather are individuals who have made errors in judgment that are largely due to their youthful impressionability and lack of maturity” (p. 140). Like the excerpt above, some participants in my research were more apt to frame their young offender clients who were involved in minor offences, not just as having less responsibility as a result of their age, but as under served young people who lived with systemic needs (e.g., lack of family support; familial addiction).

This is in contrast to a smaller group of youth with whom any intervention has seemed to fail, youth who are very resistant to the supports being offered. The group of youth who seem particularly chronic in their offending patterns and behaviours and for whom it seems certain that they will continue offending into adulthood despite service provisions seem to be described as youth who have come from “good families” but go on to offend anyways. These youth lack the “excuse” provided by familial and situational barriers:

These are kids who are...criminals. And seem to come from fairly good families – although you never really know. Supportive families who care and are so confused about what is going on. Those are the kids that I find are so entrenched in it, that I think this is just their lifestyle. And I don't know what it is, but there are certain kids that you just get a feeling about that they're going to unfortunately, graduate into the adult system. Because, a lot of these kids come into contact with the system when they're 12. And in those 6 years before they're 18, there has been so many interventions and so many workers involved and so many programs tried and nothing seems to work. They might get into a program or get a job for a bit, and then they drop out, the end up back in jail or they quit. Its unfortunate, but you see them graduate into the adult system, because its unfortunate, but they aren't taking advantage of anything that's being offered to them. And unfortunately, when you turn into an adult, its completely different, the support is not there. And they're resistant. They're resistant to any sort of support. They'll meet you, but its really because they want MacDonal'd's or something. They're not really interested in working towards any sort of goal. Anything that you sort of propose to them, they're like, “oh, I don't need to do that.” Ya. So, those are the kids that you just...and there is not a lot of them, I don't think, but some of them, its become their lifestyle. They've adopted that as part of who they are. They're not willing to change and not interested in changing. They're ok with it. And so, you just have to roll with that and

do what you can. And there are some kids who you know are going to be in the adult system. There is only so much that people can do. As opposed to the kids, like I said, who are addicted to drugs, or are victims themselves. And its circumstances, life, the hand that they've been dealt. (Amanda)

At the law enforcement level, many participants discussed the types of factors they consider when deciding whether to divert. Participants emphasized the level of cooperation exhibited by the youth, past criminal record, type of offence, victim desire and parental/community support for the offender. Cooperative youth with a pleasant demeanor, one who has no or a limited criminal record, committed a non-violent offence and had community or familial supports were the most appropriate for diversion. A related concern is the construction of two types of offenders within the diversion-eligible category. As expected, participants had very clear ideas of what made a youth diversion-eligible or good candidates for diversion. This was based on a combination of personal views, lessons learned from practice and organizational policy. Elaine for example, focused on the offence characteristics, patterns of offending and his perception around the utility of restorative justice:

The deciding factor for myself is probably the level of cooperation, previous police interaction – whether or not they have a criminal record. Lots of times a kid doesn't have a criminal record, but has 200 PRIME files for the same thing. Those would definitely play a role into whether I would do it or not. And then I would say, the type of offence. And then if somebody was obviously seriously injured, there's not a chance in hell I would do diversion or RJ. If it were a violent offence, I don't think I would do diversion, which I know that in restorative justice, there is stuff of varying natures in what it's used for. I know that. But, I have a hard time doing that. But I guess it would also depend upon level of victim cooperation. So, if I go to an assault, and victim says, "I don't want to charge the kid, I want to do this..." But, it's not something I'm going to suggest if somebody's been pepper sprayed or something...The only other thing is that to get someone in EJM, you need parental support – active parents who wanted to participate who realized that their child had done wrong and wanted to help. I've had these parents who want the kids to do better. I've had other parents who are worse than the kids and who've actually said to us, "pound sand." And you wonder why their kid is the way they are! [sarcasm] (Elaine)

Most participants felt that youth who were not well connected to pro-social supports or lacked parental support were not appropriate candidates for informal police diversion (warnings and cautions) and were equally inappropriate for extrajudicial measures where restorative

justice was the only extrajudicial measures program available. Furthermore, having been charged in the past was often grounds for extrajudicial measures to be perceived as off-limits. Allison found using previous charges as a deciding factor was inappropriate:

And I don't know that we're real good at understanding: "you go over here and you go over here..." [motion of separating people into two groups]. What we hear often is, "you will never see this kid referred to restorative justice because he has ten other charges..." And I say, "why are we doing the same thing the eleventh time?!" So, I think this differentiation between...well...more serious cases or repeat offenders have to go to court, and less serious have to go to EJM...that doesn't really work for me. (Allison)

Similarly, Daniel felt that the decisions on whether a youth was appropriate for diversion are highly problematic in that resources are not evenly available across the province such that a smaller community that may be less diverse and less economically stable might give diversion options to a smaller variety of youth, whereas a larger community may have improved access and enhanced specialized programming. For this reason, the decision to divert may have less to do with the youth and their specific factors in their case than with external factors. Daniel used the word "hypocrisy" to describe the method of choosing who gets diverted and who gets tracked into formal processing:

...part of the trap is the kid that's really positioned and has a socio-economic advantage gets diverted. If I had 2 kids who committed the same offence – lets say shoplifting. And I say, "ok, I'm going to call your folks." I call one parent and they say, "ok, I'm calling my husband and we'll be right there." They seem really engaged and shocked by this. I feel some sense of confidence that this is going to be dealt with. Other kid: "Where's your mom?" "I dunno. I haven't seen her for the last two or three days." That's not good. So the next thing I do is call MCFD. And then, when I start writing up my report, I've got two kids that have done the same thing, same history. But because one of them has the absence of support networks to end up making him more resilient to future offending, he's the one who's going to get hammered quite frankly. And then he gets down in the funnel of the Burnaby youth detention centre, which is the petrie dish for future offending. And it's a self-fulfilling prophecy. You've got a poor kid who has a bad background and I guess it's the old thing: there's good people and bad people. The world loves to end up making that divide because if we say "that kid screwed up because he's a bad kid" and then we can say, "that means we're all good." And its bad people that make the world bad. We don't have to change anything because the world is good...Its quite a hypocrisy isn't it? (Daniel)

Relatedly, Natasha felt that the system is not built for youth who have special needs—though this is the bulk of clients the system serves. In response to what she identified as a contradiction she noted:

Many youth don't have any family, they are managing their own finances and most of them live outside of the traditional care system – meaning that they reside on their own. The system isn't designed to be effective as a prevention system. When we see these kids, they have so many barriers to service. Often they aren't able to access services or even know what services might be available or how to get to them. Or, they are so dysfunctional that they are unable to relate to others to be able to take advantage of any program that they might access. And at one time, as a social worker, I was unable to access kids outside of my area because we had restrictions on mileage. I've never had a kid take the bus to [site name] to see me....but that's how it can be. And the kids have real tangible barriers, like they don't have bus tickets or they have a probation order that mandates school attendance. And they tell me: "I can't go to your program because it takes place during school." Additionally, there is a perception that kids aren't criminal until they are teenagers. But we know that we have kids who are 9 or 10 years old who could really use some resources directed towards early intervention. When I worked in Scotland, we had kids at 9 or 10 taking advantage of the resources we had available. Our system is not like that. (Natasha)

Allison commented that she sees "...social justice inequalities" in the restorative justice program she runs that receives police referrals:

We still have an overrepresentation of middle class young men and a vast underrepresentation of Aboriginal youth...in our program. Those Aboriginal youth – you can look at our court stats for [community name] and see that they are still vastly overrepresented in court. And the number of Aboriginal youth that we get is very very very low. In fact, we don't have any referrals that we can report from the last year from the [police agency]. They only police the reserves. That, to me is baffling. So, when we start to create those hierarchies of less serious, more serious, again, its very offender focused and again, there are some social inequalities there that are glaring. (Allison)

The category of diversion-eligible young offender, according to Omar has undergone a gradual expansion as restorative justice programs take hold. Increasingly, youth who might previously have been ineligible for an extrajudicial sanction (e.g., more severe crimes such as robbery) are permitted to participate in restorative justice once that program was established, though this is still up to the discretion of those running the program and can be highly contentious. Omar recounts what he framed as a positive story with a positive ending.

I'm hesitant to do a conference with no supports except if the youth is more mature. There is almost always someone like an uncle or even a grandma who can support the youth. Also it is important because these supporters were also likely affected by the crime. In one case I have a kid who had nobody. The case involved a stolen vehicle that he was driving; his friend, his passenger died when the car crashed. Both the offender's family and the victim's family were Aboriginal. It was very important to the victim's family that they meet with the offender, someone who they knew, while his was in custody. This couldn't be arranged at first given the custody centre rules. Eventually the conference did occur a while later in the custody centre. It ended up being only the offender and the victim's mother. Though the Aboriginal support worker in the custody centre made himself available to attend if necessary, the offender wanted to go by himself and that is what we did. The youth opened up to the mother and she said, "I just want you not to end up like my son."

In some cases it is important to have supporters because it affects them as well. Parents get to express their piece. Parents get to see their remorse of their child and in many instances, they have not seen this in a long time. It gives them something. The parents can recognize that "my kid does have the capacity to do good." Additionally, it allows the victim to see where the kid comes from. It allows for a complex understanding and for the victim to know a bit more about the kid who is making the apology. Often the victim perceives the offender as a scary monster. In the conference, they see this little kid who is often crying. It humanizes and helps the victim to let go of fear and anger they might have. They can then go away feeling better – they "get it". (Omar)

This illustrates the way in which a local program served to expand the fluid idea of who is appropriate for diversion. The "divertable young offender," A sub-set of the diversion-eligible young offender, is the youth in conflict with the law who responds positively to diversionary measures. In the preceding paragraphs, Amanda told the stories of two "types" of youth who might be filtered into diversion programs: the young person who, despite being faced with structural barriers found resilience in the context of diversionary support and eventually succeeded, and the young person who just could not seem to be helped no matter how many supports and resources are provided. This resistant offender lacks the excuses of the resilient offender.

## Conclusion

In this chapter I have acknowledged the multiple dimensions and rich theoretical landscape involved in the ethos of care by examining several sub-themes that illustrate how practitioners told stories of their negotiations and re-negotiations of the action they undertook to do good in their practice: by providing relationship based care; setting youth clients up to be successful with tailored prevention and intervention responses; working to try to “make a difference”; offering second chances; displaying an acute awareness of the social context of the offender; engaging in professional practice based on personal beliefs of how children and youth should or deserve be treated and; imbedding the action of advocacy into practice.

Despite demonstrable shifts towards managerialism, individualism and punishment within youth justice policy, and outcomes signifying the inadequacy of resources resulting in net narrowing, professionals embed care into the youth justice system. They do this specifically the area of community-based responses to youth crime and engage in efforts to fill persistent gaps. As discussed in Chapter 8, my findings suggest that youth justice policy development in Canada over the last decade has been heavily informed by (and perhaps bound by) a view that the panacea to youth crime can be found inexpensively within the community. As of late, themes of managerialism and punishment have influenced and otherwise created policy responses. While the entrenchment of community-based responses to youth offending under the YCJA (2002) may have signaled a shift in philosophy, the move towards meaningful consequences, restorative justice and root causes merely (re)introduced, with a different façade, the same narrative that existed under the YOA (1985). Exacerbated by the enhanced measures of social control under Bill C-10, youth justice policies have extremely profound care deficiencies. These care deficiencies are particularly visible when the narratives of policy-making are contrasted with the narratives of operational youth justice.

In contrast, the operational narratives are abundant with care resources and practices shaped by care; in many ways, individual practitioners adapt to care deficiencies within policy by drawing in their own provisions of care governed by what I termed an ethos of care. For these reasons a peculiar disconnect arises between policy as it is created and written, and policy as it is practiced. The implications mean that youth justice is practiced on a micro-scale that is constantly experiencing tensions because professionals enmeshed in the ethic of care naturally seek a relational approach. For example, the very system of contracting out youth justice

services becomes problematic when workers are given a small piece of a much larger puzzle and are left powerless to invoke any sort of meaningful change on a meso or macro scale; their only power of resisting the system and providing care based on their relational approach is to offer free charitable service to individual clients. This tension begs the question of why care often left out of policy only to be provided as charity by individuals.

## CHAPTER 12: Conclusion

*Now this is not the end. It is not even the beginning of the end. But it is, perhaps the end of the beginning.*  
~Winston Churchill, 1942

### Chapter Overview

This research focused on diversion and community-based alternatives to custody for young offenders. For the purposes of this research, diversion, and community-based responses to youth crime include informal processes and non-incarcerating sanctions utilized for young offenders for the purposes of diverting youth away from the formal justice system at any juncture, and/or reintegrating that offender within the community. Measures of interest included extrajudicial measures, extra-judicial sanctions, conferencing, restorative justice, and intensive support and supervision under the YCJA (2002). This research followed a qualitative approach that engaged narrative as a mechanism to examine policy and practice.

Phase 1 involved an examination of over a decade of policy-related discussions within the House of Commons and Senate as well as their respective committees and resulting legislation reported by *Legisinfo*. Initially, all transcripts were examined. At a later stage, a proportional stratified random sample was drawn, restricting the sample to 32 items. Phase 2 involved semi-structured interviews conducted with 14 professionals in the field of youth justice with the aim of accessing practice narratives on policy implementation. Chain-referral and maximum variation sampling techniques were employed to access a diverse group of professionals including police, youth workers, restorative justice personnel and probation officers in the regions of Greater Vancouver, the Fraser Valley and Vancouver Island in the province of British Columbia. Participants ranged in length of service from one year to over 35 years. Thematic narrative analysis of phases 1 and 2 occurred iteratively with data collection.

Overall, I have presented findings regarding community youth justice measures on an operational level (e.g., insufficient resources available to individual workers; narrowing the net of youth who are eligible for services; invoking charitable provision of youth justice services; the outsourcing of diversion strategies by government to community organizations) and also on a

policy-making level (e.g., the complex fusion of restorative justice and diversion strategies; the substitution of anecdotes for evidence in policy-making; the simple rather than complex stories used to frame the “youth justice problem” by policy-makers), and finally on a macro socio-political level (e.g., a reversal of the welfare state and the associated implications of this reversal). Through the presentation of findings, I have made comments about the impacts of ideological and policy shifts and policy-making on individual practice and on the efforts of individual professionals to begin the work of closing the gaps in youth justice services based on their own understanding of social responsibility and the “ethos of care.” This research contributes to the body of work on youth justice in Canada by exploring the connections and disconnects between policy discourses at each of the political, policy and practice levels and undertook to highlight how such a multi-dimensional analysis is a meaningful way to assess an important social policy issue.

I undertook this research to develop a clearer understanding of the social, political and practical narratives that emerged, are invoked, and influence community-based responses to youth crime at each of the rhetorical, policy and practice stages of youth justice policy. My intention has been to develop a deeper understanding of the beliefs, meanings, intentions, assumptions and values that provide the foundation for action at each of these three policy levels. I also aimed to put together a clearer picture of the inter-connections between the policy levels, specifically given youth justice reform brought on by the YCJA (2002) and community-based responses and in order to understand how policy change works (or in some cases, does not work) within and across each level. A focal concern has been to whether disconnects across the rhetorical, codification and implementation levels exist, with specific attention as to where and why they emerge. The broad nature of my research questions required the analysis of data from divergent sources and spanning a decade of time. To adequately address each question, in my presentation of data and findings, I vacillated between emphasizing both broad and local narratives that could simultaneously speak to the presence of broader political narratives and individual practice narratives in order to provide for the reader a sense of the varied terrain researched—and as was demanded of the broad research questions.

In the previous five chapters, I presented the results from the archival analysis and the participant interviews to gather policy and operational narratives, respectively, and in order to make the case that the narrative approach to policy studies is valuable in revealing, not only a

description of what policy means, but also the stories that undergird these meanings. Furthermore, I arranged the data in a way that allows the relationships between and within policy and practice, and also over time to be examined. Still to be explored are the implications such findings have on the policy process and for policy makers and practitioners. This chapter will end with the identification of future research flowing from what this study has accomplished.

## **Youth Justice Narratives in British Columbia**

In addition to the descriptive content presented throughout the findings chapters, the narratives in the data were also thematically coded to reveal policy and practice narratives. During the first round of coding, nearly 50 codes were identified within the archival data and over 20 codes emerged from the interview data. In examining how these codes connected to one another and saturated the data, I was able to link, expand upon and in some cases eliminate codes to build the themes that are presented here. This process involved reading and re-reading as well as coding and re-coding the transcripts throughout the analysis and writing stages over a period of over two years; *NVivo* was a helpful resource in making such work seamless. As an added challenge, while this research was in the planning stages, Bill C-10, one of the key bills that had helped to form the impetus for the research received Royal Assent, creating a moving target for the end point of archival analysis. This also translated into the discussions around the bill having much more influence since the amendments had become law. That said, though Bill C-10 was passed into law on March 13, 2012, some practitioners had not yet considered how this would (if at all) impact their practice at the time I interviewed them. This would be an area to examine more closely with future research. The magnitude of this project, despite efforts to limit the data examined at the archival level, necessitated meticulous attention to making research decisions transparent and recording each decision and element of the research process systematically. This process identified narratives in the policy-making setting over time and how the threads of these narratives informed, contrasted and set the context for resulting practice.

Despite the stability of policy stories as emphasized throughout the literature, a critical question to consider in examining shifts in policies and policy narratives overtime is why and how some ideas take hold and become policy responses while others do not—simply, the processes by which old narratives and ideas fade or are re-told and new narratives and ideas take hold or become more prominent. As discussed in Chapter 6, the narrative approach to the

study of politics, policy and practice is significant in that narratives and stories offer insights into social and cultural meanings (Patton, 2002), the analysis of which allows researchers to see how meaning is made and how policy solutions follow from these subjective constructions. Furthermore, the discursive function of narratives means they are communicative in that they allow speakers to tell a story in a particular way to convey a particular view of the world to others (Hogeveen & Smandych, 2001). For Russell et al., (2008) taking a rhetorical perspective on the nature of policy-making emphasizes “the struggle over ideas, the ‘naming and framing’ of policy problems, the centrality of audience and the rhetorical use of language in discussion to increase the audience’s adherence to particular framings and proposals” (p. 40).

### ***Communitarianism and managerialism***

In Chapter 8, I discussed the prevalence of the communitarian narrative, especially in the discussions early on in the archives—those debates foundational to the coming-into-force of the YCJA (2002). Communitarianism refers to the tendency towards solutions that draw on informal resources provided in local communities rather than those provided formally by the government. Obviously community-based responses to anything are grounded in beliefs that decentralization and local responses are superior (in some cases) to state-provided solutions—that is the central argument of any policy that is based on community responses. What was important in this research was the attention speakers placed on the community as a panacea. In this sense, the informal, local solutions would not act as supports to a strong formal system, but instead were crafted as the opposite of incarcerative sanctions that had been identified as perhaps the most undesirable aspect of the YOA (1985). As the community was invoked, there also appeared to be a belief that local solutions were necessarily “good” because those people who knew the young offenders (e.g., local police) would be the professionals dealing with them and the assumption that Crown prosecutors and judges, who we were told did not know youth, would only be used as a last resort. Also imbedded in this narrative was a moral positioning of the community to address what legislators said was an outcome of more mothers in the workforce. The contradiction here is that while the community was positioned to do everything that the formal system had done, and more, it was framed as needing fewer resources as informal responses were assumed to be inexpensive.

## ***Punishment***

The third narrative that was found to be constitutive in the archives focuses on two key narrative processes that featured prominently in the data and that underscore the punitive narrative that, as of late, frames community-based responses to crime: the politicization of youth justice and the constructions of the youth criminal. I focused on how these processes have helped shape youth justice policies over the past decade. In particular, I considered how the focus has shifted away from the community as the site of control for the young offender in the later part of the data and how the groundwork for this shift is largely evident throughout the early part of the archives examined. The data suggest the politicization of youth justice and particular constructions of young offenders as part of the punitive narrative has helped to shape and re-shape community-based responses to youth crime over the past decade.

## ***Outsourcing youth justice***

Chapter 9 revealed the lack of resources allocated to community youth justice—those foreshadowed by legislators—has resulted in youth justice service delivery that has become fragmented and heavily reliant on efforts of individual professionals to overcome barriers to care. In many ways, the compromise that occurred at the political level served to foreshadow the tensions present in the operational setting that emerged throughout the interviews.

## ***Net narrowing***

Relatedly, in Chapter 9 I described net narrowing—a phenomenon in the context of diversion where criminal charges become framed as a window of opportunity for youth to access the services they are viewed as in need of. The situation illustrated throughout the data is that as much as the emphasis within the YCJA (2002) on community-based responses to youth offending was seemingly premised on creating more effective and tailored responses to delinquency and focusing on prevention, in operation, non-interventionist strategies may actually make much-needed services harder to reach. As a result, some professionals speculated that the system is now designed so that young offenders must become more severe and prolific in their offending behaviour in order to access rehabilitative resources. This finding is connected to a lack of resources devoted to community-based responses.

### ***Restorative justice and diversion***

Chapter 10 revealed the challenges in delivering community-based responses to youth crime in the context of restorative justice. In that chapter I argued that because the broad category of community-based responses to youth crime is storied as subsuming restorative justice, restorative approaches are necessarily limited in their approach. As noted in Chapter 8, restorative justice did not occupy an important space in the archives, and when it did, it seemed to be invoked as one of a list of community-based approaches. Given what practitioners expressed about restorative justice, considerable challenges in implementing restorative justice have resulted. For example, in some communities, restorative justice is dually positioned as the only diversion program for pre-charge youth whilst also being identified as an approach that is not suitable for crimes beyond very minor ones. In other communities, restorative justice practices seem to hold some rhetorical power where enforcement agencies may go through the motions of using restorative processes rather than actually taking the approaches seriously.

### ***The caring ethos and charity***

Chapter 11 of this dissertation revealed that an ethos of care shapes youth justice practice in this province. In some ways, it seems that this ethos has been allowed to flourish as a result of the increased contracting out between government and the non-profit sector where workers are permitted more flexibility in their practice. It is clear, however, that the ethos of care is important in the whole of the youth justice service sector, beyond the non-profit sector. Despite the importance of the narratives of individualism and responsibility as well as managerialism in crafting youth justice policy over the last decade, the ethos of care is very much based on collectivity and informality creating an important tension in youth justice between the policy and operational settings. The ethos of care furthermore, tends to invoke charity as a response to care deficiencies in social policy where the provision of care becomes fragmented and ad hoc, rather than institutionalized based on rights. The adaptations and practices based on an ethos of care range from a practice philosophy to tangible practices such as work without pay. Though the latter seems unsustainable and based on the exploitation of workers who are often already underpaid, it seems best to reinvigorate the ethos of care throughout the youth justice system, rather than to limit it—perhaps with a focus on how to do this more ethically. The more insidious implications may mean that the caring ethos works well

with the practice of community crime control because it invokes charity—it also risks restricting community organizations to micro change. Broadly, it seems that in cases where policies create care deficits, individual workers try to close the gaps and frame their work as based on their social responsibility to do good and to help.

## **Implications and Applicability**

Together, the data tell an exceedingly complex set of stories about policies and practice, about youth justice and potentially about working towards justice more generally. As the data revealed, the challenges of shifting responsibility for crime control from the government to the community by way of community-based responses can be mitigated in practice. However, there are some key consequences that seem to flow easily from such an arrangement that have been identified throughout this dissertation. To be clear, this is not an argument to “re” centralize the provision of youth justice services in British Columbia. Instead, the findings catalogued in this dissertation point to the challenges in providing services in what ends up being a fragmented system. Adjustments must be made to improve the contexts that youth justice professionals practice in and to recognize the immense potentials held by the workers, particularly in their orientations around the ethos of care. Furthermore, it must be recognized that the simple blending of restorative justice and diversion practices under the umbrella of community-based responses may not be universally appropriate and thus, current practice must give way to more complicated ways of delivering just results. Communities must be able to deliver community-based responses that are not linked to restorative philosophies where appropriate, and likewise, restorative justice professionals must be allowed to recognize their potential in dealing with more than just high frequency, low-level crimes. Ultimately, what this research has found is that youth justice cannot be reduced to simple, cohesive narratives, and it cannot be said that current communitarian, managerialist and even “get tough” tendencies are malicious in their intent and application. Instead, the story of youth justice from 2002-2012 is one where numerous and competing narratives are present. It is far too simple to write-off strategies such as diversion, and philosophies such as restorative justice, as complicit in expanding state control through enhanced and informal mechanisms including the community. However, it is imperative to recognize the complexities that arise in practice.

There seems to be a mentality that the law has the ability to change human behaviour – or that the law (or lack thereof) *causes* particular events. In 1994, Nicholas Bala described the landscape of youth justice policy criticism:

“The most outspoken critics are coming from two very different perspectives – the political right (the “get tough” camp) and the therapeutic left (the return to rehabilitation advocates). It is my view that much of the abuse being heaped on the [legislation] is simplistic, and fails to appreciate distinctions between statutory laws, judicial interpretations, and provincial implementations. More fundamentally, much of the criticism is based on unrealistic expectations of what can be achieved or caused by any piece of legislation.” (p. 247)

He continues “...we must recognize that without significant change in how Canadian society actually treats its youth, we are unlikely to experience significant changes in patterns of criminal behaviour merely by changing the law” (p. 248). Although Bala was writing about the YOA (1985), his account applies equally well to the present situation: the debate is highly polarized and both sides argue that changes to the law will ultimately, decrease youth crime.

There is evidence, as Garland and others have argued, and as elaborated upon in Chapter 5 of this dissertation, that policy-making can be explained by structural and cultural forces; this research did support that theory to some degree. However, this dissertation goes further to suggest that the most important intermediary at play is the set of social forces including individual political agency, operative in each of the rhetorical, policy and practices stages of the policy process. Perhaps the most noteworthy finding, however, is that the social forces operate most significantly in the delivery of policy by front-line professionals who largely govern their work through a caring ethos. Not unlike Jones and Newburn’s (2002) argument, people are the intervening force between structure and policy. For this reason, it is not adequate to examine how policies are made and of what they consist, nor is it adequate to flesh out the governing narratives that serve to produce policies. Instead, research must acknowledge the incredible power exercised by those who deliver policy in a daily basis. As a result, my findings not only identify the key narratives involved in community-based alternatives as set out in the YCJA (2002), but also support a commentary on how best to understand and study the phenomenon of policy more generally.

My findings have shown that while the official statistical record presents a picture of the YCJA (2002) as “working,” attention should be paid to the operational context and in how the narratives in the political sphere are personified in practice. Maclure et al. (2003) consider the utility of examining policy implementation as socially constructed practice. This means that in addition to federal and provincial/territorial policy direction, policy implementation at the local level is an equally political task. Implementation of policy at the local/community level necessarily entails interpretation, which reflects politically relevant facets of power relations and the understandings of bureaucrats, probation officers, police, community workers, and court officials. Given the current move towards degovernmentalization (invoking the community as the primary site of intervention and decreasing the state’s involvement) this is particularly relevant to Canadian youth justice. On its own, social policy at the federal or provincial/territorial level cannot motivate social change, nor can it completely structure local action. Instead, practitioner implementation, based on individual practice wisdom, plays a key role.

There is no shortage of research that suggests that less (not more) formal involvement of children and youth in the justice system is a superior approach (c.f. Lemert, Matza, Becker). For that reason, the phenomenon of “net narrowing” should not be automatically problematized. What is concerning, and what should be brought to the attention to policy-makers, is evidence that front-line workers are finding that youth come to them “too late”—when they are so far entrenched in a criminal lifestyle that they are very difficult to help, and instead must be managed as part of a persistent offender population. Additionally, it is concerning that front-line staff often do not know how to access services for youth who are not criminal enough to warrant interventions (or who have been successful and thus no longer a candidate for assistance). For some of these workers, resources that were once put into the youth justice system were not re-directed into preventative care or other alternatives now that the young offender population is decreasing.

This is not to discount the alternatives available to youth under the YCJA (2002) that were not available previously—intensive support and supervision orders as one example were not available under the YOA (1985). So, surely these new alternatives must address at least some of the need resulting from less incarceration. The answer must be one in which more (not fewer) services are directed at youth who need them in a manner that avoids the oppression seen under the JDA (1908) and YOA. Unfortunately the response to oppressive rehabilitative

measures has been one of fewer formal measures instead of more appropriate and carefully developed services. Thus, community-based responses to youth crime must not be interpreted as less interaction with youth, instead, it must be operationalized as more careful, informed and respectful interaction with youth. Whether based on a deep-seated fear of labeling youth or a fiscal non-interventionist policy, diversion and alternatives to custody must be re-envisioned in order to address the gaps present in this province.

The applicability of these findings and the conclusions for policy offered by this analysis are necessarily limited by our governing system. Because the YCJA (2002) is federal legislation that is implemented provincially and territorially, there are both implementation and operational differences as a result of variations in political and social culture, funding structures and program availability across Canada (Corrado, 1992; Kuehn & Corrado, 2011) that may limit the applicability. That said, given the body of literature from other provinces that has helped inform this project, its not unreasonable to expect other jurisdictions across Canada to be confronted with similar challenges in rolling out youth justice policy. Furthermore, this research is applicable to other Western democracies that have, as of late, implemented community-based responses to youth crime schemes and have begun decreasing their custodial population and contracting out to non-profit organizations in their youth justice delivery (e.g., the United Kingdom and Australia). These findings are particularly relevant to other jurisdictions where restorative justice has been a strong part of diversion work.

## **Future Research**

Fairclough (2003) makes the case that texts cannot be fully and definitively understood through narrative analysis. In Chapter 6, I discussed the underlying premise of the narrative approach as accepting that reality is constructed through the interpretations of individuals, informed by their beliefs and lens. As such, my presentation of the narratives that I have uncovered from the data can also be said to be an interpretive account of “reality.” While this does not negate the value or credibility of narrative work, it does underscore the importance of viewing this kind of work as “inevitably partial” (Fairclough, 2003, p. 15). Some of this challenge can be managed through rigorous analysis, continual checking of interpretations and also by triangulating data gathering techniques as discussed in Chapter 6. For this reason, this work represents an effort to constantly seek to improve and extend our readings and understandings

of the policy narratives surrounding and constructing community-based responses to youth crime. With respect to future research, this approach invites future efforts to examine and interrogate these narratives.

Beyond research that is guided by an acceptance of the provisional nature of these findings, there are numerous directions future research should take. Although this study presents wide-ranging findings regarding politics, policy and practice surrounding community-based responses to youth crime, a good deal more remains to be learned. This is particularly so given responses to young offenders continue to change and our knowledge concerning how best to deal with young offenders grows. A broad-based study such as the one undertaken in this dissertation expectedly raises more questions—which demand further research—than it answers. The following section identifies several important issues that deserve further attention from researchers.

While in Phase 1 of this study, I examined politics at the national level, in Phase 2—the semi-structured interviews—I restricted my inquiry to the province of British Columbia, and more specifically, Greater Vancouver, the Fraser Valley and Vancouver Island. Without a doubt, given the diverse nature of provinces and territories across Canada, youth justice practices, especially flexible practices involving community-based responses to youth crime, differ across and also within the provinces and territories. As discussed in Chapter 9, participants who worked in other Canadian provinces prior to their work in British Columbia noted specific differences in practices and the availability of programs. Given these variations, it is important that researchers conduct inquiries similar to this one in other Canadian locales to understand not only similarities and differences in practices, but also to uncover the implications of such diversities. Such research would also be particularly important in other regions of this province given the diverse practices that no doubt exist throughout British Columbia.

Relatedly, policy discussions and policies at the provincial level are an important area to research that was beyond the scope of the research at hand. Undoubtedly, decisions made at provincial and territorial levels contribute in important ways to how resources are allocated and how local youth justice policies shape practice. Areas of interest include narratives displayed in political discussions at the Legislative Assembly of British Columbia and also those that operate throughout the bureaucracy in policy discussions. Research should be conducted to explore the

meanings and intents in these local policy contexts with a focus to uncovering how community-based responses to youth crime are implemented across the country.

With respect to the period of time covered, data collection in this research ended in 2012, with the coming-into-force of the *Safe Streets and Communities Act* (2012). For that reason, future research should involve a more recent period of time with the aim of understanding the effects and impacts of that legislation on community-based youth justice practice. Given the temporal proximity of the enactment of the *Safe Streets and Communities Act* with the interview phase of this research, most participants did not have experience enacting changes that came along with the reform. A more recent study period would also allow for further analysis of narratives around youth justice with the House of Commons and Senate.

In order to capture a holistic picture of community-based responses to youth offending, a critical area in need of further study is in addressing how youth and their families experience community-based responses, and how victims experience system: members of each of these groups have important and often complex insights into youth justice that cannot be adequately captured except through direct study. These understandings should not be overlooked. Such an endeavor would best be accomplished through semi-structured interviews, or perhaps focus groups, and should gather subjective interpretations of first-hand experiences.

Another area of research building off of the present study is the evaluation of specific practice innovations such that best practices can be shared throughout the province, and perhaps across Canada. As discussed in Chapter 9, practitioners were often dissatisfied when programs that they felt worked were not given adequate funding. Such research could identify strategies that have been used to address challenges such as resource allocation, and might have transformative potential if they are used to inform legislators of the practice contexts of youth justice. This endeavor might also be used to determine in what settings community-based responses best work and how to decide what programs are appropriate for which youth.

An important gap in research, that has become even more pressing given the findings of this research, is police statistics on informal warnings and cautions and how these affect later youth justice system contacts. Because of the nature of front-end diversion, such statistics are not reported systematically to the Canadian Centre for Justice Statistics (i.e., we only know about the “not charged” group which represents more than the diverted group, and does not

include very informal mechanisms) and thus represent an important gap in our statistical knowledge of community-based processes. Additionally, the phenomenon of net narrowing as uncovered in this research must be further examined and researchers must ask whether youth crime is declining as national statistics suggest, or whether the phenomenon is being treated differently through un-recorded community-based responses. Relatedly, what are the costs of community-based responses and diversion strategies and how are these allocated to other sectors (be they other areas of government or non-government)?

Given the findings around a lack of awareness and resistance to diversionary measures that seem to persist, it will be important to examine through research what makes a professional supportive of a particular measure (e.g., restorative justice conferences, extrajudicial measures). A related research concern surrounds the question of who gets diverted, whether at the pre-charge stage or the post-charge stage, as was discussed by several participants. For example, one participant mentioned that at the post-charge stage the youth's demeanor and attitude is a factor in whether a referral for extrajudicial sanctions is taken. Another observed that in her 10 years as a restorative justice worker taking police referrals, she only rarely receives a referral for an Aboriginal youth, despite the fact that her community has a sizeable indigenous population. She says,

"Many young people who are of Aboriginal descent already have a criminal record for many reasons, police bias being one. And we don't see them [being referred to our restorative justice program]. They continue to cycle through the court process as children and then as adults. It's very frustrating." (Allison)

These comments signal the importance of further investigation on whether there are particular beliefs around who is appropriate for community-based responses and/or restorative justice and how these beliefs are reached. The concept of appropriateness or diversion-eligibility must be examined more closely with an emphasis on examining the individual characteristics that inform appropriateness. For example, Allison went on to say,

"...and I've been sent cases where the police says, 'this is a good referrals for you: good kid, comes from a good two parent family, plays hockey. He's perfect for you.'...all I do in those situations is say, 'ok, you seem to think this person is appropriate. Ok. What about the victim?' and then they're like, 'oh, the victim??' That illustrates the very offender focused process." (Allison)

With respect to political narratives, the research at hand focused on identifying and examining narratives as well as the functions of these narratives. Future research must more closely examine how policies and practice might differ if policy narratives shift. For example: what if the dynamics of race and masculinity are contemplated as important contextual facets of youth crime? These types of social structural issues that pervade Canadian (youth) culture deserve further examination. Additional research to investigate any of these questions will contribute importantly to our understanding of the functionality and meaning of key components and strategies invoked by the youth justice system. It will help to shed light on inconsistencies and hopefully provide remedies to the most pressing concerns.

## APPENDIX A

### List of Archival Data References

The following cases are listed in order of occurrence. The “R” designates cases included in the restricted sample.

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## APPENDIX B

### Semi-Structured Interview Questions

#### 1. Introduction to the interview

- a. Introduction to the study and review of participation and consent
- b. Introduction of the participant (professional experience)
  - i. Please describe the youth justice role you perform
  - ii. How does your organization receive its mandate? (Government/community group?)
  - iii. To whom are you accountable?
- c. What role(s) have you played in youth justice during study time period?

Note: given the diversity of participants, questions will be asked only if they apply to the individual participant's role and may be modified for applicability. Questions may be followed with probing questions to elicit more detail (see section 6 for examples).

#### 2. General perceptions of federal and local youth justice policy

- a. I would like to know what kinds of things influence and drive your professional practice (these may be professional mandates and/or personal values, beliefs or anything else that is considered to be a driving force).
  - i. Can you tell me about a time in which \_\_\_\_\_ played a part in your professional practice?
- b. In general, what do you think of the YCJA?
  - i. Why?
- c. Has your perception changed overtime?
  - i. Why/why not? How?
- d. Other than the YCJA, what policies direct your professional practice?
  - i. In what ways do they direct your professional practice?
- e. What do you think of each of these policies you've mentioned?
  - i. Why?
- f. Has your perception changed overtime?
  - i. Why/why not? How?

- g. What do you think of proposed revisions to Canadian youth justice policy?
- h. Have you changed your practice behaviour since the YCJA was introduced?
  - i. Why/why not?
  - ii. If yes, when and in what ways? Can you provide an example of a situation that describes this? How did you arrive at this change? What happened?
- i. What do you consider to be key strengths of youth justice policy?
  - i. How does each of these strengths impact your work or the work of others in the youth justice field?
  - ii. Can you tell me about a time when one of these strengths has impacted your work or the work of others in the youth justice field?
- j. What do you consider to be key weaknesses of youth justice policy?
  - i. How does each of these weaknesses impact your work or the work of others in the youth justice field?
  - ii. Can you tell me about a time when one of these weaknesses has impacted your work or the work of other in the youth justice field?
- k. What are the key issues youth justice policies *should* address?
- l. Does policy address the issues you believe to be important?
- m. In your opinion, how successful has implementation of the YCJA been?
- n. What challenges remain?
- o. What is the intent of the YCJA? What helps you arrive at this conclusion?

### 3. Practice experiences

- a. Are there systematic barriers to policy implementation that you've experienced?
  - i. In what ways did these barriers present themselves?
  - ii. Can you describe a situation in which you faced this sort of barrier?
- b. Does policy aid or impede your practice?
  - i. Can you tell me about a time when you felt either was true?
- c. Thinking about diversion and alternative measures in general, can you tell me about a situation in which you experienced a clash of vision or values with someone or with policy direction?
- d. How much flexibility do you have in your job?
  - i. What constraints do you have?

- ii. Can you describe how an important constraint impacts your work?  
Or: can you describe how flexibility impacts your work?

**4. Meaning of the YCJA**

- a. Sections 4 and 5 of the YCJA set out the principles and objectives of extrajudicial measures while sections 6 through 9 outline warnings, cautions and referrals more specifically. Sections 10 to 12 discuss extrajudicial sanctions and section 18 and 19 describes youth justice committees and conferences. Do these sections inform your work?
  - i. In what ways?
- b. What do these alternative measures mean?
  - i. What do they assume?
  - ii. What are they intended to achieve?
  - iii. How does this intention play out for you?
- c. What does the term “extrajudicial measures” mean to you?
  - i. What does this practice do?
  - ii. What is it “supposed” to do?

**5. Ending the interview:**

- a. Is there anything else you would like to add?
- b. Is there anyone else that you think it would be helpful for me to talk to?

**6. Examples of follow up and probing questions (used where appropriate):**

- a. What happened in that situation?
- b. Why do you think that occurs?
- c. Can you provide an example to illustrate your opinion?
- d. Can you tell me about a time when...?

## APPENDIX C

### Recruitment Letter and Participant Consent Form

**Project Title:** From the YCJA to Sébastien's Law: Investigating the Last Decade of Youth Justice Policy and Practice in Canada (British Columbia)<sup>69</sup>

You are invited to participate in a study entitled "*From the YCJA to Sébastien's Law: Investigating the Last Decade of Youth Justice Policy and Practice in Canada*" that is being conducted by Lorinda Stoneman. I, Lorinda Stoneman am a Doctoral Candidate in the School of Child and Youth Care at the University of Victoria and you may contact me if you have further questions by email: [lorinda@uvic.ca](mailto:lorinda@uvic.ca) or by phone: [REDACTED]. As a graduate student, I am required to conduct research as part of the requirements for a PhD in Child and Youth Care. Accordingly, this project is being conducted under the supervision of Dr. Sibylle Artz. You may contact Dr. Artz at 250-721-6472. The Social Science and Humanities Research Council (SSHRC) has provided funding for this research.

### Purpose and Objectives

The purpose of this research project is to investigate the last 10 years of youth justice policy and practice in Canada, specifically the use of extra-judicial measures (including community alternatives and diversion). The chief objective is to analyze the connections between policy, politics and practice and the phenomenon of policy transfer by researching how policy ideas function, grow, change and frame policy and action. The two key questions that guide this research are: (1) what beliefs, meanings, intentions, assumption and values undergird policy aims and action? And (2) How does policy implementation and change work across the study contexts? Though several innovations were introduced in the YCJA, this research will focus on community alternatives to custody including: extrajudicial measures, extra-judicial sanctions, conferencing, restorative justice, intensive support and supervision and probation.

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<sup>69</sup> Project name was revised in February, 2013.

**Importance of this Research**

Research of this type is important because it begins the task of bridging the gap between official and academic discourses and community/front-line understandings in their contexts.

**Details of Participation**

You are being asked to participate in this study because you have practice and/or research experience in the field of youth justice in Canada. If you agree to voluntarily participate in this research, your participation will include a 1-2 hour audio-recorded semi-structured interview at a location of your convenience. Following the interview, transcription of the recording will occur. Written notes will also be taken during the interview. Though participation in this study may cause some inconvenience to you, including your time commitment to take part in the interview, there are no known or anticipated risks to you by participating in this research. On the other hand, the potential benefits of your participation in this research include your own opportunity to reflect on your experiences and an opportunity to contribute to an expansion of locally and nationally relevant knowledge.

Your participation in this research must be completely voluntary. In cases where you are a colleague or professional acquaintance of the researcher, it is especially important for me to remind you that you are not obliged in any way to participate. In any case, if you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study, you will be asked if your data can be used. If you do not give permission to the use of your data, it will be destroyed at your request.

**Anonymity and Confidentiality**

In terms of protecting your anonymity, though the nature of the in-person interview dictates that the principal investigator will know your identity, care will be taken to ensure that you are anonymous in the dissemination of all research results. Your confidentiality and the confidentiality of the data will be protected by the following procedures: (1) paper data/consent forms and audio-recordings will be stored in a locked filing cabinet; (2) transcriptions will be stored in password protected computer files. Data presented in any dissemination will not contain any identifying information.

You should be aware of two limits to anonymity and confidentiality. The first involves the research context. The restricted geographical area and the small number of individuals in the population from which the sample is drawn may allow others to “guess” who participated. The second limit involves the recruiting process; this limit applies to participants referred to the study by a person outside the research team (e.g. another participant). To mitigate these limits, names of participants and identifying features in the data (e.g. names of places, professional positions) will not be disseminated. Pseudonyms will be assigned to each participant during data collection.


### **Dissemination of Results and Disposal of Data**

It is anticipated that results of this study will be shared with others in the following ways: published journal articles, a dissertation, presentations at scholarly meetings and/or other scholarly publications.

Data from this study will be disposed of once approval of the dissertation has been obtained and other publications are complete. At this time, paper files will be shredded; electronic files will be erased.

### **Contact Information**

Individuals that may be contacted regarding this study include:

Principal Investigator: Lorinda Stoneman, email: [Lorinda@uvic.ca](mailto:Lorinda@uvic.ca), Phone: 

Supervisor: Sibylle Artz, email: [sartz@uvic.ca](mailto:sartz@uvic.ca), Phone: 250-721-6472

In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at UVic (250-472-4545 or [ethics@uvic.ca](mailto:ethics@uvic.ca)).

**For in-person interviews:** Your signature below indicates that you understand the above conditions of participation in this study, that you have had the opportunity to have your questions answered by the researchers, and that you agree to participate in this research project.

**For telephone interviews:** Your verbal acknowledgement that you have read and understood this form indicates that you understand the above conditions of participation in this study, that you have had the opportunity to have your questions answered by the researchers, and that you agree to participate in this research project.

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Name of Participant	Signature	Date
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One copy of this consent will be left with you, and the researcher will keep one copy

**Statutes Cited**

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