Is Treatment the Cure?
Exploring the Possible Role of Implementing Mandatory Treatment Programs in the YCJA for Serious and Violent Youth

by
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Abstract

Since the adoption of the Youth Criminal Justice Act (YCJA) a reduction in youth crime recidivism has prevailed, except for the most serious violent offenders. The purpose of this thesis was to explore whether the absence of mandatory treatment under the YCJA explains why this population of youth are at a high risk to re-offend after judicial intervention. Using a developmental and life-course theory lens, this thesis employed a case analysis, which examined 22 cases from British Columbia, Alberta, Saskatchewan, and Manitoba. Through two analyses it was discovered that judicial ideologies and the decision-making processes of judges do not align with the current developmental research that has found individualized, intensive, and validated treatment programs are the best way to decrease the risk of recidivism for this population of youth. Due to their multi-level risk factors, without treatment their chances of recidivism and the likelihood of becoming career criminals increases substantially. Rather, it was found that the majority of youth in this study were sentenced as adults, and the role of rehabilitation was of no importance in the judges’ final decision. This thesis argues for the need of mandated treatment as the current establishment of the Canadian juvenile justice system has been ineffective in dealing with serious violent youth, and will continue to be, unless changes are implemented.

Keywords: Youth Criminal Justice Act; serious violent youth; sentencing; mandated treatment; judicial ideologies
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Chapter 1.

Introduction

The development of antisocial and criminal behaviors is a social, legal, and clinical concern. According to a 2002 report by the World Health Organization, 16 million people are killed every year from violence, and many more suffer from physical and/or mental health problems as a result of violence. A larger societal concern surrounding violence stems from the antisocial and criminal behaviors committed by adolescents. A 2008 report by the Canadian Center for Justice Statistics found violent youth crime had increased 30% from 1991-2006. Moreover, between 1997-2006, juvenile homicide rates in Canada rose 41% (Juristat, 2008). From 1996-2006 the overall rate of violent crime decreased 4%; however, violent crime committed by youth in those 10 years increased 12% (Juristat, 2008). In addition to violent crime rates, youths’ participation in non-violent crime increased from 1997-2006; for example, mischief offences increased 46%, bail violations went up 33%, and offences involving weapons rose 44% (Juristat, 2008). The number of drug offences committed by youth also increased during this 10-year span. In 2006, drug offences increased by 97% to double the rate in 1997. The proportion of youth accused with possessing cocaine and other hard drug offences more than doubled since 1997 (Juristat, 2008).

Despite these increases from 1997-2006, in 2007, the overall violent youth crime rate decreased 2%. Further, the number of homicide offences in 2007 dropped 13% from 2006 (Juristat, 2008). Similar trends have continued to occur with violent crime rates remaining relatively stable and substantially lower than in the early 1990s (Juristat, 2008). Even though youth violent crime rates have remained relatively stable since 2007, they have doubled compared to 20 years ago (Juristat, 2008).
With the number of youth becoming involved in violent crime having increased, there has been a social and economic burden placed upon society (Meier, Slutske, Heath, & Martin, 2011; Moretti & Obsuth, 2009). The average cost for a criminal career beginning in adolescence is approximately $2.0 million U.S. per offender (Moretti & Obsuth, 2009). Additionally, between 70-90% of youth with major and persistent antisocial behaviors, who developed into serious violent offenders, did not receive the necessary treatments (Moretti & Obsuth, 2009). Also, the majority of these youth did not receive the proper diagnosis, further decreasing the success of treatment (Moretti & Obsuth, 2009). Consequently, serious violent youth are at a heightened risk of escalating and continuing their offending into adulthood, unless they are properly diagnosed and treated, in the community or in custody (Moretti & Obsuth, 2009).

In response to the increase in serious violent offences committed by youth, criminologists began to study the risk and protective profiles of youth in order to develop a better understanding of the causes and correlates to their problem behaviors (Farrington, 2005b). Specifically, developmental and life-course theories have identified youth who are at risk of committing serious violent crimes have individual characteristics (such as genetic predispositions, developmental disorders, and mental illness), and are raised in negative environments (abuse, neglect, criminogenic family members, and run down neighborhoods) (Farrington, 2005b; Lahey, Applegate, Chronis, Jones, Williams, Loney, & Waldman, 2008; Murray & Farrington, 2010). Ultimately, it has been found that the individual characteristics interact with the aversive environments, thus leading to the development of serious violent behaviors. This research has also shown with age, these behaviors intensify. Developmental and life-course theorists have demonstrated the complexity underlying serious violent youths’ behaviors, along with the need for intervention to decrease these youths’ risk of developing a criminal career (Farrington, 2005a; Lahey et al., 2008; Murray & Farrington, 2010). Due to the severity of offences these youth commit, the majority of them are likely to become involved in criminal justice system at some point during their life.
1.1. The Current Study

The primary aim of this thesis was to investigate whether mandatory treatment should be implemented through the YCJA. This thesis arose from the following anomalous outcomes of the YCJA; while it has been effective in reducing the number of youth who commit minor offences, it has not been as effective in reducing the rate of youth who commit serious violent offences and repeat serious offenders. The main theoretical perspective employed in this thesis involved developmental and life-course theories. A main tenant of most of these theories is that serious violent youth who experienced validated treatment programs during their period of incarceration and subsequently in their communities, have reduced risks of recidivism. A key and controversial legal/policy theme in most liberal democratic countries for serious violent young offenders involves mandatory sentencing and treatment orders versus youth consent to treatment. However, in Canada, mandatory treatment too has had a controversial judicial history especially since the end of the Juvenile Delinquent Act in 1982. The aim of this thesis was two-fold. First, it explored if mandatory treatment should be implemented through the YCJA, and second, whether the decision-making process of a sample of Western Canadian provincial judges incorporated mandatory related principles when sentencing youth who have been convicted of a serious violent offence. Examining judicial ideologies surrounding treatment in sentencing; therefore, is important because it assists in explaining the bases for understanding the legal rationale for imposing such sentences. Given the general YCJA principle requiring consent to treatment, as it can provide information on how the judiciary views youth who commit serious violent offences. Judicial viewpoints on culpability, aggravating/mitigating conditions, rehabilitation and punishment are essential dimensions of judicial ideology. The latter theme has evolved dramatically in Canadian history, especially during the last 50 years.

1.2. History of Treatment in the Canadian Juvenile Justice System

The debate surrounding the treatment of young offenders has been extensive. Prior to 1857, in Canada, children and adolescents who were guilty of an offence were
treated as “miniature adults” and were punished the same way as adults. This resulted in children as young as eight being incarcerated in Kingston Penitentiary, and being subject to capital punishment (Bala, 2009). In 1857, legislation was enacted that identified the unique needs of youth, and suggested their criminality needed to be dealt with differently. Consequently, convicted children were sent to juvenile institutions rather than adult penitentiaries. This led to the development of Canada’s first juvenile justice legislation, the *Juvenile Delinquents Act (JDA)*, which came into effect in 1908. The *JDA* resulted in a separate correctional system for youth and created a “welfare-oriented philosophy for youthful offenders” (Bala, 2009, p. 215).

The primary objective of the *JDA* was the rehabilitation and treatment of youth. Under the *JDA*, youth were not labelled or treated as “criminals”, but as “misguided children”, and they were charged with delinquency rather than a criminal offence. It was believed that youth engaged in deviant behaviors was a direct result of their parents, families, poverty, culture, and peers (Corrado, Gronsdahl, & MacAlister, 2007). This ideology was reflected in s. 38 of the Act which stated:

> the care and custody and disciple of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as practicable, every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child and one needing aid, encouragement, help and assistance (*Juvenile Delinquents Act*, Section 38, 1908).

The *JDA* adopted a “parens patriae” approach giving the courts the authority to act as surrogate parents when the family and school failed the child.

Any youth who were guilty of delinquency became a ward of the court until they were discharged from the courts care, resulting in many youth to be placed in the care of child welfare agencies. Further, youth convicted under the *JDA* were believed to be suffering from “maladie” in which they needed to be cured from. The length and nature of the treatment services in order to “cure” youth was the responsibility of the provincial director of child welfare. The *JDA* was in effect until 1984 when it was replaced with the *Young Offenders Act (YOA)* (Bala, 2009).
The treatment of young offenders changed with the implementation of the YOA. The YOA did not focus on preventing crime through treatment and rehabilitation of the young offender. The ideology of the YOA shifted from a welfare oriented approach to a modified justice model (Corrado, Gronsdahl, & MacAlister, 2007). The YOA attempted to balance the needs of the offender with the protection of society (Bala, 2009). This meant rehabilitation was no longer the only priority of the court, and youth were charged with criminal offences rather than delinquency. Under the YOA, it was recognized that youth needed to take responsibility for their own actions instead of blaming their environments, as seen with the JDA. Even though youth were to take responsibility for their actions, the punishment was not to be as harsh as it was for adults, this was known as “mitigated responsibility”. The court’s authority was to maintain the public’s safety from youth who committed offences, however, it was highlighted that social and community based sanctions should be used wherever possible, and incarceration should only be used as a last result, or for very serious offences (Bala, 2009). The YOA was in effect until 2003 and was replaced with the current juvenile justice legislation, the Youth Criminal Justice Act (YJCA).

On April 1, 2003 the YCJA became Canada’s juvenile justice legislation that attempted to balance the justice model legislation of the YOA with the social welfare approach of the JDA. This ideology is highlighted in the Act’s Declaration of Principle which states:

…the purpose of the youth criminal justice system is to prevent crime by addressing the circumstances underlying a young persons’ offending behavior, rehabilitate the young persons who commit offences and reintegrate them back into society, and ensure that a young person is subject to meaningful consequences for his or her offences, in order to promote the long-term protection of the public (Youth Criminal Justice Act, section. 3, 2002).

Additionally, one of the main objectives of the YCJA was to reduce the use of courts and custody for youth convicted of less serious and non-violent offences (who make up the majority of offenders); while at the same time loosening the provisions of a custodial sentence for youth who commit serious violent offences, mirroring the adult sentencing regimes (Bala, 2009; Roberts, 2003).
This means that for youth who commit less serious offences, diversion away from the criminal justice system, treatment and rehabilitation are of primary importance, whereas for youth who commit serious violent offences, rehabilitation and crime prevention are of secondary or tertiary importance. For these offenders, proportionality and just sanctions are of primary importance (Roberts, 2003). The transformation surrounding the treatment of young offenders has been extensive since the JDA. However, the current ideology of the YCJA for serious violent youth has not been effective in decreasing recidivism, there needs to be a shift in mentality from punishment back to rehabilitation for this group of offenders.

1.3. Overview of Chapters

Chapter Two examines the relevant literature regarding the risk and protective profiles of serious violent youth through a developmental and life-course theory lens. This chapter will also include a discussion surrounding what successful treatment programs consist of, and why they need to be implemented through the YCJA to decrease recidivism. It will be argued that using evidence based treatment programs which target the multi-causality of offending have better results at decreasing the risk of recidivism, than the current forms of correctional treatment.

Chapter Three establishes the legal framework used in this thesis. This chapter will evaluate the goals and evolution of the YCJA since its implementation in 2003, especially in terms of sentencing serious violent youth. Additionally, the changes to sentencing will be discussed, specifically the finding from the Supreme Court of Canada in the case of R. v. D.B. (2008), and the implementation of Bill C-10. Lastly, the legal issues surrounding mandated treatment will be addressed through a discussion on the Canadian Charter of Rights and Freedoms, specifically section 7. The implementation of mandated treatment may trigger a section 7 argument; therefore, cases having dealt with section 7 arguments in regards to mandated treatment will be analyzed, demonstrating that the Courts have ruled compulsory treatment does not violate the principles of fundamental justice.
Chapter Four discusses the methodology employed to carry out the study. This chapter will review the sampling techniques and criteria, research instruments, data analyses, and ethical considerations. Chapter Five consists of an overview of the cases selected for the analysis. This chapter will provide a table of the risk profiles of each youth involved in the study, allowing readers to develop a better understanding of the young offenders, and their pathways to offending. Chapter Six will uncover the themes, philosophies, and rationale, along with the decision-making process judges’ used when imposing a sentence onto a youth convicted of a serious violent offence through a qualitative case analysis. In addition, this chapter will explore what factors judges’ use to justify a youth or an adult sentence for the same seriousness of offence. As well as disentangle the differences between provinces in Western Canada on their philosophies regarding treatment and sentencing. Lastly, Chapter Seven will conclude the thesis with a discussion based on the results that were found, which will be linked back to the literature review. This chapter will be finalized by acknowledging the limitations of the research and future directions.
Chapter 2.

Literature Review

Through the literature provided, it will be argued that the punitive based methods that are characteristic of the current juvenile justice system are ineffective in dealing with serious violent youth. Using a developmental and life-course perspective, the risk and protective factors for this population of youth will be explored, demonstrating that this is a heterogeneous group of offenders; therefore, the “one size” fits all approach to juvenile justice will not decrease the risk of recidivism, and in some cases increases these youths’ risk of becoming career criminals. Implementing evidence-based treatment programs, which are designed around the unique needs of each offender, will result in the best chances for their successful rehabilitation and reintegration.

2.1. Developmental and Life-Course Theory (DLCT)

DLCT integrates key hypotheses from other theories, including strain theory, social learning, social control, and differential association (Farrington, 2011). There are three main themes in DLCT: 1) the development of antisocial behaviors related to offending; 2) risk and protective factors and how these change with age; and 3) how life events affect the development of antisocial behaviors. The overall goal of the theory is to identify within-individual changes and how they relate to offending (Farrington, 2011). Developmental theorists recognize human behavior is not static; it is continuously changing due to a person’s ongoing interaction with one’s psychology, biology, and social environment (Le Blanc & Loeber, 1998). As a result, certain risk factors for the development of antisocial behaviors (as well as their persistence) have been found (Farrington, 2005b; Murray & Farrington, 2010). Risk factors include: individual characteristics (i.e. temperament, neurocognitive deficits, and genetics), environmental factors (i.e. parents, peers, and neighborhood), and the interaction of the two
Research on the developmental trajectories of offenders has led to the identification of individual predispositions that are exacerbated by being brought up in aversive environments; this has been found consistently for serious violent offenders (Farrington, 2005a; Lahey et al., 2008; Murray & Farrington, 2010). A study by Loeber et al. (2005), demonstrated how the interaction of individual predispositions and environmental factors play a role in the development of these behaviors.

In their study, Loeber et al. (2005) identified the risk profiles of adolescent males who had been convicted of murder. Eleven common risks were identified which consisted of 1) low socio-economic status (SES): 2) family on welfare: 3) bad neighborhood: 4) truancy: 5) low school motivation: 6) onset of delinquency before age 10: 7) cruelty to people: 8) high parental stress: 9) callous/unemotional behavior: 10) depressed mood: and 11) physical aggression (Loeber et al., 2005). This study indicated that the interaction of individual characteristics and environmental factors increased the risk of developing antisocial behaviors, including serious violent behaviors. Further, this study showed that risk profiles for future violent behavior can be identified in early childhood and that violent behaviors often accumulated over time when the earlier antisocial behaviors were more persistent and extreme (Loeber et al., 2005). It is important to know what individual characteristics and environmental factors increase youths’ chances of developing violent behaviors in order to establish proper treatments and interventions to combat these underlying causes (Farrington, 2005a).

Developmental and life-course theories provide empirically supported information regarding the common risk factors that increase youths’ chances of developing antisocial behaviors, as well as the likelihood of persistence and escalation of these behaviors without treatment. It has been demonstrated that without effective treatment, serious violent youth are likely to re-offend. As a result, when they come into contact with the criminal justice system, it is central they have the opportunity to receive empirically supported treatment programs that are designed to combat their risk factors and highlight their protective factors. Through a developmental and life-course lens, mandated treatment may be the last chance these youth have before becoming career criminals. However, the shift in public perceptions surrounding young offenders and the
establishment of “get-tough on crime” legislation has rendered the accessibility of effective treatment programs limited, especially for serious violent youth.

2.1.1. Serious Violent Youth

Serious violent offenders are a small percentage of youthful offenders. The crimes commonly committed by serious violent youth consist of murder, manslaughter, assault, rape, and robbery (Hoge, 2009). Research examining the trajectories of these youth has found many of them have multiple underlying risk factors, putting them at an increased risk to commit serious violent offences. The majority of serious violent youth suffer from cognitive deficits such as low IQ, poor problem solving, and limited abstract reasoning abilities, which directly impacts their ability to make responsible decisions by properly weighing the costs and benefits of a decision (Corrado & Mathesius, 2014, p. 159). In addition, many serious violent youth suffer from at least one psychiatric disorder and/or developmental disorder. The most common developmental disorders among this population of youth are, conduct disorder (CD), and oppositional defiant disorder (ODD). These youth are also at a high risk to have a developmental neurological disorder, most commonly being fetal alcohol spectrum disorder (FASD), autism spectrum disorder (ASD), or attention-deficit hyperactivity disorder (ADHD) (Corrado & Mathesius, 2014). Research has also found evidence for adult personality disorders to be rooted in early development and prevalent among serious violent youth. Most commonly found among serious violent youth are antisocial personality disorder (ASPD) and psychopathic personality disorder (PPD). To further add to the complexity of these youth, an overwhelming majority have been victims of trauma, such as exposure to toxins in utero, and physical and sexual abuse (Corrado & Mathesius, 2014). Taken together, the profile of a serious violent youth is very complex, with many underlying risk factors to promote their persistence and escalation of offending into adulthood.

Adding to the complexity of serious violent youth is the crimes they commit. Their crimes get sensationalized by the media causing fear within the public, and the false belief that crime rates are rising. This leads to crime control policy and legislation, increasing the punitive sanctions imposed onto these youth when they become involved in the criminal justice system (Andrews & Bonta, 2010). This has been seen in the shift
of the Youth Criminal Justice Act’s philosophy on sentencing youth convicted of a serious violent offence.

2.2. Treatment for Serious Violent Youth

The treatment of juvenile offenders has consistently changed as a result of a fluctuating sociopolitical environment (Andrews et al., 1990). During the mid-1970s there was a political shift in the United States with the Republicans replacing the Democrats, which changed the outlook and treatment of juvenile offenders. The Democratic government had an “ideological hegemony” (Andrews et al., 1990, p. 370) toward juvenile offenders, encouraging an individualistic approach to treating youth. This outlook and approach was seen as being “naïve” and “too lenient” on “hardened” criminals resulting in the general public supporting the Republican Party as their approach to juvenile offenders was more punitive. This began a transformation involving sentencing reforms that decreased the role of rehabilitation and increased the role of proportionality in criminal justice and corrections across North America (Andrews et al., 1990). In Canada specifically, the transition from rehabilitation to punishment for juvenile offenders, was largely due to the increase in the youth crime rate, leading to the public’s dissatisfaction with the juvenile justice system to effectively handle these youth (Roberts, 2003). This shift in ideology was marked when the YOA replaced the JDA in 1984. The purpose of the YOA was to replace the welfare oriented model to juvenile justice with a justice oriented model. The political and public pressure to include more “get tough” reforms to juvenile justice continued into the 1990’s, with the Conservative and Liberal governments in Canada amending the YOA to include more punitive based sanctions for youth (Roberts, 2003). This ideology was carried over to the YCJA, especially for serious violent youth.

Simultaneously occurring along with the political transitions during the 1970’s and 1980’s, labelling theory and critical/Marxist theory were emerging with new ideas on crime causation that grew in popularity. Labelling and critical/Marxist theories drew attention away from psychological, biological, and other empirically supported causes of crime, further downplaying the importance of rehabilitation. Most noteworthy was a 1974 review by Robert Martinson, which concluded “the rehabilitative efforts that have been
reported so far have had no appreciable effect on recidivism” (Martinson, 1974, p. 25), resulting in the belief that “nothing works”. The doctrine that “nothing works” was accepted by the Conservative Party along with the majority of the general public, causing greater attention towards punishment and strict dispositions for young offenders (Andrews et al., 1990). Also contributing to this shift in ideology, was the increase in the reported number of homicides and suicides committed by juveniles during the 1980s.

A moral panic erupted based on the assumption that juvenile delinquency was thriving (Howell, 2003). This belief, along with the reported image of juvenile offenders being “superpredators”, increased the public’s perception that North America was under attack by a generation of violent youth. This further fueled the support and need for “get-tough” legislation (Howell, 2003; Skowyra & Powell, 2006). Consequently, rehabilitation programs and services were replaced with boot camps, scared straight tactics, and more detention centers. In addition, a higher number of youth were being transferred from the juvenile justice system to the criminal justice system and being sentenced as adults (Howell, 2003). Criminologists and psychologists have repeatedly demonstrated that the “get tough” approach to juvenile justice is ineffective and empirical support for rehabilitation continues to flourish, but the political and public pressures have continued to resist this approach.

2.2.1. Mental Illness and Youth

The public’s misperceptions of serious violent juvenile offenders as malicious violent criminals, has increased the support for “get-tough” policies expanding the use of courts and custody for youth convicted of a serious violent offence. This has ultimately led to harsher and more punitive sanctions with little effort toward finding treatment that actually works (Flash, 2003). Research has shown that youth are more responsive to encouragement rather than punishment. Furthermore, adolescence is a time in life when it is natural for youth to reject the strict rules and structure set out by adults, decreasing the effectiveness of punitive sanctions on recidivism rates (Flash, 2003). In addition, data has consistently shown that the majority of young offenders suffer from mental health and/or psychological disorders, which need to be treated in order to combat their risk of re-offending (Skowyra & Powell, 2006).
In a study by Teplin et al. (2002), researchers found 66% of males and 74% of females in juvenile custody were diagnosed with a psychiatric disorder. This study tested for multiple psychiatric disorders which included affective disorders, anxiety disorders, psychosis, disruptive behavior disorders, attention-deficit-hyperactivity disorder, and substance abuse (Teplin et al., 2002). More specifically, it was found that half of the males and nearly half of the females met the diagnostic criteria for a substance abuse disorder. Further, more than 40% of males and females were diagnosed with a disruptive behavior disorder, and more than 20% of females met the criteria for major depressive disorder (Teplin et al., 2002).

In another study by Abram, Teplin, McClelland, and Dulcan (2003), the researchers found 46% of males and 57% of females in juvenile custody were diagnosed with comorbid disorders; meeting the diagnostic criteria for two or more of the following disorders: major depressive, attention-deficit-hyperactivity, conduct disorder, oppositional defiant, manic, dysthymic, psychotic, panic, obsessive-compulsive, generalized anxiety, separation anxiety, overanxious, and substance abuse (alcohol, marijuana, and other substances) (Abram et al., 2003). It was further found that 11% of males and 14% of females, who had a psychiatric disorder, also met the criteria for substance abuse disorder. Additionally, 20% of males and 30% of females who had a substance abuse disorder had a major mental disorder (Abram et al., 2003).

Similarly, in a study by Shufelt and Cocozza (2006), researchers found 79% of youth in custody met the diagnostic criteria for two or more disorders. Comorbidity increases the difficulty of treating youth due to the multiple underlying causes to their criminal behavior. This demonstrates the need to ensure youth are properly diagnosed and treated in custody, in order for their mental illness to be identified and combated. In a 2004 report, it was noted that there were over 2.3 million youth arrested per year in the United States, with approximately 600,000 of those youth being processed through the criminal justice system. Out of those 600,000 youth, 100,000 ended up being sentenced to a secure correctional facility. Of those 100,000, 70% suffered from a mental illness and 25% suffered from severe mental illness that compromised their ability to function (see Flash, 2003).
In Canada, there have been consistent findings. In a study by Gretton and Clift (2011), 140 males and 65 females in custody in British Columbia, were screened for mental illness. It was found that 92% of males and 100% of females met the diagnostic criteria for at least one mental disorder, with substance abuse and dependence disorders having the highest prevalence (85.5% for males and 100% for females) (Gretton & Clift, 2011). Additionally, 73% of males and 84% of females were diagnosed with aggressive forms of conduct disorder. Furthermore, it was found that 61% of males and 54% of females were exposed to physical abuse, and 21% of males and 42% of females had exposure to sexual abuse. Lastly, researchers found female offenders were significantly more likely to be diagnosed with substance abuse/dependence disorders, suicide ideation, sexual abuse, post-traumatic stress disorder (PTSD), depression and anxiety, and ODD, along with higher rates of comorbidity (Gretton & Clift, 2011). These studies demonstrate the high prevalence of mental illness that many of these youth are suffering from, with many having more than one disorder, adding to the complexity of their criminality. This increases the need for specialized individualized treatment and rehabilitation programs, more prevention services, and less focus on punishment (Abram et al., 2003; Skowyra & Powell, 2006; Teplin et al., 2002).

2.2.2. Multi-Causality of Offending Behaviors

Juvenile offending is directly and indirectly linked with multiple causes such as mental illness, family dynamics, poor school performance, peers, and neighbor systems; therefore expecting a "one size fits all" method of correcting serious violent juvenile offending is unrealistic and ineffective (Borduin et al., 1995; Roberts & Biswas, 2008). Treating young offenders as a homogenous group fails to account for the "multidetermined nature of antisocial behavior" which has to be targeted in order for young offenders to have a chance of being successfully rehabilitated (Borduin et al., 1995, p. 569). An individualized assessment of each young person is required in order to understand the complexity of their criminal behaviors. There are empirically supported models that assess all factors linked to youth’s antisocial and offending behaviors. Two examples are the biopsychosocial model and the Risk, Needs, Responsivity (RNR) model.
The biopsychosocial model examines the youth’s biological, psychological, and social processes that influence the development of behavior (Aguilar & Springer, 2008). These processes include youth’s personality, cognitive abilities, medical history, emotional development, criminal history, family dynamic, neighborhood environment, and education in order to develop a program that tailors to the specific needs of each offender (Aguilar & Springer, 2008; Carrigan, 2008; Dodge & Pettit, 2003). Research has shown that behavior is a result of “complex interactional processes across intrapsychic, family and community interaction”; therefore, it is imperative that all of these processes are examined and taken into account to ensure juvenile offenders have the best chance of reintegrating successfully (Aguilar & Springer, 2008, p. 27). It is important to remember that no single factor predicts the development of antisocial behaviors and the interaction amongst these factors differs in each youth. This increases the importance of an individualized assessment of youth entering the system, incorporating all processes that influence the development of behavior (Aguilar & Springer, 2008; Dodge & Pettit, 2003). Also recognizing the complexity of offending behavior is the RNR model.

The RNR model individually assesses each offender and tailors specific programs in order for offenders to have the best chance of a successful outcome. This model answers the questions relating to the “who, the what, and the how of correctional intervention” (Dowden & Andrews, 2000). The RNR model is designed to be a correctional intervention aimed at rehabilitating youth who are placed in custody. By classifying the risk level of the offender, their specific criminogenic needs, and the correct individual response, studies have shown that the RNR model decreases recidivism (Andrews et al., 1990; Dowden & Andrews, 2000). The RNR model and the biopsychosocial model demonstrate that serious violent youth are a heterogeneous complex group, and in order for treatment to be effective, the unique needs of juvenile offenders have to be taken into account.

Due to the increase in concerns surrounding violent juvenile offenders, the field of research analyzing the effectiveness of treatment vs. no treatment, as well as what treatments are most effective has grown. Multiple meta-analyses have examined if treatment has an effect on reducing recidivism and if so, the most effective modes of treatment. In addition to meta-analyses which compare multiple forms of treatment to
one another, individual types of treatment have undergone extensive research to determine their efficacy. Unfortunately, research has shown that currently much of the treatment that is being used in corrections is based on “custom, bureaucratic convenience and political ideology” rather than empirically based research (Lipsey & Cullen, 2007, p. 298). This poses a problem because the current forms of treatment in corrections have been the types of treatment that have been found to be the most ineffective in the meta-analyses that have been conducted.

2.2.3. Characteristics of Effective Treatment Programs

There has been a number of meta-analyses conducted examining what works and what does not work in terms of treatment for juvenile offenders. It is critical that evidence based research, which identifies what is effective in reducing recidivism, is implemented in order to ensure youth have the best chances of being successfully rehabilitated. Unfortunately, evidence based research has not guided the current intervention and treatment strategies within the most youth criminal justice systems (Flash, 2003; Greenwood, 2008; Lipsey & Cullen, 2007). There has been little to no tolerance for finding successful treatment modalities and implementing what works. Instead, politicians use “get tough” strategies which are designed to be more punitive to satisfy the public (Flash, 2003; Lipsey & Cullen, 2007).

The majority of meta-analyses and independent studies have repeatedly shown that punitive and deterrent measures do not work in decreasing recidivism, and in some cases they actually increase the risk for youth to continue and even escalate their offending behavior (Lipsey & Cullen, 2007). However, as noted in the literature, examining what works for juvenile offenders can be difficult as the effectiveness may take time to materialize; therefore, using punitive and just desert techniques are a quick fix solution that satisfies the public (Greenwood, 2008). Some treatment strategies can take months or even years for the effects to become noticeable; this can make treatment programs, at first glance, seem ineffective. Consequently, this decreases the support by the public and politicians for their implementation (Greenwood, 2008). Nevertheless, when treatment programs are compared to traditional correctional and criminal justice
dispositions months to years after completion, the effectiveness of treatment is undeniable (Greenwood, 2008; Flash, 2003; Lipsey & Cullen, 2007).

Meta-analyses examining the effects of punitive and just desert dispositions have continuously found no support for these methods. Petersilia and Turner (1993) examined the effectiveness of intensive supervision programs (ISPs) and found no reduction in recidivism in any of the 14 sites they analyzed. Further, at one year follow up, researchers found that youth in the ISPs had a higher recidivism rate than youth in the usual probation group (37% to 33%). In another meta-analysis by Aos et al. (2001), they studied the effects of punitive based programs and found a mean increase in recidivism. Petrosino, Turpin-Petrosino, and Buehler (2003) conducted a meta-analysis of Scared Straight programs and found these programs were more harmful to youth than doing nothing. Research has continuously shown that sending youth to prison and implementing long, punitive, just desert dispositions result in higher recidivism rates, causing more damage to youth and society.

Rehabilitation and treatment programs differ from traditional correctional and criminal justice system dispositions through the interactions with the offenders. Rehabilitation and treatment strategies are directed at “motivating, guiding, and supporting constructive change in whatever characteristics or circumstances engender their criminal behavior or subvert their prosocial behavior” (Lipsey & Cullen, 2007, p. 302). This underlying ideology of rehabilitation and treatment can occur in institutional and community settings, meaning that any offender (serious violent or not serious violent) can and should have access to rehabilitation and treatment programs. Community based programs do have a higher effectiveness rate than those in institutions, but that could be for a myriad of reasons. For example, youth who are in custody typically have committed more serious offences and have a greater number of risk factors than youth who are not in custody, making their treatment more difficult. However, rehabilitation programs implemented in institutions have a greater effect than traditional correctional and criminal justice programs (Lipsey & Cullen, 2007). Further, as seen with cognitive behavioral therapy, evidence based treatment programs can be as effective in institutions as they are in the community. Interventions that focus on the multiple causes of crime, recognize the individual differences of offenders, and are
implemented by trained professionals have consistently shown effective results in decreasing recidivism (Greenwood, 2008; Kurtz, 2002).

Variation in treatment effectiveness has been linked to offender characteristics (i.e., temperament, mental illness), characteristics of program providers, characteristics in correctional staff, the content of the program and how it is delivered, and the impact the program had on changing the individual offender and their personal circumstances (Andrews et al., 1990). It should be noted that meta-analyses have found no differences for males and females, and among ethnicities in regards to the effectiveness of treatment (Dowden & Andrews, 2000; Lipsey, 2009; Lipsey & Cullen, 2007). The specific treatment plans may have to be altered in order to fit the unique needs of a female versus a male, but the treatment itself was as effective. For example, cognitive behavioral therapy works effectively for males and females, but the individual treatment within the cognitive behavioral framework may be different. Meta-analyses and other studies have also continuously shown that the quality and integrity of how the treatment is administered and who administers it greatly affects the overall effect of the treatment (Greenwood, 2008; Kurtz, 2002; Landenberger & Lipsey, 2005; Latimer, 2003; Lipsey, 2009).

Ensuring staff are highly qualified and trained, as well as recognizing that each treatment plan will need to be developed and implemented differently, is vital to the success of treatment programs (Landenberger & Lipsey, 2005). In addition, treatment that incorporates family members has shown to be more effective than treatment that does not. Due to the fact that family directly or indirectly influences the youth’s behaviors, they have to be treated both independently and with the youth (Kurtz, 2002; Latimer, 2001; Lipsey & Cullen, 2007). Moreover, it has been shown that when the effectiveness of treatment has been examined for youth compared to adults, there have been larger mean effects for juveniles (Lipsey & Cullen, 2007). Also, when comparing effects of treatment among youth, there have been greater effects for younger youth than youth who are 15 years of age or older (Latimer, 2001; Latimer et al., 2003). Both of these findings reveal that early prevention and intervention programs can have a huge impact on youth and decrease their risk of becoming chronic offenders. Further, higher risk offenders tend to have larger treatment effects because they have a higher need for
treatment and more room for improvement (Andrews et al., 1990; Dowden & Andrews, 2000; Lipsey & Cullen, 2007).

The RNR model provides support for the finding that higher risk offenders require more intense treatment. There have indeed been larger treatment effects for high risk violent offenders when implementing the RNR model than low or moderate risk offenders (Andrews et al., 1990; Dowden & Andrews, 2000). The multi-casual treatment programs that are used within the biopsychosocial model and RNR model are effective in decreasing recidivism rates, as they have specific treatment plans for each youth recognizing that juvenile offenders are a heterogeneous group. Additionally, these programs incorporate families, neighborhoods, communities, and education to fully treat the youth. These individualized treatment programs increase youths’ reception to treatment, which has been found to increase the effectiveness of treatment.

Research has shown that youth should only become involved within the criminal justice system after all other treatment options have been exhausted (Johnson, Lanza-Kaduce, & Woolard, 2009). There is no evidence that supports the belief that placing youth into custody or even worse transferring youth into the adult criminal justice system reduces recidivism. Effective treatment needs to be graduated as opposed to “leap frogging” over options, as it is more likely to be perceived by the youth as being fair and increases their compliance. For example, if a youth received a community sanction then a graduated intervention would be placing the youth into a low-end juvenile residential facility, not imposing a custodial sentence or transferring the youth to the adult criminal justice system (Johnson et al., 2009). It was found that 36.3% of juvenile offenders who received graduated intervention reoffended, compared to 57.5% for youth who did not receive graduated intervention (Johnson et al., 2009). Juveniles who experienced leap frogging interventions were 1.458 times more likely to reoffend than youth who did not experience leap frogging. In addition, serious violent offenders and repeat offenders were more likely to reoffend when they experienced leap frogging over graduated interventions (Johnson et al., 2009). In this study 60.2% of youth experienced leap frogging. A negative experience within the criminal justice system greatly increases the risk of recidivism because youth are less open to the change due to their negative perceptions and attitudes (Johnson et al., 2009). However, leap frogging and imposing
punitive and strict dispositions onto youth is in line with the current crime control legislation that is supported by the general public.

The juvenile justice system needs to move away from placing youth into custody and toward treatment and rehabilitation. Studies have continuously shown that punitive and strict dispositions have higher recidivism rates than treatment. Further, treatment aimed at identifying and targeting the multiple causes and correlates of youths offending behavior are even more effective at decreasing recidivism. In addition, community based treatment programs are more effective as these strategies are keeping youth out of the criminogenic prison environment. However, for youth who are serving their sentence in custody, research has shown that treatment can be effective in decreasing recidivism. The RNR model is a perfect example of a strategy designed for a custody environment that uses cognitive behavioral techniques focusing on the multiple causes and correlates to crime, and has consistently been found to be effective. However, the evidence based treatment programs are not popular among the general public; therefore, policy makers are less likely to implement them.

2.3. Conclusion

The rise in the publics’ concern surrounding young offenders has led to an increase in research surrounding what works and what does not work for the treatment of young offenders. Research has shown that evidence based treatment programs aimed at rehabilitating youth have the greatest mean effects for reducing recidivism. Unfortunately, only 5% of youth who are eligible for evidence based treatment programs will participate in an evidence-based treatment program, and for every year delayed in implementing evidence based programs, another cohort of juvenile offenders have a 50% higher than necessary recidivism rate (Greenwood, 2008).

Policy makers and the general public have to be educated on what is the most effective method of dealing with young offenders, especially serious violent young offenders who have multiple underlying causes of their offending behaviors. It is critical that evidence based treatment programs be fully implemented and used as “the go to” interventions in order to give youth the best chances of becoming rehabilitated. Also,
using graduated techniques with youth is important as their perceptions of the criminal justice system and the disposition imposed on them greatly influences the effectiveness of the outcome. The most effective way of decreasing recidivism rates is to implement evidence based multi-casual treatment programs. This can be achieved by mandating treatment through the YCJA. However, the current establishment of the Canadian juvenile justice system resembles a proportionality and just desert philosophy, which ignores the developmental and life-course theories. In turn, the individualized and validated treatment is not the focus when sentencing these youth. One of the main arguments of this thesis is the need to shift the ideology of the YCJA back to rehabilitation, in order to align with the findings from the theories.
Chapter 3.

Legal Framework

This chapter is going to discuss the legal literature required for this thesis. Information regarding the *YCJA*, particularly sentencing serious violent youth, will be examined. The changes to the legislation since its implementation, and how this had led to a shift in judicial ideology on how to effectively deal with this population of youth will also be highlighted. The amendments made to the *YCJA*, specifically in response to Bill C-10 in 2012 further solidified the punitive mentality of the *Act*, especially for youth who commit serious violent offences. It will be demonstrated that these changes run counter to the research, which has shown evidence based treatment is the best approach for these youth.

In addition to the sentencing provisions in the *YCJA*, the *Canadian Charter of Rights and Freedoms*, in particular section 7, will be discussed. Due to the fact that this thesis is examining the potential role for mandated treatment, there will be arguments that mandating treatment is in violation of an individual’s fundamental freedoms. This section will provide background information on the *Charter*, section 7, and cases demonstrating that mandated treatment does not violate section 7, and can be legally implemented.

3.1. Youth Criminal Justice Act and Sentencing Serious Violent Youth

The changes in youth justice from the *JDA*, to the *YOA*, and now the *YCJA* have transformed the juvenile justice system in Canada, especially in regards to sentencing. Sentencing was the most impacted area of juvenile justice when the *YCJA* came into effect, and its continued amendments. This is especially true for serious violent youth, as
the sentencing provisions have expanded, and judges have more options on how to sentence these youth. More specifically, laws guiding the use of adult sanctions for young offenders have gone through more significant changes than any other part of the youth justice legislation over the last three decades (Bala & Anand, 2012). The provisions of the YCJA that outline the imposition of an adult sentence for young offenders are substantially different from those in the YOA, and have undergone both substantive and procedural amendments since they were originally enacted. Adult sentences are available in cases where the judge determines that the sentencing provisions of the YCJA are inadequate and insufficient to hold the young person accountable for the offence(s) he/she has committed; almost always these cases involve serious violent offences. Adult sentences are used for young offenders who have committed serious violent acts and are believed to be a risk to the safety of the public, making the adult sentencing provisions under the YCJA to be a safety net for the most serious violent young offenders (Bala & Anand, 2012). These changes to the youth justice system, specifically sentencing, which occurred with the implementation of the YCJA, were in response to the public's (mis)perceptions that violent crime rates were raising, leading to the public's confidence in the juvenile justice system to decrease (Bala, 2009).

3.1.1. Public Opinion on Juvenile Justice

Public concerns surrounding youth crime have emerged from polls revealing the public is worried about the sentencing of young offenders, many believing the courts are being too lenient. This belief emerged with the perception that violent crimes committed by youth were on the raise. In 1997, a nationwide survey was conducted in Canada, revealing 70% of Canadians reported having “little” or “no” confidence in the YOA to manage youth crime (Roberts, 2003). Another survey was conducted in 1998 with 90% of the Canadian public having voted “dealing with youth crime” as an important issue for the government to deal with. In a 2000 poll, 60% of Canadians believed youth crime to be on the rise (Roberts, 2003). In another poll conducted in 2000, 77% of Canadians reported they believed the courts are too soft in their sentencing of juvenile offenders (cited in Roberts & Hough, 2005). Similar findings have also been found in the United States (USA) and the United Kingdom (UK). In the 2003 British Crime Survey (BCS), the
survey results indicated that over a third of the sample believed youth courts did a “poor” or “very poor” job (Roberts & Hough, 2005). This survey also revealed that out of the entire criminal justice system, the public had the lowest level of confidence in youth courts than any other part of the system. Similar to Canadian findings, three quarters of the British sample believed the system was too lenient (Roberts & Hough, 2005).

Another important finding from the BCS was the finding that the public believed the sentencing objectives for adults were also relevant for youth, with deterrence and desert having the strongest support. This revealed that the public supports a strict and punitive juvenile justice system that is guided by the same principles as the adult justice system (Roberts & Hough, 2005). Unfortunately, the public’s perceptions around youth crime regarding the leniency and ineffectiveness of juvenile justice have largely been shaped by a few serious crimes committed by a small percentage of young offenders (for example, the James Bulger case\(^1\)). As a result of these inaccurate perceptions, there has been an increase in public and political pressure to increase the severity of sentencing for young offenders. Consequently, sentencing elements of the YCJA are more severe and strict for youth convicted of serious violent offences (Roberts, 2003). Moreover, in response to the lack of confidence within the juvenile justice system, the government of Canada responded with the implementation of Bill C-10.

### 3.1.2. The Omnibus Crime Bill: Bill C-10

The omnibus crime bill, Bill C-10, also referred to as the *Safe Streets and Community Act*, was implemented on March 12th, 2012 after the Conservative Government took the majority in the federal government (Corrado & Peters, 2015). Bill C-10 was put in place to continue the “get-tough” on crime platform of Prime Minister Harper and the Conservative Government, as well as in response to the publics’ misperceptions on the increased rate of serious violent offences being committed by

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\(^1\) James Bulger was two years old when he was kidnapped from a shopping mall in Bootle, UK by two 10 year old boys, Robert Thompson and Jon Venables. The two boys beat and tortured James to death in Walton, Liverpool, a town 4 km away from the mall they abducted James. The boys then weighted James’ head down over railroad tracks in hopes to make his death appear as an accident. This case led to widespread debate over how to deal with young offenders who commit serious and violent crimes.
youth (Bousfield, Cook, & Roesch, 2014; Corrado & Peters 2015). The goal of Bill C-10 was to “emphasize the importance of protecting society and facilitate the detention of young persons who reoffend or who pose a threat to public safety” (Parliament of Canada, 2012, para 2). Consequently, the Safe Streets and Communities Act led to amendments in the YCJA “in order to increase the protection of society by formally detaining young offenders (either through pretrial detention or custodial sentencing), who have repeat offending histories and/or present a threat to the safety of the public” (Corrado & Peters, 2015, p. 547). This would be accomplished through the addition of punitive sentencing objectives to be included in the YCJA.

Bill C-10 expanded the principles of sentencing in the YCJA by adding specific deterrence and denunciation. The addition of these two principles takes away from the original focus of the YCJA which was to hold the young person accountable while simultaneously promoting their rehabilitation and reintegration (Bousfield et al., 2014; Corrado & Peters, 2015). Research has provided the support for an emphasis on rehabilitation for young offenders in order to decrease their risk of recidivism; however, with the addition of the two new sentencing principles, there has been a shift in the underlying ideology of the YCJA. The principles of sentencing under the YCJA now largely reflect adult sentencing principles under the Canadian Criminal Code as the focus of youth justice has moved away from developmental factors, culpability and diminished blameworthiness, to deterrence and denunciation as the main methods to protect society (Corrado & Peters, 2015).

A further amendment made to the YCJA as a consequence of Bill C-10 affecting sentencing is the mandatory consideration of the Crown for an adult sentence for youth (aged 14-17) who are charged with serious violent offences (Bousfield et al., 2014; Corrado & Peters, 2015). The Safe Streets and Communities Act states that the Crown must consider an adult sentence for offences that are considered serious and violent, which increases the range of sentences a young person can receive an adult sentence (Bousfield et al., 2014; Corrado & Peters, 2015). Prior to Bill C-10, the YCJA stated the Crown may consider an adult sentence for youth (14-17 years of age) who were charged with a serious violent offence, meaning that the use of adult sentences were to be kept for the exceptional and rare cases (Corrado & Peters, 2015). With the Crown now having
to consider an adult sentence, there may be less opportunity for the court to learn about the background of the offender (mental health, family dynamics) that would be seen as mitigating factors decreasing the youth’s overall culpability (Bousfield et al., 2014; Corrado & Peters, 2015). Again, this amendment shifts the focus from holding the young person accountable through rehabilitation, the original focus of the Act, to punishment.

Another amendment in the YCJA that resulted from Bill C-10 was an increase in the ability to use remand by expanding the availability of offences which remand can be used. For example, pre-sentencing detention can now be used for repeat offenders with patterns of guilty verdicts, serious property offences for which the term of imprisonment would be punishable by a maximum of five years, and young offenders who have outstanding charges (Corrado & Peters, 2015). Prior to the Safe Streets and Communities Act, remand was available for young people who had been convicted of a violent offence, convicted of an indictable offence in which the punishment for an adult would be two or more year’s incarceration, and/or a failure to comply with non-custodial sentencing provisions (Corrado & Peters, 2015, p. 547). Due to the fact that the number of violent and serious violent offences committed by youth is a small percentage, expanding the provisions of pre-sentencing custody may have a large impact on the number of youth held in pre-sentencing custody. This keeps in line with the crime control philosophy that underpins Bill C-10.

The implementation of Bill C-10 also led to the definition of a violent offence to be amended. Originally, the YCJA did not define a violent offence; therefore, what constituted a violent offence was determined by case law. In the case of R. v. C.D. and R. v. C.D.K (2005), the Supreme Court of Canada (SCC) defined a violent offence to include “an offence in the commission of which a young person causes, attempts to cause or threatens bodily harm” (R. v. C. D; R. v. C.D.K, 2005, para 17). This definition set out that a violent offence is one in which bodily harm was at least threatened, making violence reasonably foreseeable. When Bill C-10 came into effect, the definition of a violent offence was expanded. A violent offence is now:

(a) an offence by young person that includes an element the causing of bodily harm; (b) an attempt or a threat to commit an offence referred to in paragraph (a); or an offence in the commission of which a young person
endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm (Youth Criminal Justice Act, s. 2, 2012).

Bodily harm under the new definition of violent offence does not have to be threatened, meaning bodily harm no longer has to be reasonably foreseeable. Broadening the definition of a violent offence may lead to an increase in the number of custodial sentences for young offenders as the number of offences which meet the new definition will increase.

3.1.3. Sentencing under the YCJA

Youth convicted of a serious violent offence can either be sentenced as a youth, or as an adult. When the YCJA came into effect in 2003, there were five offences known as ‘presumptive offences,’ meaning that if a youth was convicted of one of these five offences, there was a presumption the youth was to be sentenced as an adult unless the youth could satisfy the judge why a youth sentence was sufficient to hold them accountable under s. 72(2) of the YCJA (Bala & Anand, 2012). Section 72(2) states “The onus of satisfying the youth justice court as to the matters referred to subsection (1) is with the applicant (Youth Criminal Justice Act, s. 72, 2002); meaning the onus was on the youth to show cause rather than on the Crown. The presumptive offences, in which the youth had the onus to satisfy the judge are listed under s. 2(1) of the YCJA and include, first or second degree murder, attempted murder, manslaughter, aggravated sexual assault, or a third serious violent offence.

In 2008, the constitutionality of s. 72(2) of the YCJA was challenged. The SCC ruled s. 72(2) violated section 7 of the Charter of Rights and Freedoms, specifically infringing on the presumption of diminished moral blameworthiness, which is a principle of fundamental justice found in s. 7 of the Charter. This decision came down in the case of R. v. D.B. (2008). The SCC ruled that s. 72(2) resulted in a reverse onus which was unconstitutional; Abella J. for the majority stated:

Because the presumptive sentence is an adult one, the young person must provide the court with the information and counter-arguments to justify a youth sentence. If the young person fails to persuade the court that a youth sentence is sufficiently lengthy…an adult sentence must be imposed. This forces the young person to rebut the presumption of an

The SCC never disputed that adult sentences for young offenders convicted of a serious violent offence were unconstitutional per se; it was the onus of proof which was questioned and ultimately ruled to be a violation of s.7 of the Charter. Section 72(2) of the YCJA now states that “the onus of proving to the youth justice court as to the matters referred to in subsection (1) is on the Attorney General” (Youth Criminal Justice Act, s.72, 2012). Therefore, even if youth were convicted of a presumptive offence, the onus remained on the Crown to prove to the judge why a youth sentence was insufficient to hold the young person accountable, rather than the onus being on the youth. This was a significant ruling because it highlighted “the special needs and vulnerabilities of youth, as well as their amenability to rehabilitation, and recognized that youth should not be held as accountable for their crimes as adults” (Bala & Anand, 2012, p. 663). In line with the SCC ruling in R. v. D. B. (2008), further amendments to the YCJA were made to sentencing youth as adults.

The other amendments to the Act as a result of the findings in R. v. D.B. (2008), was the elimination of the concept of presumptive offences, meaning that youth convicted of any one of the five offences listed in section 2 of the Act were no longer presumed to be sentenced as adults. In addition, the onus was placed on the Crown in all cases to satisfy the judge an adult sentence is required to fulfill the purposes and principles of sentencing under ss. 3 and 38 YCJA (Bala & Anand, 2012). Consequently, today, if a young person 14 years or older is convicted of an offence, the Crown must decide if an adult sentence is appropriate and satisfy the judge in all cases, rather than there being a presumption of an adult sentence with an onus on the youth to justify a youth sentence (Bala & Anand, 2012). If the Crown does decide to seek an adult sentence, then the Crown must notify the accused and the court that if the youth is convicted, an adult sentence will be applied for. All juvenile justice systems in common law jurisdictions have provisions for youth who have been convicted of a serious violent offence to receive similar or identical sentences to those imposed on adults (Bala & Anand, 2012; Roberts, 2004). Specifically in Canada, the main question judges have to
consider is if the sentence under the YCJA is of sufficient length to hold the young person accountable under section 42 of the Act.

Section 42 outlines the youth sentencing provisions judges can invoke which include special provisions in s. 42 (2)(o), (q)(i)(ii), and (r) for youth who have been convicted of a serious violent offence (Bala & Anand, 2012). For manslaughter, attempted murder, and aggravated sexual assault the maximum sentence under s. 42(2)(o) is a three year custody and conditional supervision in the community. For these three offences, the judge can use their own discretion to specify the time spent in custody and community² (Bala & Anand, 2012). For second degree murder, the maximum sentence outlined under s. 42(2)(q)(ii) is seven years with no more than four years from the date of committal to be served in custody with the remaining time to be served under conditional supervision in the community. For first degree murder, s. 42(2)(q)(i) specifies that the maximum sentence is ten years with no more than six years served in custody from the time of committal with the remaining time to be served in the community under conditional supervision (Bala & Anand, 2012). The last sentencing option judges have for youth convicted of a serious violent offence is under s. 42(2)(r) which is the Intensive Rehabilitative Custody and Supervision (IRCS) sentence.

IRCS sentence can only be used for youth who are “suffering from a mental illness or disorder, a psychological disturbance or an emotional disorder” (Youth Criminal Justice Act, s. 42, 2002), and have been convicted of a serious violent offence or a third offence that caused or attempted to cause serious bodily harm (Bala & Anand, 2012). IRCS sentence is an alternative sentencing option for the most disturbed and serious young offenders by which they are placed in a secure treatment facility to have better access to rehabilitative and mental health services. For most offenders, mental illness and/or emotional disturbances greatly contribute to their offending behavior, so this sentence aims at targeting those underlying causes or contributors to their criminal activity to decrease the risk of recidivism (Bala & Anand, 2012). The length of sentence under an IRCS sentence is the same as a regular custody and supervision sentence

² For these three offences, judges are not governed by the two thirds of the sentence to be served in custody and the remaining one third to be served in the community rule for custodial sentences imposed onto youth.
which is determined by the offence for which the young person is convicted (Bala & Anand, 2012). However, if an IRCS sentence is ordered under the YCJA, the young person does not have to take part in any drug or medical treatment and cannot receive this treatment without their consent (Bala & Anand, 2012). As a result, unless the young person has indicated that they are willing to participate in treatment in its entirety including drug and medical treatment, as well as individual and group counselling, there may not be sufficient justification to impose this sentence.

IRCS sentence is rarely used as a result of the statutory limits on when it can be ordered (only for the most mentally and emotionally disturbed youth convicted of a serious violent offence), and the provincial director of youth justice must approve its use (Bala & Anand, 2012). Youth must demonstrate they are willing to participate, in addition to meeting the statutory criteria. This has resulted in provincial directors approving this sentence for very few youth. Another reason IRCS sentence is said to be rarely ever used is because it is very expensive and intrusive; however, the federal government allocated $11 million to each province to put towards IRCS sentences but due to the rarity in its use, the federal government has now allocated that money elsewhere (Bala & Anand, 2012). The IRCS sentence could be a very important and helpful sentence resulting in positive outcomes for youth who are in need of intensive treatment. Further, an IRCS sentence could decrease recidivism rates because the underlying causes of youth criminal behavior are being treated, and as a result it could decrease the number of youth being sentenced as adults. This mirrors the shift in ideology from rehabilitation and reintegration to punishment for serious violent youth.

**Sentencing Youth as Adults**

Once the Crown has decided it is going to seek an adult sentence, an application of an adult sentence is made. The test judges use to determine whether a youth sentence would fulfill the purposes and principles of sentencing is outlined in section 72 of the Act. As originally enacted, the most important consideration judges must focus on is whether a youth sentence would be of sufficient length to hold the young offender accountable, but since the *R. v. D. B.* (2008) ruling, judges must also consider the presumption of diminished blameworthiness (Bala & Anand, 2012). Specifically, s. 72(1) states:
The youth justice court shall order that an adult sentence be imposed if it is satisfied that (a) the presumption of diminished moral blameworthiness or culpability of the young person is rebutted; and (b) a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 would not be of sufficient length to hold the young person accountable for his or her offending behavior (Youth Criminal Justice Act, s. 72, 2012).

In determining whether to impose a youth or an adult sentence, in accordance with 72(1)(a), information regarding the presumption of diminished moral blameworthiness has to be considered. This information consists of the presentence report, the degree of participation of the young person, the harm done to the victim, criminal record, and aggravating and mitigating factors as outlined in s. 38(3). These factors specifically relate back to s. 72(1)(a) as they have the power to rebut the diminished blameworthiness of the youth. Meaning, the higher degree of participation by the young person, the greater the harm caused to the victim, a criminal record, in addition with more aggravating factors than mitigating factors, the blameworthiness of the young person is increased, and is deemed to be at a level closer to an adult than a youth; rebutting the presumption of moral blameworthiness. In addition to these factors, ss. 3(1)(b)(ii) and 38 must also be examined.

Section 3 of the Act is the Declaration of Principle, specifically s. 3(1)(b)(ii) says:

The criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following: … (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity.

Along with s. 3, s. 38 has to be analyzed, which contains the purposes and principles of sentencing. Section 38(1):

The purpose of sentencing under section 42 is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

Judges now must make an assessment of the young person’s amenability to rehabilitation and their recidivism risk, which involves examining the personal history and
character of the youth, as we all as the nature of the offence in order to determine if an adult sentence is appropriate (Bala & Anand, 2012). In addition ss. 3(1)(b)(ii), 38, and the factors outlined in s. 38 (3), judges also consider the age and maturity of the offender. Youth who are closer to 18 years of age are held more accountable than younger youth because they are considered to be more mature; therefore, more accountable for their actions. Judges will also take into account the young person’s behavior and response to treatment while in detention. All of these factors taken together determine whether a youth sentence would be of sufficient length to hold the young person accountable under s. 42 of the Act. When a judge is not satisfied based on 72(1), then they must impose a youth sentence as outlined in s. 72(1.1); s. 72(1.1) of the Act states “If the youth justice court is not satisfied that an order should be made under subsection (1), it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed.”

These amendments reflect a shift toward making rehabilitation and reintegration as central as accountability and proportionality in sentencing youth as adults. This is extremely important because sentencing youth as adults without taking into consideration their personal history, characteristics, and circumstances of the offence can result in detrimental effects for youth by greatly increasing their risk of recidivism. For youth convicted of a serious violent offence, judges have to weigh the likelihood of successful rehabilitation against accountability and protection of the public, keeping in mind the maximum time available under a youth sentence as opposed to an adult sentence.

For the most serious violent offences, accountability and protection of the public take precedence over rehabilitation, consequently an adult sentence is viewed as most appropriate by the justice system as well as the public (Bala & Anand, 2012). Sentencing youth who have committed serious violent offences as adults, satisfies the accountability and proportionality principles which are highly supported by the general population. Adult sentences satisfy the public’s belief that they are being protected, but long term protection is not necessarily a result of sentencing youth as adults (Bala & Anand, 2012). Adult sentencing is a quick fix solution that will not prevent youth from reoffending. Rather many studies have found youth who are sentenced as adults are at a higher risk
of reoffending and reoffending more quickly than youth sentences as youth (Miller & Applegate, 2015; Myers, 2003; Redding, 2003). In order to reduce the risk of recidivism, intensive rehabilitation and treatment programs are required to help youth understand their behaviors are required rather than long punitive custodial sentences (Bala & Anand, 2012).

These youth have underlying causes to their criminal behavior which have to be identified and treated through a “resource-intensive combination of preventative, enforcement, and rehabilitative services” (Bala & Anand, 2012, p. 708). Unfortunately, the current set up of the YCJA, sets out the objective of the youth justice system to respond to offending, rather than being proactive to offending, meaning rehabilitative services are of secondary importance. This has led to the harmonizing of youth and adult sentencing principles for young offenders convicted of a serious violent offence (Bala & Anand, 2012; Roberts, 2004). As a result, youth who are in dire need of rehabilitation are being severely punished, decreasing their chances of successful rehabilitation and reintegration, and increasing the risk of their recidivism. Research has shown the deeper youth penetrate the criminal justice system, the less likely they are to desist. Therefore, imposing adult sentences onto youth impedes their chances of desisting from criminal activities, encouraging a criminal career (Bala, Carrington, & Roberts, 2009).

A popular saying among the general public and politicians is, “a crime is a crime, whatever the age of the offender”, which brings on a simplistic view of the sentencing process (Roberts, 2004, p. 302). This viewpoint neglects to remember that adolescents are being punished rather than crimes; therefore, the severity of the sentence needs to take into account the seriousness of the crime as well as the moral culpability of the offender. Offender culpability is greatly influenced by age, giving cause for a separate juvenile justice system that sentences youth differently (Roberts, 2004). Sentencing young offenders, especially young offenders who have committed serious violent offences, is extremely complex and delicate with a number of factors that have to be taken into account. Many youth convicted of a serious violent offence act out of impulse, lack of foresight, and have limited moral and psychological development which requires
the justice system to hold them less accountable than adults. Consequently, many do not require an adult sentence (Bala & Anand, 2012).

3.2. Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms is a constitutional document that came into effect in 1982. The main goal of the Charter was to ensure that every Canadian citizen, as well as any person currently in Canada, was legally protected from the government. No laws set forth by either the federal or provincial government can infringe upon the rights listed in the Charter. Legal rights are set out in sections 7 through 14; specifically in regards to compulsory treatment, a section 7 violation may be triggered. Section 7 of the Canadian Charter of Rights and Freedoms is under the legal rights division which was established to protect individuals in their dealings with the justice system. Section 7 states, “Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice” (Canadian Charter of Rights and Freedoms, s.7, 1982). A section 7 argument may be made against mandated treatment as it could be seen as inhibiting an individual’s life, liberty, or security of the person because treatment is being forced against their will. As a result, it is critical to analyze this section, along with cases in order to anticipate any legal arguments regarding mandated treatment.

3.2.1. Section 7-Canadian Charter of Rights and Freedoms

When a section 7 violation is argued, a section 7 analysis occurs. During the first step of this analysis, an individual must demonstrate that a component of section 7 (life, liberty, and security of the person) has been breached in order to make a successful claim. Further, they must demonstrate that this breach is in direct contrast with the principles of fundamental justice. Section 7 violations can theoretically be saved by section 1 of the Charter (the limitations clause), but this has never occurred. The Supreme Court of Canada (SCC) has stated that section 7 violations will only be saved by section 1 in exceptional cases such as natural disasters, outbreak of war or epidemics (Sharpe & Roach, 2013). Many cases involving a fundamental personal choice, as well as treatment orders under conditional sentences and probation orders
have triggered a section 7 analysis. It is in relation to these cases that compulsory treatment would need to be analyzed.

**Fundamental Personal Choice**

In terms of fundamental personal choice, there are two cases that have similar arguments regarding occasions necessitating a mandated treatment order. In *B(R) v. Children’s Aid Society of Metropolitan Toronto* (1995), B(R) was born four weeks premature and shortly after her birth, she began to develop health problems. One month after she was born, B(R)’s hemoglobin levels dropped to a level that caused her physicians to believe her life was in danger, and the best way to try and save her was through a blood transfusion. Her parents, being Jehovah’s Witnesses, refused to allow their baby to have a blood transfusion due to their religious beliefs. Following a hearing, the Provincial Court (Family Division) allowed the Children’s Aid Society wardship over the infant so the surgery and blood transfusion required to save B(R)’s life could proceed. The parents contested as they claimed this to be a violation of their liberty as parents, depriving them of making the decision on behalf of their child.

This case went to the SCC and the decisions of the courts below were upheld with a slim majority that this was a section 7 violation, but was in line with the principles of fundamental justice; therefore, it was not an unjustifiable infringement of the parents’ liberty interests. The court stated, “The common law has long recognized the power of the state to intervene to protect children whose lives are in jeopardy and to promote their well-being, basing intervention on its parens patriae jurisdiction...The protection of a child’s right to life and health...is a basic tenant of our legal system” (*B(R) v. Children’s Aid Society of Metropolitan Toronto*, 1995, para 88). The court went on to further say “It is worth noting as well that the rights set out in section 7 are conditional and not absolute. The rights therein set out can be interfered with if done in accordance with the principles of fundamental justice” (*B(R) v. Children’s Aid Society of Metropolitan Toronto*, 1995, para, 94). In view of the right to life, refusing B(R) a blood transfusion may have cost her life; therefore, where a child’s life is in jeopardy, section 7 places limits on the parents’ right to liberty.
In AC v. Manitoba (Director of Child and Family Services) (2009), a 14-year old Jehovah’s Witness needed a blood transfusion in order to control internal bleeding from Crohn’s disease. AC signed an advance directive medical document in which she documented that under no condition must she be given blood. Her doctor believed that without surgery and a required blood transfusion, AC’s life would be at serious risk. Upon being admitted to hospital, AC underwent a psychiatric assessment which resulted in a finding that she needed protection. The Director of Child and Family Services applied for an order under s. 25(8) of the Manitoba Child and Family Services Act, which allow the court to authorize treatments if it is in the best interest of the child. The court ordered that AC undergo the required medical treatments as it was in the best interest of AC due to the seriousness of her medical condition; without it, her life was at risk. AC and her parents filed a claim that the decision violated her s. 7 rights.

The SCC found s. 25(8) of the Manitoba Child and Family Act did not violate AC’s rights under s. 7. The court stated that s. 25(8) of the Act functioned in a manner that was consistent with principles of fundamental justice, meaning that it did not pass the analysis of a section 7 violation. These two cases are very important to consider for mandated treatment as they demonstrate compulsory treatment against one’s will can be justified if it is in the child’s best interest for their life. Acting on behalf of the child does not violate the principles of fundamental justice. Many serious violent offenders are in critical need of treatment services, as many are suffering from mental illness, substance abuse, physical abuse, and neglect which have profound negative effects on their life.

3 These two cases are important to consider when discussing the possible role of mandated treatment. However, it is important to distinguish the difference in the type of treatment being discussed. These two cases specifically focused on medical intervention, whereas, most cases involving serious violent youth will require psychological treatment. There will be instances when medical treatment may be required for youth who are diagnosed with mental illness or a developmental disorder (i.e. ADHD), but psychological and behavioral treatments would be the main source of rehabilitation.
**Conditional Sentence, Long Term Offender or Dangerous Offender, and Probation Order**

In terms of placing a mandated treatment order onto youth as part of their sentence, there are currently three sentences that involve mandatory treatment orders: 1) conditional sentence\(^4\), 2) long term offender or dangerous offender status, and 3) part of a probation order. A conditional sentence is when an individual serves their sentence in the community rather than in custody. As given by the name, there are conditions in which the individual must abide by, if they fail to do so, they may have to serve the remainder of their sentence in custody. As part of a conditional sentence, courts have established that mandatory treatment orders are allowed, and necessary in order to protect society and promote the rehabilitation of the offender. This was demonstrated in the case of *Regina v. Wismayer* (1997).

Wismayer received a conditional sentence that included a mandatory treatment order. The Justice ordered that Wismayer continue treatment with a psychiatrist as a condition of his sentence. This was deemed the best fit sentence to promote Wismayer’s rehabilitation and reintegration, as well as the protection of the public. In this case, it was stated “The conditional sentence can have important beneficial effects for the community. Use of the conditional sentence provides the opportunity for rehabilitation through mandatory treatment, reduction in the costs of incarceration and, where appropriate, the possibility of encouraging the offender to take responsibility for his or her actions through community service or other measures” (*Regina v. Wismayer*, 1997, p. 2.). This finding has important implications in the youth context as the younger the offender when treatment is mandated, the more effective the treatment will be. Therefore, all of the effects highlighted in the above quote, opportunity for rehabilitation, reduction in costs of incarceration, and the offender taking responsibility for their actions while at the same time helping the community, are all heightened with youth.

\(^4\) Note that a conditional sentence and a custody and supervision order under the *YCJA* are very similar. Once released from custody, the youth are on a conditional sentence, meaning mandated treatment orders could be imposed through this portion of the sentence using relevant case law to justify it.
The younger an individual is at the time treatment is received, the higher the success rate of treatment due to the plasticity of the brain. Further, the reduction in the costs of incarceration will be greater with youth, particularly serious violent youth, because through treatment their risk of recidivism decreases, which in turn decreases the risk of a criminal career. Through a conditional sentence, youth can learn to give back to the community, understand and take responsibility for their actions, ultimately increasing the safety of the public as well as the cost-benefit analysis of the community. Similarly, *R. v. Knoblauch (2000)* and *R. v. Paradee (2012)* received conditional sentences involving mandated treatment orders.

In *R. v. Knoblauch (2000)*, Knoblauch plead guilty to unlawful possession of an explosive substance and to possession of a weapon for a purpose dangerous to the public peace. Knoblauch had a long history of mental illness and treatment, as well as possessing explosive devices. The sentencing judge in the case imposed a conditional sentence of two years less a day followed by three years of probation. The sentence and the probation order required Knoblauch to reside in a locked psychiatric treatment unit at the hospital where he was currently receiving treatment, until the psychiatric professionals made a unanimous decision to transfer him. If Knoblauch were to be transferred from the locked facility, then he was to reside at a treatment facility which was directed by his physician. This decision was overturned by the Court of Appeal, and the Court of Appeal exchanged the conditional sentence of two years less a day set by the sentencing judge, to be a period of incarceration of two years less a day, with the three years of probation remaining the same, with the same terms and conditions set by the sentencing judge.

The SCC, with a 5-4 majority, overturned the Court of Appeal ruling, and decided that the sentence imposed by the sentencing judge should be restored. The SCC noted that the sentencing judge did have the authority to impose mandated treatment as a component of the conditional sentence. Consistent with the other cases regarding conditional sentence, the SCC supported the role of a conditional sentence rather than incarceration as it was specifically designed for the rehabilitation of the offender, which would promote the safety of the public:
In the case of a conditional sentence, a regime uniquely suited to the offender is put in place by the terms of the order under which the conditional sentence is imposed. It is tailored to take into account the needs of the offender and those of the community into which he will need to be reintegrated. This includes taking full advantage of all community-based services, including residential programs, and including residential programs that may have a compulsory residential element (para 41).

The SCC further pointed out that the conditional sentence imposed by the sentencing judge “was legal and fit and was the one that best served the objectives of sentencing…Moreover, it was the sentence that best ensured that the dangerousness of the accused would be curtailed for the longest period of time, with both short-term and long-term benefits to the community at large” (para 48). Also noted in this case was the use of conditional sentences to impose compulsory treatment, and in general, these conditions are allowed to be set, “a conditional sentencing order can be made under the Criminal Code requiring an offender to undergo treatment in a closed psychiatric facility, provided that such an order is reasonable in the circumstances, and consistent with the purpose and principles of sentencing” (para 42). In this case, the SCC has clearly stated that through a conditional sentence treatment can be mandated, even as far as admitting someone into a psychiatric hospital, if the sentence reflects the best interest of the offender to promote their rehabilitation, by which the safety of the public can be secured.

More recently, *R. v. Paradee* (2012), an 18 month conditional sentence was imposed in addition to a 90 day custodial sentence. For the conditional sentence; the court stated “I am also satisfied that the principles and purposes of sentencing can be met by a conditional sentence order having taken into account all of the circumstances presented in the case at bar. Denunciation and deterrence are paramount. Rehabilitation is also important. A conditional sentence order with stringent conditions and mandatory treatment and counselling is appropriate” (*R. v. Paradee*, 2012, para. 63). This demonstrated the importance of using appropriate treatment methods in order to rehabilitate the offender and through treatment; specific deterrence will be more likely achieved than through incarceration with no required treatment.
Long Term or Dangerous Offender Status

Another example of courts implementing mandated treatment is when an offender receives a long term offender or dangerous offender status. Most of these cases result in an indeterminate sentence with conditions that have to be satisfied before the offender is able to be released. Many cases have demonstrated that one important condition is treatment. In *R. v. Stoney* (2004), Stoney was declared a long term offender and subject to a 10-year supervision order after his release from custody. One of the conditions imposed onto Stoney was that once released he must undergo mandatory treatment; “In my view, it is crucial that Mr. Stoney take medicine under the direction of a psychiatrist and participate in therapy while on parole supervision. The offender cannot be given an option as to these conditions” (*R. v. Stoney*, 2004, para 131). Even though Stoney was declared a long term offender, his case did raise the issue of mandated treatment through a supervision order.

As part of an indeterminate sentence, treatment can be made compulsory; however, in this case, Stoney had a determinate sentence length, and the treatment order was a condition after release. There was an argument that mandated treatment through this type of order was unconstitutional. The judge mentioned section 134.1(1) of the *Corrections and Conditional Release Act* (CCRA) which states: "subject to subsection (4), every offender who is required to be supervised by a long-term supervision order is subject to the conditions prescribed by subsection 161(1) of the Corrections and Conditional Release Regulations, with such modifications as the circumstances require" (*R. v. Stoney*, 2004, para 132). The judge went on to further discuss the conditions of the CCRA which states:

The listed conditions in s. 161(1) of *CCRA* Regulations do not include involuntary treatment. However, there is a basket provision found in s. 134.1(2) the CCRA. It provides: The Board may establish conditions for the long-term supervision of the offender that it considers reasonable and necessary in order to protect society and to facilitate the successful reintegration into society of the offender (*R. v. Stoney*, 2004, para. 133)

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5 *R. v. Stoney* (2004) was a provincial court decision in Atlantic Canada; therefore, its decision is not binding. Nonetheless, the case has important implications.
Understanding all the pieces of legislation that can be used to implement mandated treatment is important. The *CCRA* shows that there are provisions whereby conditions can be imposed even if they are not part the original sentence. As long as the conditions promote the long-term protection of the public and successful reintegration of the offender, s. 134.1(2) establishes that compulsory treatment conditions are justified. Presumably, these conditions do not violate the principles of fundamental justice under section 7. The judge concluded that “the legislation must be read in its context. The general rule is that treatment is subject to the informed consent of an inmate. However, a failure of the inmate to consent to the required treatment does not, in itself, make the treatment involuntary… involuntary treatment is possible for persons on parole” (*R v. Stoney*, 2004, para 135). Ultimately, the judge related the need for treatment as a mechanism to protect the community, which was one of the main sentencing objectives under the *Criminal Code*; “…the emphasis is upon management of the risk the offender poses for the community…it is my view that the parole board can make conditions that mandate that Mr. Stoney take involuntary treatment and therapy. These conditions are essential in Mr. Stoney's circumstances” (*R. v. Stoney*, 2004, para. 154). This case is extremely important as it sets a precedent that long term offenders can also be subject to mandated treatment once they are released from custody through a probation order. This is critical for the long term protection of the public, as these offenders are at a high risk to re-offend; therefore mandated treatment in the community will continue to promote their rehabilitation and reintegration.

In the case of *R. v. R.T.M.* (2009), the judge considered the Stoney ruling, but ended up only recommending treatment rather than enforcing it. R.T.M. was convicted of sexual interference and sexual exploitation, and was designated a long-term offender. During his 10 year supervision, the judge recommended R.T.M:

1) Be referred to a comprehensive and lengthy sexual offender treatment program such as the Wellspring Sex Offender Intervention Program at the Capital Regional Psychiatric Centre in Saskatchewan. The offender is lower functioning from an intellectual standpoint, and will require rehabilitation that is modified for and tailored to that particular population. The Wellspring Program is best suited to deal with this offender; 2) Continue to be treated with Androcur or other effective anti-androgen medication that can attenuate the physiological production and activity of testosterone, prompting a global reduction in sex drive; 3) Be enrolled in formal
psychiatric/psychological treatment and follow-up to address and facilitate the pharmacological and psychotherapeutic management of the offender’s paraphilic conditions, mood disorder, proclivity for alcohol/substance abuse, and character pathology; 4) Be enrolled in relevant vocational, educational, life and/or social skills programming (para, 169).

The judge is acknowledging the need of treatment for R.T.M. in order to decrease his risk of recidivism and promote the safety of the public; however, he felt that he did not have the authority to mandate the treatment, especially the Androcur. Interestingly, the judge commented that the National Review Board should have the authority to order treatment onto individuals who have been designated long term offender and require treatment to suppress their urges, especially those who commit sexual crimes, “I am alarmed by the National Parole Board’s inability to require long term offenders who have committed sexual crimes such as these to take anti-androgen medication” (para, 103). This case has two important implications.

First, the judge would have imposed mandated treatment onto R.T.M., if he felt he had the authority to do so. This supports the need for legislation allowing judges to order treatment for those offenders who require programming to combat their underlying causes to their criminal behavior. Second, the National Review Board should also have this authority as they are the service which will continue to monitor the offenders’ once they are released; therefore, they should be able to enforce services that will promote the offender’s rehabilitation and successful reintegration.

Two more recent cases, R. v. Weigel (2010) and R. v. Ramgadoo (2012), demonstrate how compulsory treatment can be imposed on offenders who have a long term or dangerous offender status as a condition of their indeterminate sentence. Weigel received a long term offender status in which he was sentenced to two years in custody, followed by a 10 year supervision order; and Ramgadoo received a dangerous offender designation and an indeterminate sentence. As one of the conditions of their sentences, they each had to undergo and complete treatment, which was enforced by the National Review Board. In R. v. Weigel, the Justice ordered that Weigel undergo treatment and medication as prescribed by a doctor in order to decrease his risk of recidivism. As part of the supervision order, the Justice stated:
To take such sex-drive reduction medication as may be prescribed by a treating physician. Where medication is not given by injection by a medical professional, the condition is generally twinned with compulsory blood testing to ensure compliance. This term in the Long-Term Offender sentence will provide continuity with a treatment plan to protect the community. Failure to comply with such a mandatory treatment will result in denial of release into the community. As well, failure to comply with this condition shall be deemed to be a breach of this order of long-term supervision (R. v. Weigel, 2010, para. 104).

In both of these cases, the issue was raised regarding the impact of refusal of treatment. If anyone refused to comply with the treatment order imposed onto them, then under s. 753.3 of the Criminal Code, a breach of a long term supervision order punishable by a maximum 10 year sentence, would apply. Therefore, both of these cases recognized that no one can be forced to take their medication, but failure to comply with the condition will result in a custodial sentence. These two findings provide support regarding the need of treatment, as well as using the law as a mechanism to impose the required treatment.

In the case of R. v. V.M. (2003), the defence argued that the implementation of mandated treatment as part of a long term or dangerous offender status was a violation of section 7. The Ontario Superior Court of Justice found that the treatment conditions, as part of his long term offender designation, did not violate his rights protected under the Charter; “I conclude that it is constitutionally permissible for the NPB to impose a condition requiring an offender to comply with medical treatment prescribed by a doctor as part of a long-term supervision order. Included in this condition is the requirement to take prescribed medication” (R. v. V.M., 2003, para. 126). V.M. posed a great threat to the community and without the proper medical and psychological treatment, he would re-offend; therefore, the court imposed stringent conditions which included taking sex drive reducing medication, partaking in a high risk sex offender program, substance abuse treatment such as Alcoholics Anonymous, and taking Antabuse, along with regular breathalyzer and urine analysis. This case further demonstrates that mandatory treatment conditions can be ordered and followed, otherwise the individual will return to custody:

...the National Parole Board will impose terms such as "take medication as prescribed by a medical doctor" or "follow treatment plan/psychological
counselling/psychiatric counselling as arranged by supervisor." This type of condition ensures that if the offender does not take the medication that a treating doctor prescribes as part of a treatment plan, the offender will be in breach of the supervision order. His or her supervision order may be suspended by the parole officer for a period of up to 90 days and he or she will return to prison. If the breach continues, the NPB may lay an information and prosecute with respect to the breach (R. v. V.M., 2003, para. 125).

Additionally, this case established that mandated treatment does not necessarily violate s. 7 and the principles of fundamental justice. There are ways in which compulsory treatment can be ordered, if it is viewed by the judiciary to be in the best interest of the public and decrease the re-offending risk of the offender. This was further supported with the case of R. v. Payne (2001).

In R. v. Payne (2001), the Ontario Superior Court of Justice ordered compulsory treatment as part of his 10 year supervision order. The court in this case acknowledged that there was no statute regarding mandated treatment as part of a probation order; however, the court stated “In my opinion, it is the protection of the public which is the principal support for an order compelling the compulsory taking of treatment or medication. That is sufficient to save the order under s. 1 of the Charter. Other less drastic means are available to accomplish that purpose” (R. v. Payne, 2001, para 135). Further in the case:

In my view, an offender on conditional release by way of a long-term supervision order may be compelled by a term of the order to undertake treatment and related pharmaceutical intervention where essential to management of the accused’s risk of re-offending. In other words, the offender’s consent to such a condition is not required. Should the offender breach terms of the order respecting treatment or medication, he or she is subject to apprehension with suspension of the order pursuant to s. 135.1 of the Act or to arrest and prosecution pursuant to s. 753.3(1) of the Code… Accordingly, mandatory treatment and medication conditions in an order are a proportionate response to protecting the public from a person who, by definition, is a substantial risk to reoffend (R. v. Payne, 2001, para. 138).

This case exemplifies that ordering treatment to protect the public is not in violation of s. 7 as it does not interfere with the principles of fundamental justice. Framing sentences in the correct context promoting the protection of the public is going to be very important
when discussing the role of mandated treatment. Through the rehabilitation of the offender, the long term protection of society is achieved.

Serious violent youth pose a high risk to recidivate, if they are not treated properly. Judges are trying to balance these two (sometimes competing) goals of individualistic approaches to treatment that may best benefit the youth, and an overall need to provide for public security and protection. Ultimately, getting youth to partake in rehabilitation and treatment programs decreases their risk of reoffending, which in turn promotes the long-term protection of the public; therefore, the judiciary needs to view these two goals as complimentary.

**Probation Order**

The use of mandated treatment as part of a probation order has provided mixed findings from the court. In *R. v. Rogers* (1990), the sentencing court ordered Rogers to undergo treatment as a condition of his probation; however, the British Columbia Court of Appeal ruled that measure was unconstitutional as it violated the principles of fundamental justice under s. 7 of the *Charter*. The court stated:

> I agree with the submissions made by counsel for the appellant. In my opinion, a probation order which compels an accused person to take psychiatric treatment or medication is an unreasonable restraint upon the liberty and security of the accused person. It is contrary to the fundamental principles of justice and, save in exceptional circumstances, cannot be saved by s. 1 of the *Charter* (*R. v. Rogers*, 1990, p.8).

The court noted that the protection of the public was the underlying rationale for ordering mandated treatment; however, the court did not believe that reason was sufficient enough to force treatment onto someone. As a result, mandated treatment in a probation order could not be saved as a reasonable limit under section 1 of the *Charter*. It was further commented that less drastic means could be carried out in order to accomplish the same goals as mandated treatment. However, the court did acknowledge that the rehabilitation of Rogers was important in order to combat his schizophrenia and decrease his risk of offending, as he was non-compliant with his medication. Consequently, the court placed six conditions onto his probation order that Rogers had to follow otherwise he would be in breach of his probation order, and face the possibility
of incarceration. The first condition is especially interesting to note as it states “You will take reasonable steps to maintain yourself in such condition that: (a) your chronic schizophrenia will not likely cause you to conduct yourself in a manner dangerous to yourself or anyone else” (R. v. Rogers, 1990, p. 9). In order for Rogers to control his schizophrenia he must take his medication; therefore, the courts used different language to impose mandated treatment without explicitly ordering Rogers to take his medication. This case demonstrates that the vehicle by which mandated treatment may be imposed is critical, and courts can circumvent s. 7 by indirectly ordering treatments.

There are two youth cases that were appealed and followed the ruling in Rogers, R. v. J.J.L. (2001) and R. v. R.J.D. (2000). In the case of R. v. R.J.D. (2000), the Supreme Court made similar rulings, which was shaped through the Rogers ruling. As part of R.J.D.’s probation order, the judge imposed that he must participate and complete an “Intervention Program for sexual offenders”. R.J.D. refused to participate in the program as he claimed it would cause re-victimization as he was sexually abused as a child. He argued that mandating him to participate in this program violated s. 7 of the Charter, which the court did agree with. Again, applying the Rogers ruling, the justice stated “I find that the reasoning in the case R. v. Rogers would be applicable here and the Applicant’s Charter Rights under Section 7 of the Charter would be infringed in the event that the Order were to be made without first obtaining the consent of the Applicant” (para, 43). Therefore, the court impugned the current condition under the probation order, and amended it to read, “In the event that you are within the Province you are directed to attend and participate in a therapeutic counselling program for sexual offenders without the necessity of participating in an assessment procedure” (para, 42). This conclusion is very similar to Rogers, as the method of delivering the mandated treatment was adjusted to avoid s. 7, but treatment in the end was still required.

In the case of R. v. J.J.L. (2001), the sentencing judge imposed mandated treatment as part of J.J.L.’s probation order that consisted of taking medication as prescribed by his psychiatrist, which J.J.L. appealed. J.J.L. argued that since he was over the age of 16, he was competent to make his own decisions regarding treatment as stated under the Mental Health Act. He raised the issue that the compulsory treatment
as a condition of his probation order violated his right to fundamental justice under s. 7 of the Charter. The Court of Appeal relied on the ruling in Rogers, by noting:

The court concluded that the risk that the offender would be subjected to unusual or dangerous medication or treatment, while minimal, did exist and that such a term in a probation order “is contrary to the fundamental principles of justice and, save in exceptional circumstances, cannot be saved by s. 1 of the Charter” (R. v. J.J.L., 2001, para 5; R. v. Rogers, 1990, p. 8).

The justice continued by stating that it is not within the sentencing judge’s power to impose conditions as part of a probation order that contradicts the Charter or provincial legislation; “a sentencing judge is not entitled to impose a condition as part of a probation order that contravenes provincial legislation or a provision of the Charter” (para, 6). Ultimately, the Manitoba Court of Appeal deleted the provisions from the probation order that required J.J.L. to take medication as they violated s. 7 of the Charter.

This case is different than R. v. R.J.D. (2000) and R. v. Rogers (1990), as the Justice in this case outright deleted the order that mandated J.J.L. take his prescription medication. Rather in the other two cases, the court amended the probation order by rewording the conditions which still required R.J.D. and Rogers to undergo treatment. Through changing the avenue by which the treatment was mandated, s. 7 of the Charter was no longer violated. The case of J.J.L. is a roadblock for this thesis, as it refused to mandate treatment stating that treatment without consent is a violation of the Charter. However, the argument could be made that legislation could be drafted which authorizes mandated treatment, and the mandated treatment provisions could be phrased to mimic the Rogers order—“You will take reasonable steps to maintain yourself in such condition that: (a) your chronic schizophrenia will not likely cause you to conduct yourself in a manner dangerous to yourself or anyone else” (R. v. Rogers, 1990, p. 9). This would allow different legislative wording regarding competence to make treatment decisions and compliance with the Charter distinguishing from the J.J.L. decision.

In contrast to R. v. Rogers (1990), R. v. J.J.L (2001), and R. v. R.J.D. (2000), is the case of Deacon v. Canada (Attorney General) CAFCA (2005), which concluded that mandated treatment as part of a probation order does not violate the Charter. In Deacon
v. Canada (Attorney General) CAFCA (2005), The Canadian Federal Court of Appeal stated “...in this case, the imposition of the condition to take medication as prescribed was a necessary condition. This amounts to one of the “exceptional circumstances” that would save an impugned probation order” (para, 91). The court continued by adding “The section 7 Charter violation can be saved under section 1. The NPB had the jurisdiction to impose the condition that the applicant take medication prescribed by a physician, and therefore the condition will not be interfered with by this court” (para, 92). Even though some people would argue that implementing mandated treatment does infringe on individuals’ civil liberties, the courts have consistently shown that there are times when treatment is required in order to protect the public. Ensuring the individual needs of the offender are identified and treated will promote their rehabilitation, meaning they have a greater chance of developing prosocial relationships and behaviors. This, in turn, will enhance not only the protection of society, but also the productivity of the community. The cost-benefit of mandated treatment will decrease the costs of incarceration, allowing more funds to go into the community while decreasing the crime rate, further increasing the financial gains for society.

Mandated treatment can be ordered through a conditional sentence, as a condition for a long term offender or dangerous offender status, or indirectly as part of a probation order. As a result, it can be argued that legislatively mandated treatment can be used as a conditional order, for youth who are sentenced to a period of probation, a deferred custody and supervision order, or a custodial sentence. Ensuring that the right vehicle is used to get to a mandated treatment order, using the appropriate methods and wording in statute, are going to be critical. For example, “you will take reasonable steps to maintain mental health” as seen in R. v. Rogers, (1990) may constitute acceptable wording. Another way mandated treatment has been used is through the health care system as opposed to the legal system.

In British Columbia, the Heroin Treatment Act (1978) was drafted in response to the increase in individuals becoming addicted to, and overdosing, on heroin. The Heroin Treatment Act provided heroin addicts with a comprehensive program that included evaluation, treatment, and rehabilitation (Schneider v. British Columbia, 1982). The evaluation of a heroin-addicted individual was carried out by a panel of professionals,
which included two medical doctors, and one other person. The panel conducted a medical and psychological examination of the addict. If the panel recommended treatment, then the addict could voluntarily admit themselves into treatment; however, if they were unanimously in favor of treatment, then the addict could involuntarily be admitted into treatment (*Schneider v. British Columbia*, 1982). In order for this to occur, the director of the treatment center applied to the Supreme Court of British Columbia for a committal order. If the court was satisfied that the addict was in need of treatment, then a court order for treatment was imposed.

In response to the *Act*, Brenda Schneider argued that the province of British Columbia was acting ultra vires because the federal government had the exclusive power over drug statutes. In the case of *Schneider v. British Columbia* (1982), the SCC found that British Columbia was acting intra vires, as the *Act* was drafted under the provincial health power, not the criminal law power. As a result, British Columbia was able to mandate treatment for heroin addicts by passing the legislation under its health care powers. Even though the *Act* was never fully implemented, it does provide further avenues to consider how mandated treatment could be implemented. Treatment does not have to be mandated through federal legislation per se in order to be valid.

There are legal streams available by which mandated treatment can be ordered that do not infringe upon the *Canadian Charter of Rights and Freedoms*. As seen in the case of *Carter v. Canada* (2015), the SCC outlined that any section 7 violation must be done in accordance with the principles of fundamental justice. This demonstrates that the legislature will have to model mandated treatment legislation around other legislative schemes that have justified mandated treatment orders. As discussed, in the context of blood transfusions, mental health, and drug treatment, the Courts have ruled mandated treatment to be in accordance with the principles of fundamental justice. Further, mandated treatment legislation cannot be too broad, too vague, or in contradiction with the basic tenants of the Canadian legal system. Ultimately, the development of mandated treatment legislation would have to be constructed carefully to ensure the implementation of treatment was done in accordance with the principles of fundamental justice; therefore, not violating section 7 of the *Charter*. 
3.3. Conclusion

Serious violent youth are a unique population of offenders who have a myriad of underlying causes to crime. The current structure of the YCJA (i.e. as implemented by provincial/territorial legislation involving different models of youth justice) and other youth justice systems typically have struggled to incorporate the complexity of both theory and related research on these serious young offenders. This struggle is reflected in the historical shift in ideology from proportional punishment/deterrence sentencing philosophies to rehabilitation, and back which also has involved intense political and public pressure to control the violent youth crime. The latter typically has been sensationalized by the media and, arguably, has further confused the public/political debate on youth justice policies regarding these proportionately few young offenders. Currently, the proportionalist perspective is reflected in most juvenile/youth justice systems. However, as argued above, there is considerable research that challenges the validity of this perspective.

To the contrary, it can be asserted that, by ignoring developmental/life-course based theories on causes to serious violent youths’ behaviors, youth justice systems promote the continuation of serious offending behaviors. The research from this perspective indicates that the implementation of rehabilitation and treatment programs individualized to each offender provides the best chance for serious violent youth to reintegrate successfully i.e. reduced recidivism. Accordingly, mandated treatment within laws such as the YCJA, is a main legal/policy theme asserted in this thesis.
Chapter 4.

Methodology

This chapter addresses the methodological approaches used to facilitate this study. This research employed a qualitative legal case analysis of published court cases in order to develop a better understanding on how youth who commit a serious violent offence (murder, attempted murder, manslaughter, and aggravated sexual assault)\(^6\) are viewed by the judiciary. Examining law through a social science lens offers “the opportunity to challenge the usefulness of court decisions and pieces of legislation from an external and often empirical perspective” (Siems & Mac Sithigh, 2012, p. 655). Interdisciplinary analysis can challenge the legal doctrine and raise questions about judicial decisions (how and why a judge imposed a certain sentence), while simultaneously connecting the decision to society and any social consequences that may arise from the decision (Siems & Mac Sithigh, 2012). Analyzing cases to determine what factors judges consider when deciding to impose a youth or an adult sentence onto youth who have been convicted of a serious violent offence can lead to important information, which can be connected back to larger social and political constructs.

This information will be used to begin to answer this study’s overarching research question: should mandatory treatment be implemented through the YCJA? This is a large research question which will be explored through multiple mediums; this study is the first level of inquiry into this issue. This thesis specifically examined the role of the judiciary and their approach to serious violent youth. This led to subsequent research questions: 1) How are judges framing the sentences imposed onto youth?, 2) What

\(^6\) Originally referred to as “presumptive offences” in which an adult sentence can be imposed. In the majority of these cases, the Crown seeks to have the youth sentenced as an adult as opposed to a youth. This lead to the availability of a comparison between the factors a judge considers when sentencing a youth as an adult or as a youth.
principles and purposes of sentencing are being utilized when sentencing a serious violent youth?, and 3) Do the principles and purposes that guide sentencing decisions change depending on whether a youth or adult sentence is imposed? Examining judges’ perspectives and their rationale are important as this can allow for a greater understanding of how youth who commit serious violent offences are currently viewed by the judiciary. Determining whether judges promote rehabilitation for this small population of youth will help to determine whether mandated treatment should be implemented through the YCJA.

Employing a case analysis allows for the interpretation of a judge’s reasons and rationale for the sentence imposed on a youth to be analyzed. Moreover, this methodology provides the opportunity to develop a deeper understanding of what information (i.e. offender characteristics, circumstances of the offence) the judge considers when framing and justifying the sentence. The details of the judges’ description of the offence, the offender, and the victim, as well as how the judges construct the offences back to the larger society will be examined. Additionally, this analysis studied if the sentencing decisions are centred around rehabilitation and reintegration or accountability and proportionality.

4.1. Sampling Techniques and Criteria

The cases were accessed through the QuickLaw online legal database. Quicklaw was selected because it was inexpensive to use, readily available, and easily accessible through the Simon Fraser University library website. Despite the fact that there are multiple Canadian online legal databases, Quicklaw was used as it one of the most comprehensive, and it remains the leader of online legal research. It is important to remember when doing a case analysis that the results generated from the legal

7 During the preliminary stages of data collection, Quicklaw and CanLii were both used to access cases. However, CanLii did not provide any additional cases and generated duplicate responses. As a result, a research decision was made to solely use QuickLaw due to its popularity among the legal community.
databases do not include every case that matches your search criteria as not every case gets published.

As a result of every judicial decision not being written and published, the types of cases that are available on the databases may be biased. During the research process of Krawchuk (2008)\textsuperscript{8}, who noted in researching her MA thesis, that the decision for a case to be written up and published is largely based on the judicial procedures of each province, as well as the individual judge’s discretion. This means that there will be discrepancies regarding what cases are published online depending on the judge, in addition to the province’s procedures. Krawchuk (2008) was further informed that youth cases were especially sensitive due to their increased vulnerability, publication ban, and confidentiality. Ultimately, the number of cases that do get written and published is not representative of the total number of youth proceedings that occur.

However, using a sample of serious violent youth, in which a period of incarceration is highly likely, there is a greater likelihood for judgements to be written, minimizing this issue. This is especially true for homicide offences as judges are likely going to want to see their decisions reported. In addition, the chances of appeal are greater when a custodial sentence is imposed; having the written decision will be of vital importance. Even though the total number of youth cases available online does not equal the number of cases that occur because serious violent offences were examined, this limitation was not seen as detrimental to the research process since it is highly likely that a large proportion of these cases were actually found in the Quicklaw database.

An analysis of 22 cases from Western Canada—British Columbia, Alberta, Saskatchewan, and Manitoba—was conducted. To determine what cases could be included in the study, principles of purposive criterion sampling were used (Palys & Atchison, 2014). Criterion sampling “involves searching for cases or individuals who meet a certain criterion” (Palys & Atchison, 2014, p. 114). The criteria included: 1) cases had to be tried in one of the four provinces, 2) youth had to be found guilty of a serious

\textsuperscript{8} See Marianne D. Krawchuk, The Use of Custody Under the Youth Criminal Justice Act: A Review of section 39, Prohibitions on the Use of Custodial Sentences (M.A. Thesis, University of Manitoba, Department of Sociology, 2008)[unpublished].
violent offence, 3) the Crown had to have been seeking an adult sentence, and 4) the court proceeding had to be between the years of 2005-2015. For the purposes of this thesis, I started the analysis in British Columbia because of the research on serious violent youth that has come out of British Columbia, and I stopped at Manitoba, as this captured Western Canada in its entirety. Additionally, the legal definition in the YCJA was used to define “serious violent offence” which include, “murder, manslaughter, attempted murder, and aggravated sexual assault” (Youth Criminal Justice Act, section 2, 2012)\(^9\). As a result of examining the sentencing rationale, appellate cases were disregarded, meaning that cases were collected from the Provincial Court, including the Youth Court, and the Supreme Court of each province\(^10\).

Further, the Crown had to be seeking an adult sentence in order to determine whether there were differences in the justifications and rationales used by judges when imposing a youth or an adult sentence. As an underlying purpose of my research was to develop an understanding of the ideologies judges hold towards punishment and rehabilitation, examining how they frame an adult sentence compared to a youth sentence can lead to very important information regarding possible interventions for youth within the criminal justice system. Lastly, 2005 -2015 was selected because the YCJA came into effect in 2003; therefore, the year 2005 was selected as a data collection starting point as it allowed judges time to adjust and become accustomed to the new Act, especially with regard to the provisions pertaining to the purposes and principles of sentencing.

The case law search began in October 2015. Key terms were used in order to reduce the number of cases that resulted from the search. The key terms selected were guided by the sample criteria used: serious violent offence, Youth Criminal Justice Act, adult sentence, and 2005. In total there were 22 cases that matched the search criteria:

\(^9\) These types of offences are the ones that get sensationalized in the media and push for get-tough sanctions by the public and politicians. Therefore, identifying if judges are more likely to impose an adult sentence than a youth sentence to align with crime control policies and ignoring rehabilitation was a big rationale for analyzing cases only dealing with the most serious violent offences that resulted in interpersonal violence.

\(^10\) Due to the different levels of court used, throughout the analyses the term judge or judges’ will be used, this can include Superior Court Justices’ as well.
seven from British Columbia, five from Alberta, three from Saskatchewan, and seven from Manitoba.

4.2. Data Analysis

In order to complete the study, a qualitative legal analysis of the 22 cases was employed.\textsuperscript{11} This methodology is appropriate given the exploratory nature of the current study. Although this research is grounded in developmental and life-course theory, an exploratory approach was taken when reading and analyzing the cases to allow themes to emerge naturally; in the end, both deductive and inductive coding methods were used.\textsuperscript{12} The analysis process was initiated with deductive coding as one of the primary interests of this study was to determine how judges weigh accountability and proportionality in comparison to rehabilitation and reintegration when constructing a sentence. As the coding process continued, inductive coding techniques allowed for other themes and ideas to arise.

Case analysis allows for a deep understanding of the judicial decision because the language, tone, and underlying ideology of the judge can be examined. It is important to identify and understand the legislative and social background of judicial decisions in order to comprehend the meaning behind, and implications, of a sentence. Analyzing the selection of facts that led to the final sentencing outcome is valuable to fully develop an understanding of how and why the specific decisions were made. Additionally, principles of discourse analysis were used to guide the research process. Discourse analysis is the process of reading text, which involved reading case law to explore the connections between language, knowledge, and power (Muncie, 2006). Discourse analysis provides the opportunity to examine the larger social, philosophical, political, and legal frameworks that surround the decisions judges make. As the

\textsuperscript{11} NVivo, a program designed to analyze qualitative data was not used for the study. The coding was done by hand as it allowed for a deeper connection to the data.

\textsuperscript{12} Deductive coding is when the researcher is analyzing the data with a predefined interest or theory; whereas inductive coding begins with the identification of general themes and ideas that emerge naturally with no predefined set of interests (Palys & Atchison, 2014).
justifications and rationale of the sentences imposed relate back to the social and political ideologies of the province, and the country.

There were two different analytic approaches in this study; both were comparative analyses. The first analysis consisted of comparing judges’ decision-making processes, and rationales for imposing an adult as opposed to a youth sentence. Are there differences in the factors the judges’ consider when imposing a youth versus an adult sentence? Is there information judges’ give more weight for a youth sentence that is not present in an adult sentence and vice versa? This is important to examine because if judges’ are giving credit to youth who are participating in treatment while in custody and use this information as a mitigating factor, then implementing mandated treatment should decrease the number of adult sentences being imposed onto youth.

Second, judicial ideologies between provinces were compared. This analysis specifically examined if the judges from each province differed in their decision-making process, or if they were consistent with one another. Due to the fact the YCJA is provincially enforced, there will be provincial disparity in regards to how the Act is implemented. Do these differences relate back to the information and factors judges’ consider when imposing a sentence? Are there certain characteristics of the offence or the offender that is given more weight in one province compared to the others? This information will further our understanding on the information judges’ use to frame the sentence they impose. In addition to the differences among judicial ideologies, difference between offenders could be examined. Are there certain offender characteristics that are more prevalent between the provinces? If so, did these unique attributes influence the sentencing decision of judges that was unique to a certain province? Were these offender differences influential on the judges’ final decision that they made the judges’ analysis and rationale different from the other provinces? Ultimately, from these two analyses, a greater understanding of how youth who commit serious violent offences are viewed in the judiciary, informing the possible role of mandated treatment.
4.3. Ethical Concerns

This study did not use human participants; the sole methodology employed was a discourse and case analysis of published and readily available cases. Further, using youth cases, their identity is protected under section 110 of the YCJA, meaning that their identity cannot be released to the public. In cases where an adult sentence is imposed, the publication ban may be lifted. Often, these cases refer to the youth’s surname to maintain their confidentiality. Therefore, this research was in accordance with the policy of the Simon Fraser University Office of Research Ethics.
Chapter 5.

Overview of Cases

This chapter provides an overview of the 22 cases used in the present study. This provides information regarding the offence and background information on the offender, giving context for the results section of the thesis. Out of the 22 cases, 8 imposed a youth sentence, and 14 cases imposed an adult sentence. The cases are presented within each province: British Columbia, Alberta, Saskatchewan, and Manitoba. Table one separates the number of youth and adult sentences by province; while table two provides details regarding each offender’s background information. The argument for mandated treatment will be strengthened, as it will be demonstrated that all of these youth have underlying causes to their criminal behavior which can be targeted and treated, reducing the overall risk of recidivism.

Table 1. Adult vs. Youth Sentences by each Province

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<thead>
<tr>
<th></th>
<th>British Columbia</th>
<th>Alberta</th>
<th>Saskatchewan</th>
<th>Manitoba</th>
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<tbody>
<tr>
<td>Youth</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>3</td>
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<tr>
<td>Adult</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td>6</td>
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<tr>
<td>Total</td>
<td>8</td>
<td>5</td>
<td>3</td>
<td>9</td>
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<td>Table 2.</td>
<td>Personal History of each Offender</td>
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<td></td>
<td>Offence</td>
<td>Aboriginal</td>
<td>Abuse/Neglect/Maltreatment</td>
<td>Absent Biological Father</td>
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<td><strong>British Columbia</strong></td>
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<tr>
<td><strong>Youth Cases</strong></td>
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<tr>
<td><em>R. v. J.A.P. (2008)</em></td>
<td>Second Degree Murder</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><em>R. v. B.S.A. (2013)</em></td>
<td>Second Degree Murder</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td><strong>Adult Cases</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><em>R. v. Kenworthy (2008)</em></td>
<td>Manslaughter</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td><em>R.v. D.D.P. (2006)</em></td>
<td>Manslaughter</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td><em>R. v. J.K.W. (2006)</em></td>
<td>Second Degree Murder</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><em>R.v. Arrieta (2010)</em></td>
<td>Second Degree Murder and 2 counts of attempted murder</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<tr>
<td><em>R. v. Wellwood (2011)</em></td>
<td>First Degree Murder</td>
<td>Wellwood</td>
<td>No</td>
<td>No</td>
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<tr>
<td></td>
<td>Moffat</td>
<td>No</td>
<td>Yes</td>
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<td><strong>Alberta</strong></td>
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<td><strong>Youth Cases</strong></td>
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<tr>
<td><em>R. v. A.A. (2011)</em></td>
<td>First Degree Murder</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Offence</td>
<td>Aboriginal</td>
<td>Abuse/ Neglect/ Maltreatment</td>
<td>Absent Biological Father</td>
<td>Substance Abuse in Home</td>
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<td>R. v. C.H.C. (2009)</td>
<td>No</td>
<td>Yes</td>
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<td>Yes</td>
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<td>Adult Cases</td>
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<tr>
<td>R. v. Casavant (2009)</td>
<td>No</td>
<td>No</td>
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<td>R. v. L.L. (2014)</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>R. v. Bird (2008)</td>
<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
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<td>Youth Cases</td>
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<td>R. v. C.R.B. (2009)</td>
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<td>Adult Cases</td>
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<tr>
<td>R. v. D.R. (2015)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>R. v. Turcotte (2008)</td>
<td>No</td>
<td>No</td>
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<td>Manitoba</td>
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<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
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<tr>
<td>R. v. J.J.H. (2010)</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<td>Offence</td>
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<td>Abuse/ Neglect/ Maltreatment</td>
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<tr>
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<td><strong>Adult Cases</strong></td>
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<td>Yes</td>
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<tr>
<td>R. v. C.G.D. (2014)</td>
<td>Second Degree Murder</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>R. v. J.J.T. (2012)</td>
<td>3 counts of First Degree Murder, 3 counts of Attempted Murder</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>R. v. D.L.S. (2012)</td>
<td>First Degree Murder</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>D.L.S.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J.B.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R. v. Prince (2012)</td>
<td>Second Degree Murder</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Out of 25 Offenders</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Average (%)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|                          | 9          | 20                         | 10                        | 17                       | 10                   | 23               | 13               | 24               | 15            | 9   |
| Average (%)              | 44%        | 80%                        | 40%                       | 68%                      | 40%                  | 92%              | 33%              | 96%              | 60%           | 36% |
As seen in Table 2, many youth have underlying causes to their criminal behavior. This supports the research demonstrating the complexity of serious violent youths’ pathway to crime. As a result, evidence based treatment is needed in order to combat the numerous risk factors present in each youth. For example, in this sample, 80% of youth were victims of abuse, neglect, and/or maltreatment, 68% had parents with substance abuse issues, 92% had substance abuse issues of their own, 96% had problems causing suspension or expulsion which led to the youth dropping out, and 60% had a criminal record, with the majority having more than one previous conviction. Ensuring youth receive individualized treatment is vital to decrease their risk of recidivism. Mandated treatment through the YCJA may be the best method to make sure this occurs.
Chapter 6.

Results

This chapter discusses the results of the two analyses used for this thesis. First, the analysis comparing the decision-making process and rationale judges’ use when imposing an adult as opposed to a youth sentence will be explored. The results will be separated into youth cases, adult cases, and between provinces. Second, the comparison between provinces will be examined. Are there provincial differences in the way the judges’ present information about the case, offender, and/or victim? Are there differences between provinces in which the judges discuss treatment? Each of these analyses will help improve our understanding of the decision-making processes of judges, and what factors are the most important when sentencing this unique population of youth. As with the overview of cases, the analysis will begin with British Columbia and end with Manitoba.

6.1. Adult Sentence vs. Youth Sentence

During this analysis, four main themes emerged. The four main themes consisted of ‘blameworthiness’, ‘public policy/interest’, ‘individual characteristics’, and ‘same offence, different sentence’. Blameworthiness captured the way the judge described the circumstances of the offence. Public policy/interest revealed how public opinion and policy concerns impact the reasoning behind judges’ decisions. Individual characteristics encompassed the way judges’ discussed the offender with particular focus on the offender’s personal background, criminal history, and responsiveness to previous treatment. Same offence, different sentence highlighted the differences in the rationale judges used to impose a different sentence for the same type of offence. The twenty-two cases were analyzed individually, first to establish the themes, and then they were compared based on being a youth sentence or an adult sentence. It was found that
these four themes were represented differently depending on whether a youth or adult sentence was imposed. Differences in language, tone, and judicial ideology were evident.

6.1.1. Blameworthiness

Blameworthiness was one of the most prominent themes in the analysis. More specifically, blameworthiness captured the language used by the judge and how the judge framed the offence; how did the judge discuss/describe the offence and the circumstances of the offence? This became apparent when the judge talked about the offence; the language, tone, and the judge’s disagreement with the accused’s actions were very clear. Depending on the sentence imposed, the judge used very emotive and moral language, or, factual, legal, and objective language. It was found that when judges imposed an adult sentence, the judges’ more commonly used moral and emotive language when describing the offence; whereas when a youth sentence was imposed, the judges’ language was a lot more factual and to the point. By using different discourse when describing the circumstances of the offence and the offender, the judges promoted support from the public and politicians, as using graphic and moral language increased the severity of an offence, which in turn was backed up by an adult sentence. Further, this increased the overall blameworthiness of the offender, justifying the imposition of an adult sentence. This aligned with the crime control ideology of the Harper government. The opposite was found for the youth cases. The judges downplayed the responsibility of the offender and their overall blameworthiness for the offence. In some cases, the judge placed part of the blame onto the victim, contributing to the offender’s reduced level of blameworthiness.

British Columbia

Youth Cases

In the case of R. v. J.A.P. (2008), who was convicted of the second degree murder of his mother, blameworthiness was demonstrated when the judge was describing his limited understanding for the gravity of his actions due to his young age:
...although the murder was marked by some of the features of planning and pre-mediation in that the accused armed himself and had elements of a plan to convince his mother to come with him to the wooded area near the home, the offence was very much a product of the dysfunctional family background and the defendant’s dependency and reduced level of maturity...the defendant was very young, even in the context of the age parameters of the YCJA (para. 31).

This shows that not only was the judge downplaying the accused’s actions due to his lack of understanding and culpability as a result of his youthfulness, but also the offence was partly the responsibility of his chaotic family life, which his mother had a hand in creating. The judge also made comment to the fact that the jury convicted J.A.P. with second-degree murder rather than first-degree murder, with which he was originally charged with. This demonstrated that J.A.P. did not legally meet the requirement for first degree murder, as a result of his diminished moral culpability. The judge reinforced the decision to convict J.A.P. with second degree murder, which continued to diminish J.A.P.’s responsibility:

In my view, the conviction of second-degree murder was based on the jury’s conclusion that although the defendant had formed the intention to kill his mother when he discharged the handgun, they were not satisfied to the criminal standard that his mental processes exhibited what the law requires to establish the planning and deliberation (para. 13).

As seen in the above excerpts, the language used by the judge was factual, legal, and straightforward. The judge decreased the blameworthiness of J.A.P. by addressing his lack of maturity at the time of the offence, noting that his planning and pre-mediation were not sufficient to meet the legal standards due to his youthfulness. Additionally, the judge partially blamed the victim as he placed some of the responsibility for the offence onto the dysfunctional family life to which J.A.P. was exposed to.

In R. v. B.S.A. (2013), another second degree murder case, the judge framed the offence in similar ways decreasing B.S.A.’s overall responsibility. However, in this case, the judge did use more emotive language than seen in R. v. J.A.P. (2008), but less than in the adult cases. For example, as the judge was imposing his sentence he stated “what you did was incredibly stupid, abhorrent and horrifying. You have caused lasting pain to the Denton family and James’ friends. What you did can never be undone” (para. 52).
The judge in this passage increased the blameworthiness of B.S.A. through the use of emotive discourse. This was the one and only instance where the judge used descriptive language when he described the offence.

Earlier in the case, the judge acknowledged the remorse of B.S.A., crediting him for understanding the consequences of his action’ “…I find that B.S.A.’s remorse is genuine and he truly does regret what he did and understands the damage he has caused” (para. 37). By the judge crediting B.S.A. for being genuinely remorseful it decreased his blameworthiness because there is a sense of sympathy felt for B.S.A.; he understands what he did was wrong, his actions have had grave consequences, and he is willing to accept responsibility and the consequences that come with that. Further, the judge referred back to the psychiatric report developed for this case and made specific comments regarding the emotional trauma experience by B.S.A when he was younger, and as a result he developed post-traumatic stress disorder. The judge was sympathetic to the traumatic experiences B.S.A. was victim to, and framed them as an underlying cause of his behavioral problems such as reacting aggressively:

…his exposure to intimate partner violence perpetrated by his father against his mother was a form of emotional abuse and may be the root cause of his behavioral problems at school and his substance abuse as an adolescent…the emotional abuse may have set the stage for B.S.A. to develop PTSD following an assault he suffered (para. 40).

The judge highlighted that the external circumstances that shaped B.S.A.’s behaviors were beyond his control, provided a feeling of empathy towards him. This decreased the blameworthiness of his actions as they stem from causes that were not his fault.

These two cases demonstrated how the use of language and tone by the judge can lessen the overall responsibility of the offender, and increase the support by the public for the sentence imposed. By understanding the circumstances of the offenders’ childhood and turmoil that they suffered at young ages diminishes the publics' belief that these two youth are “superpredators” who need to be locked away. The protection of the public is not in jeopardy as the two youth do not pose a risk to society by being high risk to reoffend. This is largely portrayed through the judge and how they framed the blameworthiness of the offender. This is in contrast to the five adult cases.
Adult Cases

*R. v. Kenworthy* (2008), who was convicted of manslaughter, was the first adult case analyzed. Right from the introduction of the case, the judge defined Kenworthy as having a high degree of blameworthiness and culpability. In the introduction, the judge stated “…the seriousness of the offence and the accused’s high moral culpability made a significant prison sentence appropriate” (page. 2). The judge immediately set the stage for Kenworthy to be fully responsible for his actions, and even though he was a young person at the time of the manslaughter, his youthfulness was not at all a mitigating factor. Further on in the case, when the judge was discussing the seriousness of the offence, he said “the circumstances of the offence are aggravated, extremely violent leading to a fatality” (para 21); which was followed by “I conclude that this home invasion was planned, that Mr. Kenworthy had covered his face to prevent anyone from identifying him…I find that he used the knife and the gun with fatal results and his sole motivation was to obtain money and or drugs” (para 23). The judge portrayed Kenworthy as a greedy and violent offender whose actions were deliberate and planned.

The judge further described Kenworthy as an individual who knew the gravity of his actions as he was armed with a gun and knife. As a result, the judge dismissed Kenworthy’s portrayal of remorse as his level of culpability and maturity outweighed the possibility of being remorseful; “I conclude that Mr. Kenworthy’s expressions of remorse as insincere. He referred to Mr. Woo as a ‘crack dealer’ and as a ‘gangster drug dealer’…it is clear that he is experiencing remorse for his own situation but lacks the capacity to empathize with Mr. Woo’s family” (para. 33). This is in opposition to the way the judge in the case of *R. v. B.S.A.* (2013) described and used remorse to decrease blameworthiness.

The judge continued to highlight the seriousness of the offence and the pre-mediation of the attack, both increasing the blameworthiness of Kenworthy:

…he armed himself with a gun and a small knife to protect himself and to terrorize the occupants of the house…I find that it was a cowardly and vicious attack on a defenceless man…Mr. Kenworthy was reckless in his conduct and I find that he was at the highest end of moral blameworthiness in committing the offence. As to the spectrum on the
circumstances surrounding the offence of manslaughter, the offence committed by Mr. Kenworthy is at the highest end of the spectrum, that is, closer to the definition of ‘near murder’” (para. 75).

This excerpt demonstrates that the judge considers the actions of Kenworthy to be the most serious that could fall under manslaughter, reaching close to murder. Additionally, stating “he was at the highest end of moral blameworthiness” along with the mention of murder increased the seriousness of the offence, which increased the need for a long and punitive sentence. Moreover, the judge is stating that Kenworthy not only killed Mr. Woo, but he also terrorized the other occupants of the home instilling fear in them. Ultimately, the judge painted a picture of Kenworthy as being a greedy offender who had a disregard for human life and understood the impact that his actions could have. Therefore, he does not have a diminished responsibility in his participation of the offence. This language and description of the offender is mirrored in the second adult case, *R v. D.D.P.* (2006); another manslaughter case.

Throughout this case, there were multiple statements made by the judge which increased the blameworthiness of the offender. The judge used a lot of emotive and moral language which depicted the offender as a threat to society, who had no feelings of remorse or regard for human life. Further, the strong language used by the judge greatly increased the seriousness of the offence as the judge painted a picture of the harm caused to the victim. All of these factors taken together provided a sense of sympathy for the victim and their family, while having no empathy for the offender. The judge began by stating:

For 7.5 kilometres he [D.D.P.] drove while dragging Mr. DePatie along the road beneath him. When Mr. DePatie’s lifeless and severely abraded naked body came free from the LeBaron’s undercarriage...Mr. D.D.P. continued to drive, leaving Mr. DePatie’s on the road (para 20).

These feelings were further felt when the judge was describing the injuries to the victim and that “Mr. DePatie did not die from being struck by the car, but rather from the injuries he sustained as he was dragged alive under the vehicle” (para. 24). Again the strength of the words used by the judge brings emotions to the surface, increasing the responsibility and culpability of D.D.P; “Mr. D.D.P. caused the needless, torturous, and entirely undeserved death of a fine, well-regarded and well-loved young man; a man
who was...acting as a responsible citizen when he was mowed over...and dragged to
his death" (para. 56). This quote specifically alludes to the fact that the victim was a well-
respected young man who was doing his job and acting as a reasonable citizen, when
he was unjustifiably hit by D.D.P. The judge is further painting a picture of D.D.P. having
no regard for the impact of his actions.

Later on in the case, the judge described the circumstances of the offence over
five paragraphs, with each paragraph specifically stating the unlawful conduct that
D.D.P. carried out over the course of the night, from underage drinking, to breaking into
cars, theft of a vehicle, theft of gas, and ultimately the death of Mr. DePatie. Yet again,
framing the offence as an outcome of many unlawful acts increased the
blameworthiness of the offender, promoting a punitive sentence:

The circumstances that led to the commission of the crime began in the
afternoon...D.D.P., a minor, unlawfully consumed beer. The beer he
drank was unlawfully obtained...he unlawfully became drunk and
disorderly...In the evening, while still under the influence of alcohol, Mr.
D.D.P. unlawfully damaged several cars and stole from them...then
unlawfully damaged a Chrysler LeBaron and committed theft...unlawfully
operated the car as an unlicensed driver...unlawfully drove drunk (para.
50-52).

The level of blameworthiness the judge put onto D.D.P. was high, which depicted the
seriousness of the offence and D.D.P. as deserving a harsh sentence.

In the third adult case, R. v. J.K.W. (2006), the judge again used strong
emotional language to increase the blameworthiness of the offender when explaining the
circumstances of the stabbing offence that resulted in a second degree murder
conviction. In his analysis, the judge stated, “…J.K.W. was the leader of a group of
young men who set upon two older men who were simply out for a walk...once the
confrontation was underway, with absolutely no provocation, J.K.W. used a knife he was
carrying and stabbed Mr. Scully” (para. 178). The judge is suggesting that not only did
J.K.W. attack and stab the victims with no provocation, he was the leader of the group.
This increased the level of J.K.W.’s responsibility. In the same paragraph the judge
continued, “This was a horrific crime. The attack was unprovoked, intentional, and
prolonged. It was a senseless crime which killed an innocent man and disturbed the
community because of its randomness” (para 178). As a result of the judge including the community as being a victim of this “senseless” crime, J.K.W.’s blameworthiness is increased, as his actions not only affect the victim and his family but the entire community as well. Meaning the impact of his actions are numerous; more victims, more responsibility, leading to greater consequences.

The judge went one step further and discussed the direct impact the crime had on the victim’s family; “…The emotional impact of the murder on the lives Kenneth Scully left behind has been profound and will no doubt last a lifetime. It is difficult to comprehend the scope of the loss to his wife, his sons and the other who knew him” (para 181). Bringing in the victim’s family increased the emotions for the victim and severity of the offence, which in turn increased the blameworthiness of J.K.W. The direct connection between the crime and the victim’s family further intensified the emotions felt for the victim. When imposing the life sentence onto J.K.W., the judge commented again on the gravity of his actions; “The crime J.K.W. committed in this case was one of the most serious in law. The repeated stabbing of a man forty years his senior with absolutely no provocation or motive is arguably one of the most serious types of homicides in the justice system” (para. 184). The words used by the judge are graphic and emotive leading to the imposition of a punitive sentence. This was also demonstrated in the fourth adult case analyzed.

*R. v. Arrieta* (2010) is another example of how the judge used language in order to frame the offence, which in this case was a second degree murder conviction, as well as two counts of attempted murder, and possession of a prohibited firearm conviction, in a specific way; to increase the blameworthiness of the offender. Multiple times throughout this case, the judge referred to the high level of culpability and responsibility of the offender. For example, “the defendant’s moral blameworthiness is high. While there certainly are some signs of adolescent impulsiveness, vulnerability and lack of foresight in the events which occurred...those are not lasting images” (para. 216). This excerpt is particularly interesting as the judge does mention the impulsiveness and lack of foresight of adolescents, which is in direct contrast with the other adult cases, but after mentioning them, the judge dismissed them. This showed that the judge acknowledged youth should not be held to the same degree of accountability as adults, but the fact that
he says “those are not lasting images” no longer decreased the blameworthiness of acting impulsive as it was not truly the case in this offence. This was further ingrained in the next two paragraphs with the judge saying:

In this case, the Defendant, a street-wise young man, accepted the request or direction of his older companion, Chantabouala, that he come to the downtown area to assist in the resolution of a personal confrontation…the key point is that the Defendant had time to consider his actions. He got a gun, knew it was loaded, and took a taxi to the scene, knowing full well that violence, or at least the threat of violence, was in the air…when specifically asked to perform the deadly task of shooting someone the Defendant barely wavered. He proceeded to shoot not one person, as directed, but three, and he did so with near-clinical precision (para's 217-218).

By following the comment on impulsivity, vulnerability, and lack of foresight with these two paragraphs, the overall blameworthiness of Arrieta is increased. The judge continued to re-enforce that Arrieta had a high level of blameworthiness by stating, “In my view, these are not so much the actions of a person demonstrating the diminished moral capacity of youth as they are the actions of a relatively mature young person…having reached a stage where he felt utterly unrestrained any regard for basic social value” (para. 220). Again, the judge framed the offence to have taken place by an individual who has reached the developmental stage of a mature person.

In his concluding remarks, the judge yet again discussed the seriousness of the offence and level of responsibility of Arrieta. First, the judge said “…the Defendant’s actions went well beyond killing one person, an act which is horrific enough in itself. In addition to killing Phil Truong, the Defendant maimed Than Le, probably for life, and very nearly killed Robin Lepard, all with deliberate murderous intent” (para. 314). Second, the judge followed that up by saying:

…it is of crucial importance, in my view, to note that the evidence strongly suggests the Defendant’s actions on the night of the shootings cannot fairly be portrayed as involving the impulsive, thoughtless behavior of a youth who fails to understand consequences and exhibits the reduced empathy of adolescence (para. 315).

Throughout this case, the judge downplayed and disregarded the impulsiveness and lack of foresight that is characteristic of adolescence, which increased the overall
blameworthiness of Arrieta. The judge framed his actions as being deliberate and well thought out. The use of emotive and moral language in conjunction with the dismissal of the vulnerability of youth, portrayed a highly culpable and responsible offender.

In the last adult case, *R. v. Wellwood* (2011), blameworthiness was once again demonstrated by the judge. The judge was extremely emotive when describing the circumstances of the offence, which resulted in a first degree murder conviction; “…the circumstances of this murder, as admitted by the young person…are so horrific that no words can adequately convey the inhuman cruelty these young men showed to Ms. Proctor” (para. 13). The judge continued to increase the blameworthiness of Wellwood and Moffat through more emotive language when he discussed the pre-mediation of the offence. In the next paragraph, the judge stated:

They planned in advance to sexually assault and kill Ms. Proctor. They chose her because they thought she would be an easy target, not necessarily because either of them had any ill will toward her…they lured Ms. Proctor to Mr. Wellwood’s home. They sexually assaulted and brutalized her there over several hours. They then killed Ms. Proctor. Ms. Proctor’s body was subjected to indignities and mutilation before being stored in a freezer. The next day, both young men took Ms. Proctor’s body…soaked it in fuel, and set it on fire (para. 14).

The graphic description given by the judge on the gravity of the offence through the use of emotive language increased the need for a punitive sentence because it is eliminated any chance of diminished blameworthiness these two youth may have. To further demonstrate the increase in blameworthiness of these two young persons, the judge stated, “…it seems to me that the evidence shows that each of these young persons was a full and willing participant in these offences” (para. 41). By stating that each of the young persons was a “full and willing participant”, it provided an element of culpability and responsibility on behalf of the offenders. This in turn increased their blameworthiness and the need for a long sentence which would hold Wellwood and Moffat accountable for their serious actions.

As seen by the examples, the way the judge framed the offence, through emotive and moral language in the adult cases compared to the more factual, straight forward, and legal language used in the youth cases, the audience is provided with a very
different picture. Through the language used by the judges in the adult cases, emotions of sympathy are felt for the victim and their families, and very little empathy toward the offender. The judges blatantly framed the offence to increase the blameworthiness of the youth which increased the support from the public and politicians as the courts are “getting tough” on serious violent youth who are a risk to the protection of society. Adult sentences were justified based on the premise of the judges and the way in which they decided to frame the offence.

**Alberta**

**Youth Cases**

In the first youth case, *R. v. A.A.* (2011), who was convicted of the first degree murder of his uncle, the judge increased the blameworthiness of A.A. through emotive and descriptive language, but decreased his responsibility when discussing A.A.’s uncle and his role as a major cocaine dealer. The judge began by increasing the moral culpability of A.A. when discussing the seriousness of first degree murder and how it is one of the most serious offences under Canadian law, the judge stated “According, the moral culpability- based solely on the offence- is extreme” (para, 61). With this being in the first paragraph of the judge’s analysis, it automatically set the tone for the decision, framing the moral culpability of anyone who committed first degree murder as high, regardless of any other circumstances. The judge continued by saying, “The murder was planned and deliberate, and therefore the intentional risk-taking was extremely high. The motive for murder was revenge…or personal gains, or both. No aspect of these motives reduces the moral culpability of first degree murder” (paras 62-63). This excerpt further enforced the high level of A.A.’s blameworthiness as the offence was planned based on revenge and/or personal gains.

This gave the impression that the actions of A.A. were selfish, not impulsive (due to the planning of the murder), and cowardly because he did not like the fact that he was cut from his uncle’s drug dealing business. The judge continued increasing the blameworthiness of A.A. by discussing the harm he caused and the impact his actions had on his entire family; “The consequential irreversible harm done by A.A. was the loss of a life. That loss undoubtedly caused pain to A.A.’s family- grief not only at a loss of a
family member, but also at the extent to which A.A. had embraced criminality” (para, 64). Extending the impact of A.A.’s actions to the victim’s family, the degree of A.A.’s blameworthiness is further increased as the more victims an offence has, the greater responsibility of the offender as their actions have affected multiple people.

The judge continued to increase A.A.’s blameworthiness when he described the offence and the degree of participation A.A. had. The judge stated, “The circumstances of the murder are both crudely violent and crassly mercenary. They are very serious” (para, 66). The judge continued by saying; “…He was a fully active party to the planning the murder” (para, 72). These passages demonstrate that the act carried out by A.A. was vicious, cruel, and serious, which automatically increased the culpability of an offender, especially with the use of strong discourse. The judge continued to blame A.A., when the motive of the offence was discussed. The judge outlined only two reasons why A.A. would have killed his uncle:

This highly serious offence carries evidence of two powerful motives: 1) profit-by taking over the drug trafficking operation, as pathetically naïve as that may have been; 2) revenge- in response to being kicked out of a suite paid for by the uncle after being accused of taking 2 ounces of cocaine without approval and stealing money (para 74).

This framed the motive for the offence as purely selfish in nature, again increasing A.A.’s overall responsibility. The judge was implying that he had no understandable reasons to conduct the actions he did. Interestingly, after all of this blame was put onto A.A., the judge did mention that if it wasn’t for his uncle and the criminal life his uncle led, then this offence would have never happened. By framing the victim as also being responsible for the offence, this decreased the overall blameworthiness of A.A. because he would have never been kicked out of the drug dealing business if there was not one to begin with. Therefore, the two motives for this offence the judge laid out would not have been present if it were not for A.A.’s uncle. The judge said; “…A.A. was brought into this illegal operation by his uncle as a 16 year old and exposed to a level of temptation that might not otherwise have existed in the absence of such family ties” (para, 84). The judge is alluding to the fact that if his uncle was not a major cocaine dealer and exposed A.A. to that lifestyle, then he would still be alive today. This places blame onto the victim, while
simultaneously taking blame off of A.A. Similar findings were apparent in the second youth case, *R. v. C.H.C.* (2009).

In *R. v. C.H.C.* (2009), C.H.C. was convicted of second degree murder, and the judge intensified the nature of the offence, rooted in emotional narratives, which increased the blameworthiness of the offender. However, the role the victim played in the offence was also discussed, decreasing the overall responsibility of the C.H.C. Consistent with A.A., the judge began by increasing the moral culpability of C.H.C.; “…I rejected C.H.C.’s testimony that he did not intend to kill the deceased or to cause bodily harm that he knew was likely to cause death and was reckless…I found…the evidence that C.H.C. shot the deceased to kill him and that it was a pre-emptive strike” (para, 16). The descriptive discourse the judge used is powerful, increasing the blameworthiness of C.H.C. because the judge discredited the testimony of C.H.C. This decreased C.H.C.’s credibility and through the judge’s use of expressive language, increased the seriousness of the offence. Both of these tactics separately increased the responsibility of the offender, but used together had a stronger impact, promoting greater responsibility of C.H.C.

Also mirroring the judgement in A.A., the judge in this case, discussed the impact the offence had on the loved ones of the victim; “…the victim’s fiancée who advised that she is still overwhelmed with grief, has been diagnosed with post-traumatic stress disorder and depression after witnessing her fiancée’s murder, continues experience difficulties sleeping and fears the day C.H.C. is released as she is testified against him” (para, 17). Discussing the impact the offence had on the victim’s fiancée increased the number of victims from one to two which made the offence more serious and violent resulting in the blameworthiness of C.H.C. to be greater because he is responsible for more victims. Also, by highlighting the fiancée is fearful of the day when C.H.C. is released, portrayed C.H.C. as a revengeful individual.

The judge continued to blame C.H.C. when describing the seriousness of the offence; “…Firing a loaded rifle at an individual who was lying on a sofa, unarmed, involved a very high level of moral culpability” (para, 18). This point was further solidified when the judge was discussing her final decision; “… C.H.C.’s response, fueled by the
consumption of cocaine, was brutal and cowardly, the deceased, lying prone on a sofa, having no means to defend himself” (para, 87). This painted a clear picture of the offence and the defenseless position of the victim. Both of these excerpts used strong language increasing the degree of violence in the offence, consequently increasing the blameworthiness of C.H.C. However, the judge did decrease the responsibility of C.H.C. by placing some of the blame onto the victim. Interestingly, this was done in the same paragraph (paragraph 87) when the judge was increasing the blameworthiness of C.H.C. The judge stated; “…I characterized the attack as a pre-emptive strike and the deceased was not innocent in his dealing with the accused having regard to the earlier kidnapping of the accused by his fiancée and threats made against him and his family” (para, 87). Again, this shifted the blame onto the victim which took the blame off of C.H.C. as his actions were somewhat justified as the victim struck first with the kidnapping and the threats. Had the victim not conducted those actions, then the chances of the murder happening were low.

The two youth cases showed a high degree of blameworthiness on the part of the offender through emotive and moral discourse, but this was balanced with the judge placing some of the blame onto the victim. The judges put responsibility onto the two victims by framing the offence as partly their fault, as their actions led to the decision of the accused to take action against them. The shift in blame was not identified in three cases where an adult sentence was imposed. The judges in each of those cases continued to use emotive and moral discourse, placed the blame solely on the offender, and highlighted multiple victims.

**Adult Cases**

In the first adult case, *R. v. Casavant* (2009), a first degree murder conviction, the judge discussed how the level of moral culpability was high, and placed the blame of the offence completely on Casavant. Further, the analysis conducted by the judge was short, to the point, stern, and punitive. The judge began his analysis by stating:

First degree murder is the most serious crime a person can commit. It is difficult to imagine circumstances more difficult than those presented here. Mr. Casavant’s motivation for killing Mr. Dierich was largely if not exclusively based on greed. His crime demonstrates a degree of inhuman
disregard for the value and sanctity of human life that is beyond comprehension (para, 50).

This excerpt is extremely emotive and punitive. The words used are powerful and expressive, greatly increasing Casavant’s overall degree of responsibility. With the judge using phrases such as “inhuman disregard for the value and sanctity of human life” and referring to the circumstances of this offence as being the most serious as any first degree murder could be, the blame is entirely placed onto Casavant. Using such strong discourse justified the imposition of an adult sentence, as this passage framed Casavant as an individual who had no appreciation for human life, increasing the support from the public to lock away a “superpredator” that was a risk to their safety.

The judge followed up the previous statement with:

The level of Mr. Casavant’s moral blameworthiness for this crime is extremely high. The risk created by Mr. Casavant’s act could not be greater...Mr. Casavant caused tremendous consequential harm to many people who were close to Mr. Dierich, particularly his mother and grandmother, as was clearly reflected in the victim impact statement...Mr. Casavant’s motivation by greed, his conduct in planning and committing the murder, and his wanton conduct immediately afterwards...are as far from normative as it is possible to get (para, 51).

These two passages back to back in the judge’s analysis rebutted any diminished blameworthiness of Casavant; the judge was stern in his tone and the language. Also, the judge brought in multiple victims by discussing the impact the offence had on the victim’s mother and grandmother. This increased the blame of Casavant as multiple people have suffered as a result of his actions. Further, the judge continued to frame Casavant as an individual whose actions were far beyond those of any normal person which implied that he is a danger to society. Again this justified an adult sentence and aligned with the crime control mentality of “getting tough” on crime.

In the second adult case, R. v. L.L. (2014), the way the judge framed the offence and the offender, mirrored Casavant. The judge was stern, punitive, emotive, and increased the blameworthiness of L.L., so he had the greatest degree of responsibility for the shooting offence that resulted in a second degree murder conviction. The judge began her analysis by stating:
The circumstances of this crime can only be described as horrific. The manner in which L.L. killed Mr. Haidar comes close to an execution. Mr. Haidar was lured by L.L. and others to an isolated location...it is aggravating that L.L. shot Mr. Haidar more than once...and that he committed a second crime, robbery, at the time of the shooting. It is further aggravating that he left the wounded Mr. Haidar in the middle of a park at night in the winter without concern for his welfare or any attempt to get him aid...L.L.'s crime represents a degree of inhumanity and disregard for the value of human life that is almost beyond comprehension. L.L.'s level of responsibility for this crime is extremely high (para, 42).

The judge was very clear on the fact that she does not condone the actions of L.L. The judge framed L.L. to be a “superpredator” who had no respect for human life and whose actions were appalling. Taken together, this excerpt placed the moral culpability of L.L. to be high. Further, the discourse used is stern, punitive, and emotive, increasing the support for an adult sentence.

Continuing with the increased level of L.L.’s blameworthiness the judge said:

The motive is murky but appears to be the result of anger, rage, and a desire to get back at someone that L.L. perceived wronged him. It is clear that L.L. was the major actor in this crime. He brought a gun and used it. He took an active part in the enticement of Mr. Haidar...can only be described as reckless (para 43).

By discussing the lack of motive, and luring the victim with the intention of harming him, increased the responsibility of L.L. Additionally, the fact that there was no tangible motive for the offence, implied that the victim was innocent and did not play a role in this offence, which was in contrast to the two youth cases. Furthermore, the judge highlighted the impact that this offence had on Mr. Haidar’s family, increasing the number of victims, which in turn increased the moral culpability of L.L.; “The harm caused to Mr. Haidar’s family was reflected in their victim impact statements. Mr. Haidar’s mother has been particularly affected by the crime and her grief when she read her statement was obvious to everyone in the courtroom” (para, 44). Not only did the judge bring in multiple victims when she discussed the impact of the offence on the victim’s family, but by also stating “obvious to everyone in the courtroom” continued to intensify the magnitude of the harm caused by the offence. This revealed the grief felt by the victim’s family was so large that everyone could see it.
The judge continued to solidify the high degree of L.L.’s blameworthiness when the judge discussed the actions of the accused after the offence had taken place:

It is has to be recalled, as well, that L.L.’s behavior immediately after he shot Mr. Haidar showed no remorse. Mr. Haidar was his friend, yet L.L. left him bleeding in the snow and went out partying. His main concern after the shooting was to dispose of the weapon and escape arrest. He has not expressed remorse in any of the ways normally recognized in the criminal justice system (para, 47).

First, by the judge stating “it has to be recalled” at the beginning of this expert, has a clear connotation that L.L.’s lack of remorse and conduct after the shooting, needed to be re-stated. This framed this point to be extremely important and increased the blame of L.L. Second, the emotive description of leaving Mr. Haidar in the snow while L.L. went to party continued to justify an adult sentence as these actions were unimaginable to the general population. Also, by re-irritating L.L. left Mr. Haidar proved his disregard for human life. Lastly, by the judge adding in “recognized in the criminal justice system” solidified the blame and culpability of L.L. because he has shown no remorse, not even an amount that is typically seen by offenders in the criminal justice system. Again, this increased the support and justification for an adult sentence, aligning with Canada’s larger social and political framework.

In the last adult case, R. v. Bird (2008), the judge replicated the findings to those in R. v. Casavant (2009), and R. v. L.L. (2014). Bird was convicted of manslaughter, kidnapping, and aggravated sexual assault. The judge commented frequently on the role Bird played throughout the attack on the victim, beginning with the kidnapping. Many times throughout the judgement, the judge discussed how Bird was convicted of manslaughter, not first degree murder as she left the scene prior to the victim being killed. Although, she left the scene and her level of participation decreased from first degree murder to manslaughter, her overall blameworthiness remained high because she knew ahead of time the entire plan, participated in it, and did nothing to try and prevent it. The judge began by saying:

…Miss Bird’s participation in the kidnapping of Miss Couterpatte, when she knew of the plan to kill, was an act that, viewed objectively and in light of Miss Bird’s own knowledge, put Miss Couterpatte at risk of life-threatening injuries…Assaulting Miss Couterpatte with a wrench, initiating
a group assault with weapons in that lonely place, built the risk even higher, still with Miss Bird’s actual knowledge. This was indeed a near-murder form of manslaughter, and Miss Bird bears a very high level of moral culpability for it (para, 22).

By the judge identifying Bird knew of the plan to kill the victim ahead of time, had a profound impact on the level of blameworthiness because Bird had the power to stop the attack from happening. If Bird had of intervened or brought the plan of the attack to the attention of police, then it would have never happened. Due to the fact that she did not take any measures to stop the attack from taking place, her level of moral culpability was extremely high. Furthermore, the discussion how on the spectrum of manslaughter, Bird’s case is “near-murder” increased the seriousness and violent nature of the offence, which increased the justification of an adult sentence.

Bird’s level of blameworthiness was continued to be increased when the judge stated in her final conclusion that, “…Miss Bird’s level of moral culpability, having regard to the actions she engaged in, her knowledge of the risk involved, and the terrible harm that resulted, is very high” (para, 52). This excerpt further acknowledged the fact that Bird knew of the plan to attack and kill the victim. With Bird having participated in the kidnapping and aggravated sexual assault, put her at the highest end of culpability for manslaughter. Keeping in line with the other cases, including the two youth cases, the judge discussed the impact that the offence had on the members of the victim’s family, increasing the number of victims, which in turns increases the seriousness of the offence.

The judge mentioned key passages from the victim impact statements that were emotive and grief stricken, amplifying the impact of the statements. For example, the judge paraphrased the effect the offence had on all the members of the victim’s family. The judge stated:

…Members of Nina’s family all reflect how much they miss a vibrant and loving member of the family, one who was snatched from them far too young. They are all left to think in terms of ‘wishes’ and ‘what ifs’, wishing that Nina could be here to share in the family joys, wishing that they could share her joys. Now they can only imagine things like special birthdays, graduation day, marriage and motherhood (para, 58).
The judge continued by following up with:

For many of them, their sorrow was also expressed as anger and hatred for Miss Bird. This response is, of course, understandable, and in a sense another impact of the offence...Nina’s mother said, she never knew she could hate so much, but she does. Her life has been poisoned by hatred, as well as loss (para, 59).

By the judge picking out those excerpts from the victim impact statement, they have a profound impact on the level of blameworthiness of Bird. The family of the victim suffered greatly from the death of their loved one, and her mother’s life will forever be changed. Choosing the quotes regarding hatred, especially felt by the victim’s mother, further blamed Bird because she had the power to stop the whole incident from happening. The tone in which the judge presented these statements, was stern and emotive as this heightened the role of Bird and the need for an adult sentence.

The degree of blameworthiness and the way in which the judge described the offence and the offender’s role in the offence was emotive, moral, and descriptive for all five cases. In every case the level of blameworthiness of the offender was increased by the way the judge framed the offence and the discourse used. The main differences identified between the youth and the adult cases were the judges placing some of the blame onto the victim in the youth cases, and the tone was more punitive and stern for the adult cases. These differences justified the differences in the sentences imposed and aligned with the larger social and political frameworks of crime control using “get-tough” on crime methods. The degree of blameworthiness that the judge placed upon the offender helped to justify the type and length of sentence imposed.

**Saskatchewan**

**Youth Cases**

The youth case, *R. v. C.R.B.* (2009), was an anomaly as the judge did not describe the circumstances of the offence, which was manslaughter, with any detail, other than the minimum to provide context to the case. However, when the judge was describing the aggravating and mitigating factors, he did make a couple remarks that increased the blameworthiness of C.R.B. During the discussion of the aggravating
factors, the judge said “…Philip Roy was an aboriginal youth and a totally blameless victim” (para, 36). Through the use of the words “aboriginal” and “totally blameless”, the judge increased the responsibility of C.R.B. Aboriginal increased the level of blame because in Canada they are a vulnerable population who have been through a tremendous amount of prejudice, racism, violence, and discrimination. Stating that this victim was an Aboriginal, highlighted he was a vulnerable youth. Also, by the judge adding that the victim was totally blameless reinforced he was completely innocent and had done nothing to be attacked.

Through that comment the judge increased the overall degree of moral culpability of C.R.B., but when the judge was discussing the mitigating factors, C.R.B.’s blameworthiness was decreased. The judge noted, “…The accused acknowledges the wrongfulness of his action, as indicated by feelings of empathy for the victim’s family and feels that a period of incarceration is the only way he can be held accountable” (para, 37). By the judge acknowledging C.R.B. as remorseful, and taking responsibility for his participation of the offence, decreased his overall blameworthiness. This was reinforced with C.R.B. accepting the consequences for his actions, stating that a period of incarceration was required to hold him accountable. He was someone who had expressed sincere empathy, understood his participation in the offence, and has taken responsibility for his actions. Overall, the analysis in this case was not based on the blameworthiness of C.R.B., making it a rare case in this thesis.

Adult Cases

For the two adult cases, the level of blameworthiness portrayed by the judge is consistent with the other adult cases in the thesis. The judge in both cases increased the overall blameworthiness of the offender by using emotive and descriptive discourse when describing the offence, and using strict, punitive language when commenting on the offender’s degree of participation. In the first adult case, R. v. D.R. (2015), the judge expanded the impact of the offence, which was a home invasion and an attack on the two homeowners that resulted in a second degree murder conviction, to have affected the entire community. This increased the number of victims and the severity of harm as a result of the offence, which increased the blameworthiness of D.R. The judge stated:
This offence shocked the community and in many ways tore this community apart. Part of what shocked this community was the way in which the murders were carried out and the extreme violence perpetrated on the two innocent victims. This is so far from the norms of any civilized community that is difficult to understand. D.R.’s participation was callous, brutal, and senseless. There is a huge moral culpability that does along with being a participant in such murders (para 57).

The judge increased the severity of the offence through the use of descriptive language, as well as increased the harm done to community. The judge also made reference to societal norms and how this offence was so far from normal it was difficult to comprehend. The judge included the role D.R. played in the commission of the offences, and labelled his actions as unthinkable. Continuing with the direct blame of D.R., the judge said:

Clearly, D.R. would have been able to foresee that bodily harm would have ensued even if the plan were to simply assault the victims...once in the house, a reasonable person would have foreseen the risk of serious bodily harm and life threatening bodily injury as a result of the repeated attack with knives on the two victims. The harm done to the victims was the ultimate and the harm was either intentional or reasonably foreseeable. D.R. bears a very high level of moral culpability for these crimes (para 58).

Increasing the harm done to the victims along with the D.R.’s knowledge of the plan to cause bodily harm, the judge placed all of the responsibility onto D.R. He had the power to prevent the victims from dying, by either preventing the offence all together, or decreasing the number of injuries inflicted onto the victims. Further, he could have called 911 rather than leave the victims to die in the house with no one knowing about the attack.

Throughout the analysis, the judge kept referring to the circumstances of the offence and its severity. With the constant discussion surrounding the offence, the impact of the offence on the victims' families as well as the community, and the role D.R. played in it, the judge framed D.R. to have the highest level of blameworthiness. The judge commented, “...The offence of murder, as I stated earlier, is the most serious offence and the circumstances surrounding the commission here was horrific. D.R.’s participation was brutal and senseless. D.R. bears a significant degree of responsibility
for these offences” (para, 95). The judge continued to increase the level of D.R.’s blameworthiness:

The harm done to the victims here was the worst kind. Sheldon Yuzicappi and Jessica Redman’s lives were needlessly taken in the brutal beatings and stabbings. The victims’ families, including their very young children, have been left to deal with the anger, shock, and grief that comes with the violent death of a loved one...The violence and extent of blows was horrendous. The harm done to the victims was intentional and the deaths that resulted were reasonably foreseeable...The impact of these tragic murders on the lives of Jessica Redman and Sheldon Yuzicappi’s families was profound and no doubt will last a lifetime (para, 98).

The use of strong emotional and moral discourse to describe the impact on the family members, as well as the harm done to the victims as a result of the attack brings the degree of blameworthiness to its highest point. Extending the number of victims beyond the two who were killed, increased the severity of the offence, which increased the responsibility of the offender, as the more victims of an offence, the greater the onus on the offender. This is truly felt through the use of the judge’s language.

In the concluding comments of the analysis, the judge once again referred the level of D.R.’s responsibility of the offence, reinforcing the nature of the offence and D.R.’s active role in it. The judge said:

…The three attacked the two residents, stabbing, beating, and ultimately bludgeoning them. The attack was vicious, brutal, senseless, and prolonged. D.R. had no personal interest or motive for the attack, but he participated readily once there. He stabbed Sheldon Yuzicappi multiple times and provided assistance so that Brittany Bear could stab Jessica Redman. D.R. left two people to die and made no attempt to call for help. He then fled with the two co-accused. D.R. is highly morally culpable for the deaths of two innocent people (para 117).

The continued discussion surrounding the circumstances of the offence, the harm done to the victims’ including their family members and community, along with the offence being so horrific that it goes far beyond the norms of society, the blameworthiness of D.R. is extremely high. Through these passages, the judge largely justified the need for an adult sentence.
In *R. v. Turcotte* (2008), another second degree murder conviction, the judge similarly framed the offence and the offender in order to increase the degree of blameworthiness, ultimately justifying the imposition of an adult sentence. However, the amount in which the judge kept referring to the level of moral culpability was not nearly as much as the judge in *R. v. D. R.* (2015). In the beginning of the analysis, when the judge was describing the offence, he was very factual until he made note that after Turcotte had stabbed the victim, he responded by saying “…you have been shanked three times bitch” (para, 5). Starting the analysis with the impression of Turcotte as acting proud of what he had done automatically portrayed Turcotte negatively, increasing his blameworthiness immediately. The judge did not discuss the blameworthiness of Turcotte again until his concluding remarks.

The judge outlined the offence and the degree of responsibility Turcotte had in its commission. The judge noted, “…What Turcotte did was so callous, brutal, and senseless that it showed a complete lack of appreciation of the value of human life. The crime committed by Turcotte was one of the most serious at law” (para, 94). The emotional and moral language used, described an individual who is a threat to society as he commits acts that are unimaginable due to having no respect for human life. This point was reinforced with the judge saying, “It is indeed chilling that after the commission of the offence Turcotte not only did not exhibit any remorse for what he did, he bragged about the killing. He described himself as the ‘Boxing Day killa’…His actions were not only vicious, they involved gratuitous violence” (paras, 95-96). Again how the judge described the offence by using emotive discourse increased the blameworthiness of Turcotte. Further, the fact that Turcotte was not remorseful and bragged about the killing, framed Turcotte to be a danger, which justified the imposition of an adult sentence.

The judge also increased the moral culpability of Turcotte by increasing the number of victims’ that resulted from the offence. As seen with the case of D.R., increasing the number of victims increased the harm that was a result of the offence, and ultimately the severity of the offence. All of these items increased the blameworthiness of the offender. There was a sense of sympathy felt for the victims. The judge commented:
This has been a difficult case for all whose lives have been affected by this crime. The emotional impact of the murder on the lives of Larry Moser left behind was profound and will no doubt last a lifetime. It is difficult to comprehend the extent of the loss to his wife, daughter, parents, sister, and brother-in-law and others who were his friends (para, 90).

The judge continued to extend the impact of the offence by discussing how the victim’s wife told their daughter about the offence:

...An example of the grief was the touching comment of Moser’s wife who tearfully described how she broke the news to her seven year old daughter...She said ‘the doctors tried to fix him but couldn’t, so they called in God. God told Daddy that he was getting angel wings and was needed in Heaven. He was going to fix all of God’s cars and in return angels would teach Daddy to fly. I looked at my daughter and she had the biggest tears ever running down her face. At that moment her innocence was taken away’ (para, 91).

This excerpt described an innocent child whose father was never going to come back. Through the use of this specific passage, the judge highlighted the impact of Turcotte’s actions, especially the fact that a child’s life will forever be changed due to not having her father to raise her. Emphasizing the effect the offence had on the victim’s family, specifically his daughter, placed a greater amount of blame onto Turcotte because of the lives he has negatively altered.

The judges in the two adult cases used strong emotional and moral language when they described the circumstances of the offence and used punitive discourse when discussing the role the offender played. Also, in both cases, the judge increased the number of victims, which increased the severity of the offence. Further, by the judge mentioning the impact the offences had on the victims’ families, there was sympathy felt for the victims’ and their families, while simultaneously feelings of anger were portrayed onto the offender. All of these tactics increased the blameworthiness of the offenders and rationalized the need of an adult sentence.
Manitoba
Youth Cases

In the first youth case, *R. v. D.R.A.* (2014), who was convicted of second degree murder the judge began by increasing the overall blame of D.R.A. when he was describing the offence, as well as he increased the number of victims. However, in his final analysis, the judge decreased D.R.A.’s blame by placing some of the responsibility on external factors. This led to a sense of sympathy, excusing D.R.A.’s actions. This also made the last portrayal of D.R.A. to be positive. The discussion surrounding the blameworthiness of D.R.A. began when the judge talked about the impact of the offence, especially on the victim’s family. The judge increased the harm of the offence by describing its ever lasting effect on the family members of the victim:

…The pain and heartache this crime has had on the family of the victim is enormous. It is ongoing and real. The victim was a good and an excellent father. He has been lost to his family forever. To the extent that I can’t comprehend the family’s pain and suffering, I extend my heartfelt sympathy. I can only imagine the loss, pain, and anger this offence has caused (para, 19).

The judge did use emotion to increase the severity of the offence, which in turn increased the blameworthiness of D.R.A. The judge continued to increase the moral culpability of D.R.A. by going into the circumstances of the offence. Consistent with the passage above, the judge used emotionality to highlight the innocence of the victim, and it was through the victim’s father act of kindness that caused the victim’s death. Portraying the victim this way, the judge increased the seriousness of the offence because sympathy was felt for an innocent individual who was victim to a random act of violence. This in turn, increased the responsibility of D.R.A.:

There is little doubt that the circumstances of this offence are serious. The victim and his father are visiting in their home when they welcome the accused and his friends into the home to warm up on a cold February night. For their efforts, they were subjected to random violence costing the victim his life. The facts evidence a senseless disregard for human life. The accused pulled the trigger. His moral culpability is high (para 22).
The use of phrases such as “subjected to random violence” and “senseless disregard for human life” are powerful, eliciting an emotional response of anger towards D.R.A. along with confusion, as the victim and his father were helping D.R.A. and his friends. Further, stating that it was the accused who pulled the trigger, placed the blame entirely on D.R.A. because if he had not gone through with his actions, then the offence would not have happened. Ultimately, these two excerpts increased the moral culpability of D.R.A.

As the analysis continued, the judge changed the portrayal of D.R.A. and his level of blameworthiness. The judge began to excuse D.R.A.’s actions by placing blame on his environmental factors, and recognized the remorse D.R.A. had for the offence. The judge also credited D.R.A. for the progress he made while in custody. Through these comments, empathy was felt for D.R.A., as he dealt with many unfortunate circumstances during childhood. This provided insight into his problem behaviors. Moreover, the judge acknowledged D.R.A.’s participation in programming and education while in custody, a sense of optimism for his future was felt. Both of these factors decreased his overall moral culpability. The judge first mentioned the environmental hardships D.R.A faced:

This accused has suffered from the effects of colonization. The parenting he received from his mother is an all too common example of the effects of this country’s residential school policy. The accused was exposed to drug abuse and violence from a young age. He has had little meaningful supervision while growing up and little structure of his lifestyle (para 34).

The judge continued this depiction of D.R.A. by noting the effort of D.R.A. to face the victim’s family, expressing remorse through a heartfelt apology:

I had the opportunity of hearing the accused address the court at his sentencing hearing. At the conclusion of his remarks, I gave the accused the opportunity to address the family of his victim…On the spur of the moment, the accused turned to the family and gave a compassionate and in my opinion, genuine apology to the family (para, 35).

These two passages decreased the responsibility of D.R.A. because the judge focused on his environmental circumstances, which did not set D.R.A. up with prosocial values, structure, and adequate supervision. The impression given was D.R.A. had “an uphill battle” from the beginning, leading to a sense of compassion and understanding for his
behaviors. Also, by highlighting his courage to turn and face the family of the victim to offer a sincere apology, demonstrated the remorse felt. The moral culpability of D.R.A. was further decreased when the judge began discussing the positive steps he made while in custody:

Based on the behavior and progress made by the accused in custody, I am not satisfied that the accused possess the moral capacity of an adult at the time of the commission of the offence. He had not benefitted from an appropriate upbringing to allow him to fully comprehend the gravity of his actions and to make appropriate decisions (para 36).

By the judge stating D.R.A. did not have the moral capacity of an adult along with his inability to make appropriate decisions based on his childhood, greatly decreased his overall blameworthiness. The emphasis of his childhood, genuine remorse, and his progress in custody outweighed the circumstances of the offence and the impact on the victims, making D.R.A.’s overall blameworthiness low. The judge discussed the factors decreasing D.R.A.’s moral culpability later in the analysis and with more detail, leaving a positive and sympathetic impression of D.R.A.

In R. v. J.J.H. (2010), the second youth case analyzed, the judge was very sympathetic toward the circumstances of the shooting offence, which led to two second degree murder convictions, and the offender decreasing J.J.H.’s blameworthiness. Further, the judge placed some of the blame onto one of the victim’s (the mother) which continued to decrease the overall degree of J.J.H.’s responsibility. The only portion where the judge increased the blame of J.J.H. was when the judge was discussing the circumstances of the offence which resulted in his five year old adoptive sister, who was an innocent bystander, to be a victim. The judge did place the responsibility of her death onto J.J.H., but decreased his blame for his adoptive mother’s death. Through four passages, the judge increased then decreased the blame of J.J.H., and the decreasing continued through the remainder of the analysis. The judge began with stating:

J.J.H. has pled guilty to two counts of second degree murder. They only offence more serious...is first degree murder. The first victim was his mother, a person with whom he had a very poor relationship. The second victim was his five year old sister, an innocent child who happened upon the murder of her mother and was killed herself. Due to the type of offence and the killing of this innocent child, this is clearly a very serious
offence. I have found previously that J.J.H. struck back at his mother as many other children had done in similar circumstances (paras 120-123).

The only blame placed onto J.J.H. through these passages was for his sister. In regards to his mother, the judge framed the offence to be a natural reaction for anyone who was in J.J.H.’s situation. The judge noted the poor relationship he and his mother had, and then concluded by stating the offence was a normal reaction. As a result of his childhood and the abusive environment he was raised in, J.J.H. was referred to an offender unlike other offenders. By depicting J.J.H. through this lens, his moral culpability is further reduced, “It is important to remember…that J.J.H. is unlike other youth who have murdered. In those youth murdering was a side effect of a developmentally early commitment to a criminally motivated lifestyle” (para 129). This passage demonstrated J.J.H. was different, as he had not committed himself to a criminally motivated lifestyle, meaning the offence was the product of the negative and abusive environment in which he was raised. J.J.H. was not a youth who committed crimes for the reasons typically seen in young offenders. This representation diminished the blame of J.J.H.

The lack of blameworthiness was reinforced when the judge noted how J.J.H. regretted his actions, especially for killing his sister, and expressed genuine remorse for her death. It was not his intention to kill her, “…J.J.H. has described and portrayed genuine regret and remorse for what he did and especially so about his sister” (para, 130). By the judge noting the remorse felt by J.J.H., there is sympathy felt for him, which portrayed J.J.H. positively. This construction of J.J.H. continued late in the analysis:

The two murders especially that of an innocent child, are very serious. For this reason alone the moral blameworthiness attaching to J.J.H.’s conduct is high. He was very young at the time and he was striking back at a situation which had been building in him since his very early years. He is not a hardened criminal and there are excellent prospects for rehabilitation (para, 147).

Again the judge placed the blame onto J.J.H. for the killing of his sister, as she was an innocent five year old; but there was no blame placed onto J.J.H. for the killing of his mother. The judge framed that portion of the offence to be largely her responsibility, if she was not an abusive parent, then this would not have happened. Also, by the judge noting J.J.H. was not a hardened criminal and he was an excellent prospect for
rehabilitation, a sense of optimism was provided for J.J.H. and his future. As a result, his level of blameworthiness was further decreased.

In the last youth case, *R. v. R.L.T.* (2012), C.F. was the young offender who received a youth sentence case, whereas R.L.T. received an adult sentence for a manslaughter conviction. The judge was descriptive when describing the circumstances of the offence, painting a picture of a brutal attack. This was also depicted when the judge described the corners report and all of the injuries to the victim. By describing all of the injuries, the amount of violence placed on the victim was unnecessary, the blameworthiness of C.F. was increased. However, the judge finished her analysis by talking about the remorse C.F. felt, and the progress made in custody, decreasing C.F.’s blame.

At the very beginning of the analysis, the judge went into detail about the facts of the case which had a lasting impact when reading the rest of the case. Knowing the harm caused to the victim, all of it being unnecessary, the degree of blameworthiness began very high for C.F. The judge described the details of the assault, highlighting all of the kicks, and punches C.F. delivered to the victim, along with the use of a log as a weapon to continue his attack. The judge continued by discussing how the boys tried to hid the victim’s body by dragging it into a ditch, and taking the victim’s sweater which was used to drag the body and his shoes. The blameworthiness of C.F. was high after the judge described the circumstances of the offence because it was so violent. His degree of responsibility was further increased when the judge highlighted the injuries caused to the victim:

> ...The autopsy determined that the cause of death was multiple blunt force traumas. There were multiple contusions and abrasions to the head, a fracture at the base of the skill, several subarachnoid and subdural hemorrhages. There were other grievous injuries to the torso, limbs, laceration of the liver and hemorrhaging throughout the body (para, 8).

To inflict all of those injuries, the level of moral culpability is high. The responsibility of C.F. was further increased later in the analysis when the judge stated:

> This was nothing less than a prolonged and brutal attack on a defenceless victim. Hunter [the victim] was left to die in a ditch while both
R.L.T. and C.F. went off and burned some of his clothing in an attempt to escape detention. The victim impact statements...demonstrate the grief and loss felt by his family (para 45).

Directly after that passage, the judge changed the depiction of C.F., as she highlighted the progress C.F. had made in custody and the remorse felt. The judge credited C.F. for his participation in programming, and the positive presentence report he had. Further, the judge noted that C.F. felt genuine sympathy for his behavior and was taking full responsibility for his actions. Due to the great improvement C.F. had accomplished while in custody, the judge commented she wanted to continue to promote his rehabilitation; “...C.F. has continually attempted to address his issues while in custody and has never had significant difficulties while in custody...He exhibited extreme remorse for his actions as represented by the letter of apology that he composed and readout in court to Hunter's family” (para 53). Noting the positives of C.F. and the remorse felt, decreased his blameworthiness, which was framed to be extremely high at the beginning of the case.

**Adult Cases**

For R.L.T., the co-accused of C.F. who received an adult sentence, the judge differed in his blameworthiness by not decreasing it as she did for C.F. As with C.F., the judge began by placing the degree of moral culpability at the high end, but this level of blameworthiness continued throughout the case for R.L.T. Where C.F. was credited for his work in custody and his level of remorse, R.L.T. was not. This was largely due to R.L.T. having difficulties in custody and there was no mention in the case that he felt remorse or took responsibility for his participation in the offence.

How the judge discussed the circumstances of the offence, along with the offender in *R. v. R.L.T.* (2012) specifically R.L.T., was similar to how the judges in the other adult cases framed the blameworthiness of the offenders’. In *R. v. C.G.D.* (2014), who was convicted of second degree murder, the judge increased the blame of C.G.D. by highlighting the fact the offence was gang related, meaning it was planned and deliberate, and C.G.D. willingly took part in the offence with awareness of what was the intended outcome. The judge did not decrease his level of blameworthiness by placing
blame onto the victim, there was no mention of remorse or much discussion around his progress made in custody. The judge increased C.G.D.’s level of culpability when explaining the circumstances of the offence:

The serious nature of this offence is obvious, involving as it did, a high degree of violence. This was a gang-related shooting at close range in broad daylight by an individual who already subject to several court orders. Some planning was involved...The shooting occurred amidst a populated neighborhood, near businesses, playgrounds and a university (para 19).

Adding that the offence took place in the middle of the day, in an area that was populated with businesses, school, and playgrounds, increased the severity of the offence, which increased the blameworthiness of C.G.D. Knowing that this offence was gang related decreased the impulsivity of C.G.D.’s behavior. By decreasing C.G.D.’s impulsivity, naturally his blameworthiness increased and this was reinforced by the judge:

...I think it significant that this crime was not an impulsive act. The planning involved and the deliberate acts reflect adult qualities...C.G.D. knowingly carrying a loaded handgun that day, intentionally walked into a back lane, aimed his gun at Mr. Harper with intention to wound him, and shot several times (para 33).

This passage completely placed the blame onto C.G.D. Stating that the act was not impulsive, underwent planning which required adult –like qualities, and C.G.D. knowingly carried a loaded gun with him, and personally shot the victim. By the judge discrediting C.G.D.’s actions to not be impulsive and labelled them as requiring adult qualities, diminished any lack of moral blameworthiness. Under the Act, blameworthiness captures the “youth-like” qualities of adolescents, such as unable to foresee consequences; therefore, dismissing these qualities through this passage, the diminished blameworthiness of C.G.D. is rebutted. Additionally, the judge used the word “intention” twice to describe the actions of C.G.D. which also increased his culpability in the commission of the offence.

Keeping in line with this framework, the judge mentioned that C.G.D. was already subject to many court orders, meaning this behavior was typical for him; it was not an accident or chance occurrence that he was involved in another offence because his past
behaviors were the same. This point was further reinforced during the judge’s conclusion of the analysis, “This was a brazen act by a young person entrenched in gang culture that strikes at the core of society’s sense of security. C.G.D. had a criminal record and was on several probation orders at the time. The moral culpability is high” (para 36). Re-iterating that this offence was gang related increased the seriousness of the offence. Also, by noting this offence was gang related, decreased society’s sense of safety, and increased the number of victims as the community’s level of fear is increased. In turn, the responsibility of C.G.D. was increased. In this passage, the judge again increased the blameworthiness of C.G.D. by mentioning his criminal record, normalizing this type of behavior for him. The judge increased C.G.D.’s blameworthiness through three different types of discourses in this one passage. An adult sentence is justified by increasing the blameworthiness of C.G.D., aligning with the crime control political and social frameworks.

In R. v. J.J.T. (2010), who was convicted of three counts of first degree murder and three counts of attempted murder, the judge mirrored the judge in R. v. C.G.D. (2014), increasing the blameworthiness of J.J.T. through the circumstances of the offence and his degree of participation. In this analysis, the judge did not make any specific comments regarding the blameworthiness of J.J.T. as the overall analysis was largely based on the presentence report and the legal analysis required when determining a youth vs. an adult sentence. Yet, when the judge did make reference to the circumstances of the offence or J.J.T., the judge’s use of language increased the degree of J.J.T.’s moral culpability; “The facts themselves speak to the seriousness of the offence. Six people were killed or injured by strangers in the sanctity of a private home. Several children lost parents. Many families were devastated. The community’s sense of security was shaken by the apparently random nature of the attack” (para 14). Through this excerpt, the judge mentioned many instances that increased the blameworthiness of J.J.T. First, speaking to the offence occurring in the privacy of one’s own home increased responsibility because of the sense of safety and security your home has. Everyone should feel safe in the privacy of their home and no one has the right to take that sense of security away. Second, describing the effect the offence had on the people at the party, especially noting the children, increased the severity of the offence because this offence had multiple victims’ including innocent children. With more
victims’, the more severe the offence becomes, the higher the level of blame onto the offender. Lastly, the judge continued with the increasing the number of victims’ by including the community and the impact the offence had on the community, shaking its sense of security. These three points all increased the blameworthiness of J.J.T.

Interestingly, in the presentence report, the judge made reference to the remorse and regret J.J.T. expressed for his behavior, but this was discredited by his probation officer and the psychologist who conducted his psych assessment. They noted that J.J.T. was very manipulative and did not believe his empathy sincere. The fact that the judge picked this excerpt out of the presentence report supports the high level of J.J.T.’s blameworthiness portrayed throughout the case. In the final conclusion, the judge again noted the seriousness of the offence and how J.J.T. played a direct role in the commission of the offence:

Horrific as it is that three people died, in the circumstances it is remarkable that only three were killed. One would expect that a spray of 19 bullets at close range into a group of people in such a small area would have had even worse consequences. J.J.T.’s involvement was direct and premeditated, his moral culpability is great, and the degree of hard caused was devastating and far reaching (para 43).

The emotive language used in this passage, especially when describing the offence, along with directly implicating J.J.T.’s involvement, and the overall harm caused, all increased the blameworthiness of J.J.T. Through three examples in one passage, the judge reinforced the gravity of the offence and the role J.J.T. played in it. Overall, the judge placed J.J.T. at the highest end of moral culpability for this offence.

In the fourth adult case, R. v. D.L.S. (2012) mirrored the other adult cases. As with the other cases (R. v. R.L.T. (2012), R. v. C.G.D. (2014), R. v. J.J.T. (2010)), the judge placed a high degree of moral blameworthiness onto the accused when describing the circumstance of the offence, which was the shooting of a rival drug dealer that led to a first degree murder conviction. In this specific case, there were two accused, D.L.S. and J.B., and the judge placed equal blame onto the offenders’ initially. The judge noted that both D.L.S. and J.B. were members of the Indian Posse gang and acted as “strikers” for the gang in an attempt to exert control over the drug trade. As a result, this
offence was planned and deliberate, taking out any possible impulsivity to explain the offence:

The fact that the offence was a gang-related execution which took place in broad daylight in front of neighbors, including children, increases the severity of the circumstances of the offence. Certainly members of the immediate neighborhood where the offence took place were shaken by the incident and with the implications for their personal safety as well as the safety of their homes and the community at large...Both D.L.S. and J.B. had equal involvement in the shooting and they acted in unison. The evidence disclosed that both guns were fired at the same time (paras 16-17).

As seen with the other cases, the judge was making multiple points and with each point, the level of culpability is increased. First, the offence was gang-related, that in it-self increased the severity of the offence. To increase the severity even more, the judge included the word “execution” which is a descriptive word to assist in the framing of the offence. Second, the shooting took place during the day in the middle of a neighborhood in front of children. Including children always increases the severity of the offence as they are innocent and need to be protected. Third, the judge increased the number of victims to include the entire neighborhood as their sense of safety was decreased, which increased the severity of the offence. Lastly, the judge commented that both D.L.S. and J.B. were equally involved and each of them pulled the trigger on both of the guns used. All of these facts contained in one passage increased the severity of the offence, and the degree of participation of the two youth, which ultimately placed their level of blameworthiness as high.

Further on in the analysis, just prior to the final conclusion, the judge again reinforced the degree of responsibility of the two accused, “In the circumstances of the present case, the intentional risk taking of both D.L.S. and J.B. is high, the consequential harm is the most serious and the conduct is far removed from what would be considered normative by any standard” (para, 48). This quote is interesting in two ways. First, the judge stated the behaviors of D.L.S. and J.B. were far beyond normal, which increased the perception of danger they pose to society, which increased their moral culpability, justifying an adult sentence. Second, this quote came directly before the judge made her final concluding statements on how to sentence the two youth. Increasing their blame
and their level of danger to society just before the judge handed down the sentence helped with the rationalization of the imposition of two adult sentences.

In the last adult case, *R. v. Prince* (2012), who was convicted of second degree murder, Prince’s level of blameworthiness was increased by the judge placing him as the principle participant in the murder itself, as well as a principle and/or abettor to the robberies. Placing Prince as the primary participant in the murder made him solely responsible for the offence. Additionally, the fact that he was committing robberies when the murder took place increased his level of culpability because he was committing illegal activities which led to the murder. If he had not participated in the robberies, then the murder would not have happened. Framing the offence this way, placed the majority of the blame onto Prince:

Taken as a whole, the evidence satisfied me beyond a reasonable doubt that Mr. Prince was present during the course of all of the events that occurred…that with respect to each of the four robberies, Mr. Prince participated in the same either as a principle or as a party…Mr. Prince participated in the assault on Mr. Hall that caused his death and did thereby commit the offence of second degree murder (para, 26).

Prince’s blameworthiness continued to be increased when the judge described the circumstances of the offence. In this passage, the judge used strong emotive language, which painted a picture of Prince and his co-accused on the night of the murder:

The circumstances of the offences are distressing, involving a high degree of violence and in the murder of Mr. Hall, gratuitous, unmitigated brutality. In convicting Mr. Prince, I described him and his cohorts as urban pirates who entered into an agreement in the early part of the evening… and to rob anyone and everyone they would happen to run into on their bicycles (para 27).

First, the language used to describe the attack on Mr. Hall was very powerful. Second, the use of strong discourse was continued when the judge described Prince and his cohorts as “urban pirates”. Through this language, the judge portrayed Prince as a danger to society as he engaged in activities that can be synonymous with pirates. Most depictions of pirates are as merciless and greedy individuals who participate in a myriad of illegal activities with no hesitation, including murder. This representation
placed Prince at the highest end of blameworthiness and justified the imposition of an adult sentence.

In the adult cases, the judges placed the offenders at the high end of moral culpability. There was no decreasing their level of blameworthiness through the acknowledgment of remorse, placing blame onto the victim or external circumstances, or progress made in custody, which helped them understand their behaviors, as seen in the youth cases. Also, the judges in the adult cases used a higher degree of emotional and descriptive discourse than in the youth cases. In the end, this rationalized the requirement of an adult sentence, and affiliated with the larger social and political framework of crime control. Blameworthiness largely related to the second main theme, public policy/interest.

6.1.2. Public Policy/Interest

Public policy/interest examined how the judges framed the public interests and the extent to which the public’s interests or the public’s safety was considered in comparison to the offender’s interests. This theme was evident with the justifications used by the judge; for example, how did the judge justify the sentence imposed, what rationale was being used in order to back up the sentence. In this theme, the role of rehabilitation vs. punishment was particularly examined. How were those sentencing objectives being weighed in the decision-making process of each judge. All of this came through when the judge was discussing the sentence, as well as the overall purpose of the sentence. Again, depending on the sentence imposed, there were differences in the justification. For the youth cases, the sentence was largely based around the best interest of the offender and their rehabilitation. As a result, the public’s best interest was also a sentencing objective because through rehabilitation, the risk of recidivism would decrease. In contrast, for adult sentences, the sentence imposed was centered on the public policy and interest, with little focus on the offender.
In *R. v. J.A.P.* (2008), the judge discussed his sentence surrounding the lack of criminal record, how J.A.P. had become a prosocial citizen who obtained a legal source of employment, had prosocial relationships with his step-mother and sisters, and the best approach to dealing with the behavioral problems he had was through rehabilitation. The judge stated:

Subsequent to the murder, the defendant continued to live at home until he was 16. He then travelled to India and stayed six months at a Hare Krishna temple. After some further travel, he returned to British Columbia and took work at Whistler. He went back to high school and completed grade ten. He has subsequently maintained employment working in construction, and would like to get trades training in carpentry. He remains estranged from his father but gets along well with the woman his father subsequently married (para 25).

Through this excerpt, the judge was giving J.A.P. credit for doing well after the offence. Due to the dysfunction he had to deal with growing up, the fact that he was able to make his life better was acknowledged. This justified a sentence that is “offender centric” as the judge portrayed the offender in a positive manner.

This was further demonstrated when the judge was discussing his decision on whether to impose an adult sentence, and what factors helped him to come to the conclusion that a youth sentence was of sufficient length to hold J.A.P. accountable. The judge commented, “the defendant, now 23 years of age, has not significantly re-offended, that while needing further counselling and insight into his behavior, the defendant is a reasonable candidate to successfully complete a program of rehabilitation within the maximum term stipulated under the Y.C.J.A.” (para 31). Again, this showed optimism for the future well-being of the offender, and through the appropriate programing, J.A.P. would be able to understand his behavioral problems that stem from his childhood. This in turn, would promote the successful reintegration of the offender, and the long term protection of the public.
Interestingly, when the judge was discussing the time J.A.P. already served, he mentioned how he was currently behaving in custody. The judge noted that there had been a number of incidents that involved J.A.P. fighting with other inmates or reacted in a negative manner towards the control and structure of being in custody. The judge downplayed the seriousness of these incidents by stating, “…this appears to be in accord with a background of violence response to conflict and his eventual reaction to parental control” (para. 26). The judge put a large amount of the responsibility back onto his childhood and the control of his father as being the main reason why he responded negatively to control and confrontation. The judge continued by saying, “…anger management training and violence prevention should clearly be a focus of rehabilitative programs” (para. 26). This demonstrated that through rehabilitation, J.A.P. would learn the proper skills he needed to understand his behavioral problems and develop prosocial methods in dealing with situation of control and/or confrontation. As seen by the excerpts, the judge promoted the positive characteristics of J.A.P., and recognized how his childhood played a major role in his current behavioral problems. As a result, he was in need of rehabilitation in order to understand the reasons for his reactive behaviors. This framed the sentence to be in the best interest of J.A.P. Similar justifications were found in R. v. B.S.A. (2013).

When the judge was imposing the sentence onto B.S.A., he made a few comments as to why B.S.A. did not warrant an adult sentence, and a youth sentence would be sufficient to promote his rehabilitation and protect the public. First, the judge said, “…cases that involve factors such as premeditation, prior criminal records, moderate or high risk of recidivism, lack of remorse and poor rehabilitation prospects were more likely to lead to an adult sentence being imposed. None of those factors are present in this case” (para, 46). Through this statement, the judge was justifying his decision for a youth sentence by demonstrating that this specific case did not meet the requirements for an adult sentence. As with J.A.P., the judge promoted the positive aspects of B.S.A., for example, his remorse, lack of premeditation and criminal record, which showed the public that he was not a danger to re-offend; therefore, he was not a risk to the public.
The judge also commented on how B.S.A.’s sentence needs to be centered on rehabilitation especially due to his diagnosis of PTSD and ADHD. He mentioned that B.S.A. required specialized treatment which he had been receiving in the youth facility. The judge went one step further by saying, “…his rehabilitation progress and due to the much greater harm for both him and society should not go to adult custody” (para. 42).

The judge through this passage recognized that placing B.S.A. in an adult facility would be counterproductive to the progress he had made in custody to date, and would jeopardize his future rehabilitation. This would also put the public at risk; therefore, by framing the sentence in the best interest of the public through a youth sentence focused on rehabilitation, increased the support for a youth sentence. The judge’s decision was further justified when he said:

...Given the circumstances of the offence, your history and circumstances and the various other factors…I find that a youth sentence will have sufficient length to hold you accountable for your behaviour. In order to achieve the desired goals of rehabilitation and reintegration, I find that the maximum allowable youth sentence must be imposed...For that reason, I am not going to give you credit for the pre-sentence custody which you have served. (para, 53).

This statement is interesting because on the one hand, the judge was justifying the sentence based on the best interest of the offender through rehabilitation, but he was also increasing the punishment of the sentence by not crediting for time already served. The judge framed this decision as a method of ensuring the appropriate treatment required, but may also be an underlying justification for imposing a youth sentence to align with crime control ideologies. These two cases are in opposition to how the judges in the adult cases framed their sentences.

**Adult Cases**

In the adult cases, the main rationale used by the judges was to promote the protection of the public, as well as their confidence in the administration of justice. These sentences were focused solely on public policy and interests with the offenders’ interests being of secondary importance. As seen in *R. v. Kenworthy* (2008), “In circumstances such as this, it is my opinion that the Court’s responsibility is to protect the public, to maintain their confidence in the administration of justice and to impose a sentence of
sufficient length to hold Mr. Kenworthy accountable” (para, 81). In this passage, there was no discussion regarding the best interest of the offender or how through rehabilitation, the protection of the public can be achieved. The judge also made a comment regarding Kenworthy’s potential for rehabilitation, saying that he was not a good candidate for rehabilitation; therefore, it cannot be the main sentencing objective used; “while rehabilitation cannot be overlooked, it is of secondary importance...this is particularly so when there is no indication the offender is a good candidate for rehabilitation” (para, 71). By stating the offender is not a good candidate for rehabilitation, and making it less important in the final sentencing decision, a harsher sentence is justified. This is supported by the public and politicians.

This mentality of the judge was also seen earlier in the case when the judge stated:

...Sentencing Mr. Kenworthy under that Act will not ensure Mr. Kenworthy’s rehabilitation and his eventual reintegration into society. A sentence under that Act will not mean that he is subject to meaningful consequences that can promote the long term protection of society. A sentence under the YCJA will not hold Mr. Kenworthy accountable for the offence through the imposition of just sanctions that have meaningful consequences to him…I have no doubt that an adult sentence must be imposed (para, 57).

In this excerpt, it is clear that the judge did not believe that a youth sentence would promote the rehabilitation and reintegration of Kenworthy, as a result the protection of the public would be jeopardy. This sentence is largely justified on the grounds of crime control and satisfying the public and politicians that the Court is not going to tolerate serious violent behavior committed by youth. This theme is consistent through the remaining cases.

In R. v. D.D.P (2006), the judge was very strict in his rationale for the sentence, with very little weight given to any mitigating circumstances or consideration to the offender. The underlying justification for D.D.P's sentence was largely based on the public’s interests. While the judge was explaining the circumstances of the offence over a span of seven paragraphs, the judge referred to how the members of the community would “justifiably be angry at his conduct”, “would justifiably be angry and frightened by
his conduct", "would justifiably be outraged by his conduct", "would justifiably be horrified by his conduct", and "would justifiably shake their heads in disbelief and despair" (para. 50-55). By continuously referring back to how the community would denounce D.D.P.’s behavior, it set the rationale for a more serious and punitive sentence because the community gravely disagreed with the conduct of D.D.P. Therefore, the only way to satisfy the public and promote the administration of justice was through an adult sentence. The judge continued the justification of an adult sentence by decreasing the impact of any mitigating circumstances, while at the same time increasing the effect of the aggravating ones. Yet again, this is in line with the crime control policies and putting public policy and interests first.

This was especially apparent when the judge was discussing D.D.P.’s guilty plea. The judge acknowledged that a guilty plea is a mitigating factor, but given the seriousness of the offence, the suffering of the victim, and the continuous amounts of unlawful behavior D.D.P. took part in over the course of the night, the mitigating factor had little, if any, weight. In paragraph 62, the judge stated, “In mitigation, Mr. D.D.P. has entered a guilty plea. The parties agree that Mr. D.D.P.’s guilty plea should operate in his favor at sentencing. Also the defence counsel submits that Mr. D.D.P.’s deprived background...are other mitigating factors.” Directly following this statement, the judge stated:

I am reluctant to accord these factors much weight in light of the seriousness of Mr. D.D.P.’s crime. Also, there is absence of a compelling causal and temporal link between these factors and the offence. In other words there was no personal crisis which directly precipitated the events of March 7th, 2005...the mitigating personal circumstances of Mr. D.D.P. are sadly, all too common among offenders. They serve to explain but not excuse...they would have greater relevance in crafting a fit sentence for a minor crime than for serious violent offence (para, 63 & 64).

By the judge not crediting D.D.P. for any mitigating factors, as well as stating his unfortunate situation was all too common among offenders, further reinforced an adult sentence to support and promote public policy, and “getting tough” on crime. This demonstrated there were no excuses or circumstances which were too grave to mitigate the actions of a serious violent offence. This was emphasized again when the judge was discussing the final sentencing decision, he returned back to the seriousness of the
offence and all of the unlawful acts committed by D.D.P. This solidified the need of an adult sentence.

In R. v. J.K.W. (2006), the justification of an adult sentence was largely based on the failings of the offender. A longer sentence was needed in order to hold him accountable and protect the public. In his analysis, the judge commented about the role of the Court and how the Court has to comply with the needs of the public in order to promote their confidence within the system; “...The sentencing process this Court has engaged in is not one designed to give reign to the natural feelings of anger and desire for retribution that can exist in a case like this. The sentencing process is essentially and especially about the protection of the public” (para 181). Again, this comment showed how the main objective behind sentencing is the protection of the public, holding their interests above those of the offenders’.

The judge continued by discussing how an adult sentence was necessary due to J.K.W.’s long record, and the inability of the youth system in deterring his criminal behavior, especially once he had been released back into the community:

...J.K.W.’s repeated pattern of success inside a containment center or highly structured (and residential) youth program followed by significant and rapid decline upon release into the community is a major factor in reaching this conclusion. Although J.K.W.’s problems may be treatable within a youth custody facility, his history strongly suggests that youth community supervision will be insufficient in terms of its ability to monitor J.K.W. and to detect and curtail significant anti-social and criminal behavior (para, 182).

The judge further went on about the choices J.K.W. made while in the community. By highlighting the negative decisions J.K.W. had made. This gave the impression that the long term protection of the public was at risk, unless he was contained in a secure environment:

...He was making choices outside of the normal parameters of teenage life by not attending school; by not staying with his family or in any sort of controlled setting; by abusing drugs and committing crime to support his addiction. This cluster of facts leads the Court to conclude that the only sentence which would hold this offender accountable for this serious crime is an adult sentence (para. 184).
The judge in this case used the negative and anti-social choices and behaviors that J.K.W. decided to partake in, in order to justify an adult sentence. By focusing on the poor decisions and behavior, it portrayed the offender in a negative way, increasing the desire from the public for an adult sentence. In turn, the imposition of an adult sentence increased the public’s confidence in the administration of justice, especially for serious violent youth.

In the case of *R. v. Arrieta* (2010), the use of justification was not as apparent as it was with the other cases. Where it came through was when the judge was discussing the differences between a youth and an adult sentence, along with the number of convictions Arrieta had. With a conviction of second degree murder, two counts of attempted murder, and a conviction for discharging a prohibited firearm, a youth sentence would only hold him accountable for the second degree murder charge, as that was the maximum amount of time allotted under the *YCJA*. The judge stated that this would trivialize the seriousness of the attempted murder convictions, meaning that justice would not be served to those two victims and their families. The judge specifically stated:

...In my view, it would be difficult to analyze such a result without reaching the conclusion that the two offence of attempted murder were being treated as mere surplusage, resulting in no practical sentencing consequences whatsoever. I must confess I would have a hard time justifying a result which trivializes two acts of attempted murder to such a remarkable degree (para, 176).

The only way for Arrieta to be held accountable for the other offences that he committed is through an adult sentence. This could be seen as framing the sentence in the public’s interest because by imposing a youth sentence, this showed the public that the other offences were not being taken seriously, decreasing their confidence in the administration of justice.

In his concluding remarks, the judge made mention that he did not believe Arrieta’s outlook on criminal matters had changed, and this greatly limited the prospect of his rehabilitation. Therefore, the only way to try and ensure change was through a long sentence. Interestingly, in the same paragraph, the judge noted the dangers of an
adult correctional facility, but washed over them by stating that the length of sentence
was required in order to promote his reintegration:

It is not clear that the Defendant’s outlook has yet changed to any
significant degree…it will be a long and challenging process to bring
about the fundamental shift that is required. Despite the risks which it
poses, the adult correctional system is best suited to that purpose, both
because of the length and intensity of the programs offered and because
the prospect of long-term supervision provides the best means of
promoting the Defendant’s eventual reintegration into the mainstream of
society (para, 316).

In this paragraph, the judge justified imposing a lengthier sentence onto Arrieta, as it
was the best approach to help promote his rehabilitation and eventual reintegration. This
comment justified the sentence in the offender’s interest, whereas in the first example,
the rationale for the adult sentence was to satisfy the public’s policy and interests. The
judge framed Arrieta’s sentence to serve both the public and the offender. This case was
a deviation from the other adult cases which focused solely on the public with the
offender being of secondary importance. This was supported in the last adult case, R. v.
Wellwood (2011).

The judge in this case used the seriousness of the offence to justify adult
sentences for both Wellwood and Moffat. In addition to the offence itself, the lack of
remorse, and the high risk of re-offending all played a role in the judge’s decision to
impose an adult sentence. Due to the pre-mediation of the attack, targeting and stalking
Ms. Proctor, the brutality of the harm inflicted onto her before they killed her, then the
indignities to her body, the disrespect of her remains by throwing them into the freezer,
and then burning her to get rid of the evidence, all came together to justify an adult
sentence. This sentence served the public’s policy and interests, as the public would
have been in complete disagreement with the imposition of a youth sentence. The judge
stated, “…I think, to the comparison between societal values and the conduct of the
offenders…The gulf between the way in which this intentional killing was carried out by
these young men acting together and any normal societal value is obvious and
enormous” (para, 36). This sentence promoted crime control policies and demonstrated
that the Court’s will not tolerate such violent offences. When imposing the sentence, the
judge did not refer to the youth at all; there was no mention of their rehabilitation or the reintegration into society. It was based on a punitive and proportionate mentality.

The differences in the rationale and justifications for the sentences imposed either being in the best interest of the public or in the best interest of the offender, could be detected when comparing the youth sentences to the adult sentences. For the youth sentences, the judges’ framed the sentence in the offenders’ best interest with a focus on their rehabilitation. The justification for the youth sentence was to promote the rehabilitation and reintegration of the offender which would lead to the long term protection of the public. In contrast, for the adult sentences, the justifications largely aligned with the crime control and “get-tough” policies, in addition with ensuring the public’s confidence in the administration of justice was satisfied. There was very little discussion regarding the offenders’ best interest, as the majority of the statements made by the judges promoted the negative conduct of the offender. This in turn, increased the justification and rationale for an adult sentence and fulfilled the public’s interest by being harsh on young offenders who could be seen as “superpredators” and a threat to society. However, with understanding the offenders’ individual characteristics and personal background information, it becomes clear that each offender’s rehabilitation needs to be promoted through the sentence, as this has a better chance of protecting the public, than a sentence based on punishment alone.

Alberta

Youth Cases

In the two youth cases, the judges’ main decision on whether to impose a youth or an adult sentence was based on whether the youth needed to have lifelong supervision. In the end, the judges determined that both of the youth were good prospects for rehabilitation. Each youth had demonstrated prosocial behaviors and willingness to change while in custody. Both youth had undergone treatment and counselling, as well as obtained credits toward their high school diploma. It was based on these reasons that the judges decided a youth sentence would be of sufficient length to hold the youth accountable. However, due to their increased level of blameworthiness, neither judge credited for time already served. In the case of A.A., he had already served
3 ¾ years, meaning that his total custodial sentence would be 9 ¾ years which is almost the identical length of custodial time under an adult sentence. Similarly, C.H.C. had served three years in custody, meaning with no credit for time served, he will serve a total of seven years, which equals the length of an adult sentence. The decision to impose a youth sentence was largely justified by the judges determining that A.A. and C.H.C did not require life-long supervision, and a youth sentence would mean the two youth would not have an adult criminal record.

In *R. v. A.A.* (2011), the judge began by discussing the progress of A.A. since being in custody that was outlined in the pre-sentence report (PSR). The judge acknowledged the improvements A.A. had made to date, as well as there were no major incidents since A.A. had been in custody. The judge stated:

...there appears to be overall positive behavior; no major issues of negative interaction with peers or staff despite some horseplay and a verbal altercation; bouts of depression and perhaps some suicidal ideation...over the extended period he has taken various courses and started to address some of his issues through counselling, treatment, programs and ongoing schooling (para, 50).

This quote framed A.A. in a positive light; he had taken the appropriate steps to begin to understand the underlying causes of his problem behaviors. He had continued his progress in school, and had been a positive influence youth in the facility. By displaying the youth in this context, it justified to the public that this offender was not a threat to them, and he had the possibility to do well in society. The judge continued to praise A.A. for his work in custody; “…During that time in custody...he has advanced his education and taken at least 12 ancillary courses with counselling that may be of assistance in dealing with a variety of personal issues” (para, 76). Interestingly, a few paragraphs later, the judge again credited A.A. for the work he had done in custody, but then begun to focus on the negative aspects of A.A.’s situation:

A.A. is now 21 years old and still working on credits to complete his High School diploma. He is described by one instructor as well motivated,

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1 When a youth is sentenced as an adult for first degree murder, they are not eligible for parole until they have served a minimum of 10 years in custody. In the case of second degree murder, the youth must serve at least seven years before they are eligible for parole.
mature and overall ‘a responsible student who is always respectful and
grateful of the efforts made by school staff’. He has limited job experience
and lacks any form of special training. Reintegration into the community
appears likely to be a significant challenge, especially given what will
probably be almost a total lack of family support (para, 81).

The change in the judge’s tone present in this passage has two effects, both surrounding
the justification of a youth sentence. First, by continuing to praise A.A. for the
improvements he had made, validated a youth sentence. In this framework, A.A. is not a
“superpredator”; therefore, he does not need to be locked up under an adult sentence.
Second, by changing the tone from positive to negative, the length of the youth sentence
is justified. The fact that the judge did not credit for time served, which resulted in A.A.
spending nearly 10 years in custody, is defensible because A.A. had hurdles that he still
had to overcome, especially his lack of prosocial community support and job skills. This
excerpt is important as it framed the sentence in both the offender’s interest and the
public’s interest because a youth sentence was in the best interest of A.A. The length of
sentence was to ensure his rehabilitation and reintegration was accomplished. This was
also in the best interest of the public.

This point was further solidified when the judge handed down his final ruling:

Having carefully considered the circumstances and all of the sentencing
submissions, I conclude that A.A. can be held accountable for the
consequences of this first degree murder within the terms of the youth
sentencing regime…I am satisfied that a sentence can be fashioned
under the youth sentencing regime which would be long enough to reflect
the seriousness of the offence before the Court and A.A.’s role in it, and
would constitute meaningful consequences. In light of A.A.’s recent best
efforts, an appropriate sentence under that regime would be long enough
to provide some reasonable assurance of his rehabilitation to the point
where he can be safely reintegrated into society (para, 110).

This demonstrated that the judge had taken into consideration the advancements A.A.
had made, and a youth sentence would be of sufficient length to hold him accountable,
promote his rehabilitation and successful reintegration. The discourse used by the judge
highlighted the improvements of A.A. and through them, the public is being protected.
This framed the sentence in both the interest of A.A. as well as the public. A similar
message was portrayed by the judge in R. v. C.H.C. (2009).
As with A.A., the judge in *R. v. C.H.C.* (2009) was positive about the future for C.H.C. He was a good prospect for rehabilitation; he was taking advantage of the treatment and counselling programs available to him, as well as working on school credits. It was these factors that the judge wanted to emphasize and focus on during the analysis. The judge began by noting:

...his successful completion of virtually all treatment programs offered, including anger management and cognitive programs, is evidence of positive treatment motivation...his completion of high school and plans to engage in a trade are protective factors in assessing his future risk of recidivism (particularly in financial gain). C.H.C.’s efforts since his detention in custody in school and in programs are reflective of positive change (para, 72).

The judge’s tone reflected the optimism for C.H.C.’s future as he had completed high school, undergone treatment programs, in addition to learning a trade, so he had legitimate employment skills once he released. Further in the analysis, the judge continued to credit C.H.C. on his motivation to change and his progress in custody to date; “…I am of the view that his [C.H.C.] progress to date in treatment programs and his academic advancement cane be built upon to reduce the risk of future recidivism and ultimate contribute to the long-term protection of the public” (para, 89). The judge framed rehabilitation as a mechanism of protection for the public, and as the best chance to decrease C.H.C.’s risk of recidivism.

Consistent with A.A., the judge did not credit for time already served, and framed this justification through the blameworthiness of the offender:

...the offence was brutal, its seriousness heightened by the use of a firearm...if C.H.C. received the maximum youth sentence without credit for pre-sentence custody he will have served a total custodial sentence of close to seven years. A further three-year period of community supervision during his treatment should continue...I am if the view that this sentence is long enough to hold C.H.C. accountable for his conduct (para, 91).

The judge began this passage with increasing the level of moral culpability of the offender, through the use of emotive discourse when discussing the circumstances of the offence, which increased the justification of a long youth sentence with no credit for time served. This passage was concluded by noting through C.H.C.’s treatment, the
safety of the public is promoted. Ending the passage by framing C.H.C. positively, increased the justification of a youth sentence, focused on rehabilitation. In regards to rehabilitation, this case was extremely interesting. In the last comment made by the judge, she bounded C.H.C. to specific treatment conditions once released from custody, and if he failed to comply, he would be sent back to custody. This is very relevant to the overarching research question of this thesis regarding mandated treatment; therefore, seeing the ideology of compulsory treatment being used lends support for its inclusion through the Act. The judge said:

…I further recommend that C.H.C. be bound by conditions during the conditional supervision phase of his sentence requiring him to submit to such treatment and counselling as directed by his supervisor and that any community-based treatment program employ a cognitive behavioral multi-faceted skill-oriented approach that targets high-risk offenders and contains careful discharge plan (para, 93).

The use of the word “bound” signifies that C.H.C. must continue to undergo specialized treatment once he has been released from custody. This will continue to facilitate his progress that he made in custody and help with the transition back into the community. Through this passage, mandated treatment had been placed upon C.H.C. Overall, the sentence imposed on C.H.C. was largely justified because of his advancements made in custody and his motivation to change his behavior. The judge framed the sentence to be centered on the rehabilitation of C.H.C. as this would decrease his risk of recidivism and promote the long-term protection of the public.

The justifications used by the two judges who imposed a youth sentence was largely based on the rehabilitation prospect of the two young offenders. The judges also took into consideration and mentioned multiple times throughout the cases the progress in counselling, treatment programs, and education the two youth had completed. As a result of their motivation to change and take advantage of the programs available to them, the protection of the public would be achieved. Ultimately, in both of these cases, the sentence was based on the offenders best interest by focusing on their rehabilitation and reintegration, but also the public’s interest through a long youth sentence with no credit for time served. Additionally, the public’s interests and safety influenced the sentence, as through rehabilitation, the public’s safety is achieved. This was not seen
with the adult cases. The judges’ framed the sentences to be in the best interest of the public, promoting public safety through a long and punitive sentence. The judges also mentioned that the three youth were not good candidates for rehabilitation; therefore, they required a long sentence to protect the public and try to obtain as much rehabilitation as possible for them.

**Adult Cases**

In the first adult case, *R. v. Casavant* (2009), the judge did not discuss rehabilitation other than the fact that Casavant was not a good prospect for rehabilitation, as well as the judge did not credit Casavant for obtaining credits toward his high school diploma. The justification of this sentence was largely based on the best interest of the public and aligned with larger societal policies and politics. The judge stated; “...Mr. Casavant is not a good prospect for successful rehabilitative treatment...the maximum youth sentence would not be long enough to foster Mr. Casavant’s rehabilitation in a meaningful and realistic fashion” (para, 53). The blatant use of “not a good prospect” eliminated any optimism for Casavant to make improvements through rehabilitation. Moreover, by the judge stating Casavant was not a good candidate for rehabilitation, justified an adult sentence in order to protect the public from an individual who cannot be treated. Once the judge determined that an adult sentence was required for Casavant, the language changed becoming more punitive:

In my view the adult sentence designated for this crime, life imprisonment with no eligibility for parole before 10 years, would provide the level of retribution appropriate to Mr. Casavant’s moral blameworthiness. In my view, a youth sentence, even of maximum possible duration, would not. In my view as well, on the evidence, a youth sentence, even of maximum length, would not be of sufficient length to promote Mr. Casavant’s rehabilitation and reintegration into society (para, 55).

Adding in the term retribution increased the severity of the required sentence; in order for the sentence to be sufficient, the sentence itself must be long and centered on punitive measures. Also, mirroring what the judge stated in the passage above, the only way to promote Casavant’s rehabilitation and reintegration was through a lifelong sentence due to the fact that he was not a good prospect for rehabilitation. These findings were consistent with the second adult case, *R. v. L.L.* (2014).
In *R. v. L.L.* (2014), the judge focused on the negative aspects of L.L. without any acknowledgment of the progress he had made while in custody. The judge also increased the blameworthiness of L.L. in order to justify the sentence imposed as it was required to protect the public. The judge also used L.L.’s diagnosis of conduct disorder and polysubstance abuse as aggravating factors, which decreased his prospects of successful rehabilitation. The judge began by discussing the criminal lifestyle L.L. had adopted. The judge framed this information to decrease the belief that he could be rehabilitated, portraying L.L. negatively. This increased the justification for a long sentence, in order to protect the public from long-term criminal:

L.L. was 16 years and 8 months old at the time of the murder, certainly closer to adulthood than to childhood. He was living on his own and had been doing so for a relatively long time. He was associating with older peers and all of the witnesses commented upon his leadership abilities. He also appears to have demonstrated anti-social leadership in his gang activities. He had been part of a long running and sophisticated drug operation, even buying an exclusive territory in which to sell drugs (para 45).

Keeping in the same tone as the above expert, the judge went on to say “L.L. has been diagnosed with a severe conduct disorder made more complicated by his drug use disorder. His prognosis is made worse by the co-occurrence of these two disorders. It is characteristic of this disorder that a person lacks empathy for others and lacks real remorse” (para, 46). The judge painted a picture of an individual who was entrenched in a criminal lifestyle, being part of a gang and having his own “turf” to sell drugs, and who was incapable of remorse and empathy due to his conduct disorder. This gave the impression that L.L. was a dangerous individual who needed to be locked away for a long time in order to protect society.

Continuing with portraying L.L. in a negative manner, the judge focused on the destructive behaviors of L.L. while in custody. This was demonstrated when the judge said:

Further, his [L.L.] history shows he has had some difficulty governing his behavior even while in custody…he continued to demonstrate difficulties, engaging in assaults on peers, intimidation of peers and staff, challenging authority, possession of pornographic material, implication of drug
use/possession, and implication in recruiting a female in custody into the prostitution/escort business (para, 54).

The judge did not mention the 82 credits out of the 100 L.L. had completed toward his high school diploma, nor did the judge mention that L.L. expressed a desire to change and “he has shocked himself with his degree of rage and anger and the destruction it has brought on his life and the life of his now dead friend” (para, 32). Also in the PSR, L.L. stated that his goal was to finish high school and obtain post-secondary education in business or accounting. By excluding this information and only focusing on the adverse aspects of L.L.’s behavior, the judge framed the sentence in the best interest of the public and to promote the political and societal policies of crime control.

In her concluding remarks, the judge yet again increased the blameworthiness of L.L. by focusing on the negative factors, framing the sentence to promote the public’s safety and to maintain the public’s perceptions of the effectiveness of the criminal justice system. The judge concluded with:

This offence was among the most serious of crimes. It was committed by an offender who was near adult. He has amassed a criminal record at his young age that can only be described as shocking…none of the evidence satisfies me that, or even suggests, that a youth sentence would be of sufficient length to hold L.L. accountable for his crime or to offer any assurance that he would not re-offend on the expiry of his sentence…only an adult sentence can do that (para, 60).

What is interesting in this passage is the judge first described the actions of L.L. to be near those of an adult, but then in the sentence following directly after, she referred to L.L. as a young person. This is contradicting as she begins by stating L.L. is an adult, and then says L.L. is a young person. When she is explaining the offence, L.L. is near an adult, but when discussing his criminal record and its extensive length, he is a young person. Therefore, depending on the circumstance in which the judge is referring, she changed the age of L.L. to fit with the punitive tone she was setting. This largely justified an adult sentence. Also, with the judge discussing how a youth sentence would not hold L.L. accountable, and decrease his risk of recidivism, this rationalized an adult sentence through the protection of the public. It should also be noted that the judge did not
mention rehabilitation and the role it needed to play for L.L.’s successful reintegration once in her analysis.

In the last adult case, *R. v. Bird* (2008), the judge framed the sentence to protect the public with no discussion regarding the welfare of Bird. At the beginning of the judge’s decision, she emphasized that a youth sentence was insufficient to hold Miss Bird accountable for her actions; “three years, even if credit were given for her previous custody in the range of 1 to 1 or 1 ½ to 1, is not sufficient to hold her accountable for the offences for which she has been convicted…her conduct fell far below norms that society rightly insists upon” (para, 52). Here, she signified the importance of the public and societal perceptions of what is normative and deviant behavior; therefore, Bird’s actions strongly violated societal norms. To maintain the public’s perceptions of the effectiveness of the criminal justice system, a punitive sentence needed to be imposed. The judge continued by discussing how a youth sentence would not promote the rehabilitation of Bird and this could only be accomplished through a lengthy sentence:

> I am also satisfied, based on the evidence before me, that a further three years is not sufficient to provide a reasonable period of time for Miss Bird’s rehabilitation and reintegration. This is particularly so because it is clear that her rehabilitation and reintegration will require a substantial period of time in a secure environment, in other words in custody (para, 54).

To further solidify the need for a long sentence, was the fact the Bird had lack of prosocial community support. Therefore, she was in need of structure and supervision, which she could only receive in custody. The judge pointed out “…Miss Bird’s lack of support in the community…the need for structure and supervision in her environment, makes it clear that a sentence which would involve her release without supervision put her successful reintegration very much in doubt” (para, 55). Again this passage promoted the need for a punitive and long term sentence, otherwise her reintegration would be in jeopardy putting the safety of the public at risk. The judge reinforced this point by stating, “…Society’s condemnation of the offence must be expressed in very strong terms. In addition, at this time Miss Bird must be separated from society for the protection of the public” (para, 91). The use of strong language, as well as bringing in society’s disapproval of the offence, solidified the need of an adult sentence that was
shaped around holding Bird accountable. Also, by keeping her locked up for a long period of time, society’s confidence in the administration of justice was increased.

The ways in which the judges rationalized their sentence, either in the best interest of the offender and/or the public was apparent depending on the type of sentence imposed. For the adult cases, the sentence was justified through the interest of the public, maintaining their confidence in the justice system, and aligning with the larger social and political policies of “getting tough on crime”. Very little attention, if any at all, was paid to the progress the offenders had made while in custody, and none of the three offenders were promoted to be good candidates for rehabilitation. Rather, the judges’ focused on the negative behaviors, and the challenges each offender had to overcome, which decreased their chances of successful reintegration. The judges framed the three youth as dangerous individuals who deserved punitive sentences.

**Saskatchewan**

**Youth Cases**

In the youth case, *R. v. C.R.B.* (2009), the judge framed the sentence to be focused solely on the interest of the offender with rehabilitation being the primary objective of the sentence. Also, the judge made reference to an interpretation of a piece of the Act which helped to shape the sentence overall. The judge referred to the case *R. v. B.W.P.*, [2006] 1 S.C.R. 941, 2006 SCC 27, when discussing how to construct a sentence in order promote the protection of the public. The judge said, “…that ‘the protection of the public’ is expressed, not as an immediate objective of sentencing, but rather as a long-term effect of a successful youth sentence” (para, 38). This revealed that the sentence imposed onto the youth was not supposed to immediately lead to the protection of the public, rather the safety of the public will ultimately be achieved through a well-constructed sentence what is offender focused. This point was important to think about in relation to understanding the decision-making processes of judges’, as many times an imposition of a long sentence occurred to protect the public by keeping the offender “off the streets” for a longer period of time, rather than being focused on the individual needs of the offender, promoting their rehabilitation.
With the judge referring to this interpretation of the statute, it set up the rest of the justifications used for a youth sentence; keeping C.R.B.’s rehabilitative needs at the forefront of the sentence, which will lead to the long-term protection of the public. This was reinforced when the judge stated, “…The sentence I am about to order will promote the long-term protection of the public by focusing on the underlying causes, rehabilitation, reintegration and meaningful consequences for the offender” (para, 38). The judge is clearly stating that the sentence is going to be framed in the best interests of C.R.B. which was to promote his rehabilitation:

The IRCS program is designed specifically for individuals, such as the accused. The individuals who are accepted into the program must who the willingness and desire to change. All youths who are found guilty of presumptive offences are not accepted into this program. Based upon the pre-sentence report and the psychological assessment and IRCS assessment, the accused is deemed to be an appropriate candidate (para 40).

Through the imposition of an IRSC sentence, C.R.B. was going to receive intensive rehabilitation in custody as well as in the community. The conditional supervision in the community will help C.R.B. achieve a successful reintegration, decreasing his risk of recidivism and protecting the public. The rationale behind imposing an IRSC sentence was to promote the rehabilitation and reintegration of C.R.B., which would lead to the long-term protection of the public, achieving the sentencing objectives of the Act.

Adult Cases

In contrast, in the two adult cases, the judges framed the sentences to be in the best interest of the public and maintain the public’s confidence in the administration of justice. Furthermore, the justifications used to impose an adult sentence aligned with larger social and political policies, crime control. This was demonstrated in R. v. D.R. (2015) when the judge noted, “D.R. has a previous record of some considerable length. He has been assessed as a high risk to re-offend generally…it is clear that he continues to have many risk factors for recidivism and will require supervision once he is in the community in order to ensure safely manage risk” (para, 119). Highlighting that D.R. was a high risk to re-offend gave the impression that he required the lifelong sentence in order to secure the safety of the public. There was no discussion surrounding
rehabilitation or using rehabilitation to achieve this sentencing objective, as was demonstrated in the case of C.R.B. The judge continued by adding:

Despite D.R.’s steps in the right direction and his willingness to finally engage in addressing his issues, I do not think a youth sentence will have sufficient length to hold D.R. accountable. The benefits of a youth correctional facility setting where he has made progress will be short lived as his transfer to the adult correctional facility is inevitable. But more broadly, an accountable sentence must be long enough to reflect the seriousness of the offence and the offender’s role in it and it must also be long enough to provide reasonable assurance of the offender’s rehabilitation to the point where can be safely reintegrated into society (para 124).

The judge acknowledged the progress D.R. had made while in custody, but then decreased the impact of his progress by noting his movement to an adult correctional facility was inevitable so his progress would be short lived. As a result, an adult sentence was warranted.

The judge also added that D.R.’s rehabilitation would require a substantial length of time to reach a point where he can be safely reintroduced into the community, decreasing his risk to the public. This framed the sentence to be in the best interest of the public. The judge continued to re-iterate this point by stating:

I am satisfied that a youth sentence would not be of sufficient length to hold D.R. accountable...A youth sentence would not reflect the seriousness of the two offences of second degree murder committed by D.R. nor reflect the seriousness of D.R.’s role in those murders...A youth sentence would not provide for sufficient monitoring in the community, having regard to the identified issues D.R. has and the potential for him to relapse into behaviors and choices that will put the public at risk (para, 125).

Again, this passage highlighted the seriousness of the offences, the degree of D.R.’s participation in the commission of the offences, the challenges he faced in regards to treatment, specifically his ARND diagnosis. All of these factors separately portrayed D.R. as a danger to society, but discussing them together in the same passage intensified the level of danger D.R. posed. All of this information justified the need of an adult sentence which was framed to be in the public’s best interest.
In the case of *R. v. Turcotte* (2008), the judge used similar methods to frame the sentence to be in the best interest of the public by portraying Turcotte to be a threat to society. The judge began this depiction of Turcotte by mentioning a piece of information contained in the pre-sentence report which said, “…Turcotte told Dr. McGrath that he was having violent fantasies of suicide and of killing other people. He said the fantasies made him feel happy, normal, and excited” (para, 23). This representation of Turcotte gave the impression of an individual who had serious psychological issues, as he had fantasies of killing people which caused feelings of happiness and excitement. Having these fantasies is not normal, but the fact that Turcotte gets a sense of excitement from them, portrayed him to be abnormal. Later in the analysis, the judge brought up more information in the pre-sentence report, continuing to frame Turcotte as a dangerous individual:

…Nolan’s attitude towards crime and lack of connection towards prosocial conventions may suggest concern for recidivism. He appears to justify unacceptable behaviors, offers little compassion towards others and lacks insight on the impact his actions have on others…he prefers to associate with negative peers, enjoys activities which are antisocial in nature, and offers little indication of change at this time (para, 50).

The constant representation of Turcotte being an individual who enjoyed participating in antisocial and criminal behaviors, and associated with peers of the same mentality, further justified the requirement of an adult sentence to protect the public. This was reinforced by the judge mentioning Turcotte had a lack of prosocial community connections, increasing his risk to the community.

In the concluding section of the analysis, the judge framed Turcotte to be a “superpredator” who deserved a life sentence:

It is critical to underscore that Turcotte has a record of violence, little or no remorse for his crimes, no empathy for his victims of his offences, personality issues, violent fantasies and anti-social values. It is a concern to this Court of Turcotte’s willingness to use violence and weapons without much hesitation. He has an anti-social procriminal attitude. He is also involved with the gang, Native Syndicate Killers, and professes a willingness to do whatever the gang member requests. Furthermore, it is alarming that Turcotte has been assessed as being in the Level 5 category which is the highest category of risk to reoffend (para 93).
Highlighting that Turcotte was in the highest category to reoffend, he was a member of a gang, and had a violent history, solidified the interpretation of Turcotte as being a dangerous individual who was a hazard to the safety of the public. The only way for the judge to protect the public was through an adult sentence which will hold Turcotte accountable for life:

The evidence establishes there is a likelihood Turcotte will fail to restrain his repetitive violent behavior in the future. With an adult sentence when Mr. Turcotte is released in the community he will be subject to the state control for life. In my opinion gives his personality problem and the crimes he has committed, only life-long control over his behavior is capable of protecting the public (para 100).

The judge was focused solely on the negative attributes of Turcotte with no mention of his rehabilitation. There was no connection made between rehabilitation and the long-term protection of the public, rather the only way to protect the public in this case was through incarceration and the imposition of an adult sentence. This runs contrary to the case of C.R.B. and the research examining the role of punitive sentences on rehabilitation. However, the dangerous depiction of Turcotte that the judge painted required an adult sentence to be imposed in order to maintain the public’s confidence in the administration of justice. If the justice system imposed a youth sentence that was focused on rehabilitation onto an offender who was represented to be a danger, the majority of the public would believe the justice system was being “soft on crime”, which contradicts the larger political framework of “tough on crime”.

Ultimately, the two adult sentences were framed in the best interest of the public and supported the larger societal and political policies of crime control. The judges in the two adult cases depicted the offenders to be dangerous individuals who required a long sentence in order to protect the public. The judges used the negative qualities of the offender to justify an adult sentence.
Manitoba

Youth Cases

The main difference in the adult sentences compared to the youth sentences was how the judge perceived the youths’ progress while in custody and society’s interest in the case. Specifically examining society’s interest was unique to Manitoba. In almost all of the cases, the judge had a separate analysis regarding society’s interest, and how the sentence would reflect their interests and maintain their confidence in the administration of justice. How the judge framed the offenders’ prospects for rehabilitation was connected in with society’s interest. If an offender was doing well in custody, for example making progress towards understanding their behaviors, working on completing their education, and had plans for future legal employment, they were labelled good candidates for rehabilitation, which became the underlying objective of the sentence imposed. Through their successful rehabilitation, society’s interests and confidence in the administration of justice would be maintained because the offender would be at a lower risk to reoffend; meaning the long term protection of the public would be achieved. The youth sentences were largely presented using this mentality and justification, whereas for the adult sentences, the opposite was rationalization used.

In the first youth case, R. v. D.R.A. (2014), D.R.A. was originally placed in the Manitoba Youth Centre (MYC); however, the judge noted that he experienced many difficulties while at this specific center. Despite these difficulties, the judge concluded his statement discussing the positive progress he had made while at MYC, and these improvements continued once he was transferred to the Agassiz Youth Centre:

…The accused did not function particularly well at MYC. Although he met the basic expectations, he had trouble with peers, was rude to staff, tended to test the limits of the rules and was involved in a plan to assault another youth. At MYC, the accused undertook programming in substance abuse, mental health counselling and skills training. The correctional psychologist noted ‘steady improvement’ in the accused (para, 28).

By the judge originally focusing on the negative behaviors of D.R.A. then shifting the focus on the positive, the tone changed. The reader was left with the impression that
D.R.A. was taking the appropriate steps to better himself by taking part in the programs available to him. This representation was further reinforced when the judge was discussing the continued progress made once D.R.A. had been transferred:

…the accused does respond well to staff guidance and intervention. The accused was involved in programming focusing on anger management and developing social skills. He was described as being a positive contributor listening well to more mature members of the group. The accused used his time effectively completing his Grade 9 math and appears motivated to complete his schooling while in custody (para, 30-31).

D.R.A. was being portrayed as an individual who wanted to change his behavior and viewpoints from antisocial to prosocial because he was participating in different counselling and education programs. By the judge highlighting the positive features of D.R.A. and his progress, D.R.A. was not perceived to be a threat to society.

The judge also provided a feeling of optimism for D.R.A.’s future by consistently commenting on his ability to be successfully rehabilitated and reintegrated into society because of his commitment to changing his behaviors:

Once in a structured setting the accused has demonstrated the ability to learn from his mistakes and to mature. The accused has a lot of deficits to overcome but that should come as no surprise considering his personal history. There will be setbacks but the accused has demonstrated an ability to learn and progress (para, 37).

In this passage, the judge was sympathetic to the personal history of D.R.A., acknowledging that he was going to have setbacks and this transition was going to be difficult because of his history, but he could overcome those challenges as he had already demonstrated the ability to do so. Again a sense of optimism was portrayed for the future well-being of D.R.A. and his ability to make the appropriate changes in his life. By representing D.R.A. in this light, the judge was justifying the imposition of a youth sentence because D.R.A. was not being portrayed as a danger to society who cannot be rehabilitated. Through his continued hard work and transition, he can be successfully rehabilitated and reintegrated, framing the sentence to be in the best interest of the offender and the public because their protection will be achieve through D.R.A.’s continued progress.
In the second youth case, *R. v. J.J.H.* (2010), the judge framed the sentence to be in the best interest of J.J.H. This was especially evident with the imposition of an Intensive Rehabilitative Custody and Supervision (IRCS) sentence. This sentence is reserved for offenders’ who meet specific criteria, and are in need to intensive rehabilitative services. As a result of J.J.H.’s childhood, the judge imposed this sentence to promote his rehabilitation and to provide him with the required resources to work through the trauma and grief he was victim too:

An IRCS was prepared. There is good recommendation from all evidence I heard that J.J.H. will most likely do very well under the supervision provided by the IRCS program…the proposed IRCS plan would be the best way to treat J.J.H. in order to minimize his risk to re-offend when he is released in society...The resources will be committed towards the rehabilitation of J.J.H. and insuring, as best as can be done, that J.J.H. will not represent a future risk (para, 132).

The judge supported his decision to impose an IRCS sentence by noting that the adult system will not direct any specific resources to ensure J.J.H.’s rehabilitation is achieved. As a result of his background, J.J.H, required rehabilitation; therefore, an adult sentence was not justified:

In contrast, an adult sentence will not direct any special circumstances to insure that J.J.H. is rehabilitated. Dr. Fisher, who has experience in both adult and youth corrections, testified that very little in the way of psychological counselling would be available to J.J.H. if he is sentenced as an adult (para, 133).

With the adult system not being equipped with the appropriate rehabilitative services for J.J.H., his rehabilitation would be compromised putting society at risk. Ultimately, to ensure the safety of the public, a youth sentence would be required.

In the concluding remarks, the judge again reaffirmed the need of an IRCS sentence by re-iterating the unfortunate background of J.J.H. and his young age at the time of the offence, even in regards for the YCJA. Additionally, the judge specially noted that J.J.H. was a good prospect for rehabilitation, and was unlike most youth who commit murder, for these reasons, a youth sentence was justified. This rationalization took place over three separate paragraphs, each one leading into the next, highlighting the importance of why a youth sentence was imposed:
He was only 14 years old at the time of the offences and is 17 now. He has no record prior to the offences and has not been charged with anything since. J.J.H. continues to function as a youth...J.J.H. is amenable to rehabilitation if he is seen by a psychologist as proposed by the IRCS report. At the time of the offences, J.J.H. was unlike other youth who have murdered. He was not involved in a criminal lifestyle. He was a person suffering from Post Traumatic Stress Disorder and Reactive Attachment Disorder. I accept Dr. Fisher's assertion that the impact of the abuse on J.J.H. was dramatic. I have already concluded that the abuse had been ongoing from his birth through to the tragic events in 2007 (paras 140-142).

In these passages, the judge was highlighting the positive features of J.J.H: he was a good prospect to rehabilitation, he was not entrenched in a criminal lifestyle, and he was young at the time of the offence. Further, the judge provided a sense of sympathy for J.J.H., as he reinforced the tragic abuse he was victim too since his birth, leaving him with the diagnoses of PTSD and reactive attachment disorder. The offences were a by-product of his environment, justifying the need to help J.J.H., which could only be achieved through an IRCS sentence.

In the last youth case, R. v. R.L.T. (2012), the judge justified imposing a youth sentence onto C.F. because of his progress made in custody. This was the only difference noted in the judge's justification for sentencing C.F. as a youth and R.L.T. as an adult. The judge mentioned that C.F. was a better candidate for rehabilitation as he was taking advantage of the programs available to him, and had an extremely positive presentence report. As a result, the judge wanted to keep C.F. in the youth system where he was flourishing in order to continue his behavioral transformation, leading to his successful rehabilitation and reintegration into society. This is turn, would protect society; “...There is nothing in the background of C.F. that would indicate that his needs would be better served in the adult system or that society would be better protected if he was to be sentenced as an adult” (para, 52). This sentence was largely based on C.F. and what was best for him in the way of promoting prosocial attitudes and behaviors; “C.F. was the recipient of a very positive pre-sentence report. He has continually attempted to address his issues while in custody and has never had significant difficulties while in custody. In fact his case manager described him as exceptional” (para, 53). This point was further reinforced when the judge noted, “...C.F. has flourished in the youth system and that bodes well both for his personal rehabilitation
and for the protection of the community” (para, 54). The judge acknowledged that his rehabilitation can be achieved successfully in the youth system, and as a result, this fulfilled the interests of the public.

In the judge’s concluding remarks regarding C.F., she again stated the success C.F. has had while in custody. The main construction of the sentence was to continue the positive transition, specifically, when the judge was discussing the length of sentence. The judge noted that six years less a day is on the lower end of the spectrum for manslaughter, but this was largely justified because of the exceptional work C.F. had accomplished since being in custody:

...that results in an effective sentence of no more than six years. That, I realize, is on the lower end of the acceptable range for this crime, but the personal growth of C.F. since his incarceration is enough to warrant not exposing him to the criminal element in federal penitentiary...He still has progress to make but that can be accomplished in the youth system (para, 55).

Not only was the judge crediting C.F. for the work he had done, she was also acknowledging that placing C.F. in the adult system may jeopardize the progress he had made so far, which would have a reverse effect. By framing C.F. positively, focusing on the progress he had made in custody, the fact that he had no incidents in custody, and had a clean presentence report, as well as mentoring and helping other inmates and staff at the facility, a youth sentence is justified. Through a youth sentence, both the public’s interests and C.F.’s interests were met.

**Adult Cases**

In contrast to C.F., R.L.T.’s behavior in custody and the lack progress he had made solidified the imposition of an adult sentence. R.L.T. was not making appropriate progress in custody, and he was involved in many incidents. It was mentioned that R.L.T. had begun to participate in programs and his defiant behavior was decreasing, but this shift began to occur two years after being placed into custody. The judge did acknowledge R.L.T. for beginning to make progress but she also mentioned how a lot more work was required, which could only be accomplished in the adult system. The
judge commented that R.L.T. was a higher risk to re-offend than C.F.; therefore, imposing an adult sentence fulfilled the public’s interests:

R.L.T. is in a somewhat different situation. He has been more of a behavioral problem while at Agassiz although his behavior has improved somewhat in the past year. R.L.T. still appears to have unresolved and significant issues with anger management...he unfortunately still reacts physically and aggressively when verbally provoked. R.L.T. also comes before the court with a prior conviction for a serious violent offence. I am not persuaded on the basis of the information that I have before me that the youth sentence is sufficient to keep R.L.T. in custody for the length of time required for him not to be a danger to the community at large while also providing him with the programming he requires (para 56).

In this quote, the judge focused on the work R.L.T. still had to undergo. This was highlighted by the judge mentioning he still had anger issues and reacts violently when provoked. Until some of his problem behaviors were treated, he posed a threat to society. Also, the judge specifically mentioned he had another conviction for a serious violent offence, giving the impression that this was a developing into a pattern of behavior, further justifying the need for an adult sentence.

During her last remarks, the judge compared R.L.T. to C.F., outlining the rationalization for the two different sentences, demonstrating that R.L.T. had not progressed well enough in custody to understand his behaviors and decrease the risk to the public:

...The same high degree of moral culpability is at play with R.L.T. but he has not made the required strides in the youth system that C.F. has. Furthermore, his inability to accept full responsibility for his actions is troubling. R.L.T minimized the extent and nature of his involvement in the death of Hunter, and was seen by Dr. Slusky as exhibiting difficulty with victim empathy (para, 57).

The fact that R.L.T. had not accepted full responsibility and had yet to have empathy for his victim, depicts R.L.T. to be a danger to society, as he does not yet have a full appreciation for the consequences of his behaviors. Through the judge highlighting the limited progress made and the amount of work that R.L.T. still required, placed the adult sentence to be in the public’s interests and supports the larger social and legal
ideologies of crime control. This in turn maintains the public’s confidence the administration of justice.

In the second adult case, *R. v. C.G.D.* (2014), the judge’s overall analysis was very short and straightforward. In the concluding remarks, the judge did not go into a lot of detail which explained her overall decision on why an adult sentence was imposed. The judge noted that C.G.D. had been involved in many infractions since being in custody, many of them gang-related, which increased his risk to re-offend. The judge did credit C.G.D. for the progress he had made in custody, but this was overshadowed by the negative actions conducted by C.G.D.:

It is certainly commendable that C.G.D. has made some progress and shows some insight and willingness to be rehabilitated. He has made strides and is to be encouraged in this respect. At the same time, I am mindful and troubled that while incarcerated he has had approximately 15 institutional incidents...Dr. Fisher refers to C.G.D.’s longstanding social, emotional, and behavioral concerns (para 37).

By the judge first referring to the progress C.G.D. had made, then focusing on the trouble he had while in custody, decreased the impact of the progress he had made. Furthermore, noting that his social, emotional, and behaviors were still a concern implied that C.G.D. needed to be held in custody for a longer period of time in order to protect society.

The protection of society was the main underlying justification for this sentence. This came through in the concluding remarks made by the judge. The judge focused on the lack of progress C.G.D. had made for the length of time he had been in custody, and the number of incidents he was involved in, which required an adult sentence to protect society:

I do not accept the defence position that a youth sentence of seven years with no credit for pretrial custody is sufficient in this case. Such a sentence would not represent a meaningful consequence, address the seriousness of this offence, and provide reasonable assurance of C.G.D.’s rehabilitation and safe reintegration into society, given his continued risk...An adult sentence addresses the need to hold him accountable for his conduct, and gives him the best opportunity for successful rehabilitation and reintegration. It is necessary in the interests of society. It allows C.G.D. to continue his progress and be managed in a
structured environment. It protects the public by ensuring his re-entry to society at a suitable time and continued monitoring (para 39).

The interpretation of this passage was an adult sentence was required in order to protect the public. There were issues that C.G.D. still needed to work on and in order to do so, he needed to spend a longer period of time in a structured setting as this was the best chance for him to be successfully rehabilitation. However, even with a longer sentence, he still would pose a risk to society, meaning he required life-long supervision. Consistent with R.L.T., this sentence was entirely centered on the public’s best interest and aligns with the larger social and political principles.

In the third adult case, *R. v. J.J.T.* (2010), the rationalization for the imposition of an adult sentence mirrors those in R.L.T. and C.G.D. In addition to the lack of progress made while in custody, the judge in this case also commented on the seriousness of the offence. Taken together, these factors justified the need of an adult sentence. Using these factors framed the sentence to be in the public’s interest over J.J.T’s interests. Beginning with the seriousness of the offence, the judge set the stage for the requirement of an adult sentence:

There are many aggravating factors in this situation: the number of victims, the use of firearms, the fact the shootings occurred in a residence, the involvement of gangs, the callous attitude displayed afterwards towards the victims. In addition, J.J.T. was in significant breach of the conditions of two separate bail orders and a probation order, and an active warrant for his arrest was outstanding (para, 44).

Outlining the aggravating factors without mentioning mitigating factors focused solely on the seriousness of the offence. As a result, the public only knew of these circumstances which lead many of them to want a dangerous teen to be locked away. Also, by the judge noting J.J.T. committed the offence while on bail and probation gave the impression that the methods used thus far to deter J.J.T. have not worked, meaning a more punitive and serious sentence needed to be imposed. Moreover, mentioning J.J.T. was on bail and probation gave the impression that participating in criminal and antisocial behaviors was normal for J.J.T., again justifying an adult sentence.
As seen with the C.G.D., the judge related the length of sentence needed in order to promote the rehabilitation of J.J.T. The judge commented on the amount of work J.J.T. still had to do in order to be safely reintegrated into society, but this required a significant length of time in a structured setting. The judge also made mention of the obstacles J.J.T. will have to overcome if he wants to change his behavior:

The evidence before me demonstrates that there is hope for J.J.T. to eventually be safely reintegrated into society. However, the depth of his own emotional issues, his entrenchment in gang life, and the very real and dangerous presence of gangs in and out of penal institutions of every kind, mean that this can only happen with years of intense therapy and programming and a dedication to change on his part, at this point, he neither understands, nor is capable of making (para, 46).

At the start of this passage, the judge did acknowledge that J.J.T. could be rehabilitated and reintegrated into society but as the passage continues, the judge framed this task to be very challenging due to all of the hurdles J.J.T. faced. Further, by the judge discrediting J.J.T.’s current ability to make the appropriate changes in his behavior implies that he required a lengthy sentence to ensure he can be rehabilitated. The judge commented that this can only be achieved through an adult sentence, which would result in life-time supervision, as this was the only way to protect the public; “…A life sentence will ensure that in the event and at such a time as J.J.T. is granted parole, he will remain under supervision. I am satisfied that this is necessary in the interests of society” (para, 47). Ultimately, the judge presented the rationalization of an adult sentence as the only way to hold J.J.T. accountable for the horrific nature of the offence, to ensure the rehabilitation of the J.J.T., and to keep the public safe.

In the fourth adult case, *R. v. D.L.S.* (2012), the judge used similar discourse to justify the imposition of an adult sentence, which was largely based on the public’s interest. In regards to D.L.S., the judge commented on the aggravating factors of D.L.S.’ behavior since being in custody, and his involvement in the offence, with no mention of mitigating factors. Doing this focused solely on the negative attributes of the offender, increasing the public’s desire for an adult sentence. Interestingly, the judge used the fact that D.L.S. was not raised in a dysfunctional family or had exposure to violence and/or substance abuse as an aggravating factor as there is no reason for D.L.S. to have become involved in gangs and a criminal lifestyle:
...An upbringing that does little to explain his actions; his membership in the Indian Posse gang; the serious nature of the offence; and his continued entrenchment with the Indian Posse gang including new tattoos in the absence of any mitigating factors leads me to this conclusion[a youth sentence would not be of sufficient length (para, 49).

The judge recognized that since being in custody, D.L.S. had continued his involvement with the Indian Posse, including new tattoos, marking his commitment to the gang. With the knowledge that D.L.S. had continued to be involved in gang life implies that he was not taking advantage of the programs available to him, posing him as a risk to society.

As seen with the other adult cases, the judge used the length of an adult sentence as means to promote rehabilitation and reintegration. As a result of D.L.S.’ risk factors, he required life-long supervision. This will benefit him by providing him with structure and services, as well as protect the public. The judge supported this argument by identifying the reasons why D.L.S. has remained connected to the Indian Posse while in custody, and credited D.L.S. for beginning to take steps to participate in programs. With D.L.S. starting to make the appropriate changes, this behavior needed to be encouraged and promoted, which can be done through lifelong supervision:

In so finding, I recognize the limitations on D.L.S.’s present choices and the necessity of his staying within the Indian Posse range at the present time for personal safety reason. As well, there is some encouragement in the words of his case worker who indicates that D.L.S. now understands he can do what he wants if he follows the rules. This suggests that the future monitoring provided by parole will beneficial to him...the practical consideration of D.L.S. being on parole and the implications of it, in my view, will more likely result in his rehabilitation and reintegration into society and ensure D.L.S.’s future success if he carries through with that he says he wants to do for his future (para 50).

Through lifelong supervision, it would hopefully promote D.L.S. to continue to make progress throughout his life, allowing him to develop into a prosocial community member. In the end, the public’s safety was increased due to D.L.S.’ risk of recidivism decreasing, justifying an adult sentence.

The judge used very similar frameworks for J.B. as seen with D.L.S. The sentence imposed was based on the protection of the public, as J.B. posed a risk to society, meaning his successful rehabilitation and reintegration required lifelong
supervision. As with D.L.S., J.B. remained connected with the Indian Posse while in custody, and he had only recently begun to participate in programs; therefore, he required to remain in custody for a longer period of time:

...Despite the potential he has demonstrated and the positive steps he has taken, there are a number of concerning factors which have already been noted including the seriousness of the offence, J.B.’s gang involvement and the unpredictability of J.B.’s future depending on the life choices he makes when he is in a position to meaningfully do so. As with D.L.S., I also find J.B.’s chances of rehabilitation and successful reintegation are better served by imposing an adult sentence...a life sentence would ensure that, in the event of and at such time he is granted parole, he will remain under supervision which I am satisfied is not only necessary in the interests of society, but of his own (para, 55).

As she did with D.L.S., the judge commented that J.B.’s rehabilitation can only be achieved through the imposition of a long custodial sentence to provide him with the adequate structured environment he required, and to ensure his successful reintegation, he will be monitored for life.

In the last adult case, R. v. Prince (2012), the justifications used in the other adult cases were also present here. The judge began discussing the decision making process of imposing an adult sentence by referring back to Prince’s criminal record, and how the youth system had not been able to deter him from continuing his involvement in criminal activity. Consequently, there was nothing left in the youth system which could be used to hold Prince accountable and promote his rehabilitation, meaning an adult sentence was the only option available. Further, out of the adult cases, Prince was the oldest offender, and his age was used as an aggravating factor with the judge placing him on the high end of the age spectrum under the Act framing him to be more similar to an adult than a youth:

As I have already noted, Mr. Prince was just five months short his 18th birthday when he committed the offences...He has a lengthy history of involvement in the justice system. Many, if not all, of the resources available pursuant to the Act have been employed in an attempt to rehabilitate Mr. Prince. Despite that, nothing seems to have worked. He has been assessed as a very high risk to become re-involved (para, 73).
With the judge noting every possible program or intervention under the Act had been used, and Prince was a high risk to re-offend, an adult sentence is justified. Without an adult sentence, the public would be at risk as the youth system had not deterred Prince yet and most likely would not.

The society’s interest played a large role in the judge’s analysis, more so than in any other case used in this thesis. The judge made specific comments regarding societal interests and what sentence would best support them:

While I have given full consideration to the interests of Mr. Price, I have also considered the interests of society. In my view, societal interests, which include respect for the justice system, cannot be attended to by anything less than the imposition of an adult sentence upon Mr. Prince for each of the five offences for which he has been convicted (para, 76).

Interestingly, no-where in his concluding analysis did the judge discuss what sentence would hold the interests of Prince as he did with society. The judge blatantly stated that the only way to maintain society’s interests and their confidence in the administration of justice, was through an adult sentence. Ultimately this sentence was based on this underling justification. However, the judge framed his decision to be based on both Prince’s and the public’s interests:

I am satisfied, having considered all of the circumstances here…that the imposition of a youth sentence for second degree murder would not be of sufficient length to hold Mr. Prince accountable for his offending behavior and that an adult sentence is therefore required. A lifetime supervision following a period of incarceration will, in my opinion, serve both Mr. Prince and society as well (para, 77).

But nowhere in that passage did the judge ever mention rehabilitation and the successful reintegration of Prince. So how can the sentence be in his best interests, if his rehabilitation is not being accomplished? In none of the excerpts was Prince’s rehabilitation referred to. This again supports the sentence being framed in the best interests of the public and maintaining their confidence in justice. As with the other adult cases, this finding aligns to the social and political philosophies of “getting tough on crime”.

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For the youth cases, the judges placed emphasis on the offenders’ prospects for rehabilitation. Due to the fact the youth who received youth sentences were labelled as good prospects for rehabilitation, their rehabilitation could be achieved in the length of time allowed under the YCJA; meaning they did not require lifelong surveillance. Moreover, the judges discussed how the protection of the public would be accomplished through the successful rehabilitation of the youth; shaping the sentence to be in the best interest of the offender and consequently the public as well. In contrast, for the offenders who received adult sentences, each judge discussed how the youth was not a good candidate for rehabilitation, and if rehabilitation was going to be achieved, it required a long sentence. Ultimately, the adult sentences were framed in the best interest of the public and supported the larger societal and political policies of crime control. The judges in the adult cases depicted the offenders to be dangerous individuals who required a long sentence in order to protect the public. The judges used the negative qualities of the offender to justify an adult sentence.

6.1.3. Individual Characteristics

Individual characteristics represent how the judges discussed the information regarding the offender’s personal background. More specifically, how the judge in each case discussed and framed the personal history of the offender was examined. If the judge did consider the individual characteristics of the youth, were they used as aggravating or mitigating factors? Did this framework change depending on the sentence imposed? Understanding what information judges’ consider when imposing a sentence, and how they use that information (i.e. in the offender’s interest), is vital coming from a developmental and life-course perspective and examining the possible role of mandated treatment. Examples of personal background information include family dynamics, criminal history of the offender and/or any family members, any previous treatment, behavioral and/or learning disorders, and education attainment.
In *R. v. J.A.P.* (2008), the judge discussed his dysfunctional and chaotic background extensively, to the point where he decreased the blameworthiness of J.A.P. Further, the judge touched on the fact that J.A.P. did not have a criminal record, and he was a low risk to reoffend; “the defendant, now 23 years of age, has not significantly reoffended, that while needing further counselling and insight into his behavior, the defendant is a reasonable candidate to successfully complete a program of rehabilitation within the maximum term stipulated under the *Y.C.J.A.*” (para, 31). The judge also credited J.A.P. for maintaining stable and legal employment once he returned to British Columbia. The judge praised J.A.P. for having aspirations to obtain trades training in carpentry. Moreover, J.A.P. went back to high school and completed his grade 10 level of education, which the judge acknowledged and credited him for. Overall, the judge in this case, carefully considered J.A.P.’s personal history and circumstances, related them to the offence and his current behavioral problems, and complimented J.A.P. for the hardships he was able to overcome and turn his life around. By crediting J.A.P. for the hard work he had accomplished and was able to maintain prosocial relationships, the judge portrayed a sense of optimism for the future of J.A.P.

The judge mentioned J.A.P.’s behavior while being in custody, specifically the altercations he had been in. The judge credited his lack of prosocial coping mechanism a result of his background; “During the 26 months the defendant has been in custody there have been a number of incidents during which he was involved…this appears to be in accord with a background of violent response to conflict and his eventual reaction to parental control” (para, 26). This demonstrated that the judge acknowledged the impact of J.A.P.’s environment during childhood and adolescence on his current behavioral problems.

Similar findings appeared in *R. v. B.S.A.* (2013). When the judge was imposing his decision, he mentioned the personal history of B.S.A.. The judge commented that B.S.A. was a victim to interparental violence, perpetrated by his father, and his parent’s relationship was unstable, resulting in a chaotic home; “the relationship between B.S.A.’s
parents was volatile. His father abused drugs and alcohol. B.S.A. witnessed incidents of verbal and possible physical abuse between his parents. His parents separated in 2004. B.S.A. thereafter lived with his mother and younger brother” (para, 27). The judge also mentioned B.S.A. was victim to emotional abuse, which led to the development of PTSD. The judge recognized many situations that B.S.A. was exposed to were beyond his control and he should not be held responsible for them. The judge also commented on the lack of criminal record and problem behaviors of B.S.A. by stating:

Until July 23, 2011, there was no reason to believe that B.S.A. would not have become a useful and contributing member of society. He did well at school. He had been actively involved in sports. He had a part-time job. Although he had some discipline issues at school and had begun to abuse drugs and alcohol, such difficulties are not unusual in a young person. He had no criminal record and had never been charged with a criminal offence (para, 47).

Acknowledging the prosocial behaviors of B.S.A., such as his employment, involvement in sports, and academic performance, while downplaying his antisocial behaviors by stating that experimentation with drugs and alcohol along with discipline problems, were a normative development of adolescence provided a sense of optimism for B.S.A. and his future. Further, the judge humanized B.S.A. by decreasing his portrayal of being a predator.

In both of the youth cases, the judges paid attention to the circumstances of the offender and sympathized to the tragedies and trauma they experienced. They also noted that the experiences in their childhood helped to shed light and understanding on the offence. A feeling of empathy and concern for the offender was displayed, along with a positive feeling for their future. In the youth cases, the characteristics of the offender were framed to be mitigating factors. This was contrasted in the adult cases.

**Adult Cases**

In the cases involving an adult sentence, the judges’ framed the personal characteristics and background of the offender as aggravating factors when they were discussed. The amount of attention the background of the offender was limited, especially in comparison to the youth cases. The individual characteristics of the
offender promoted their involvement in anti-social and criminal behaviors making them at a high risk to re-offend. Further, the criminal record of the offenders' was largely focused on and used as a tool against them. The judges also mentioned the lack of law abiding family and/or community support which was also used as an aggravating factor. As a result, the judge used more punitive and less sympathetic language when discussing the background of the offenders'. In *R. v. Kenworthy* (2008), when the judge was describing the aggravating factors of the case, he said:

...I find Mr. Kenworthy is entrenched in a violent criminal lifestyle. Mr. Kenworthy has a lengthy criminal record for violent offences. I find that he was not deterred by the imposition of relatively lengthy custodial sentences...even with the love and support of his mother and his girlfriend, I find that he does not have law abiding adults who would be role models (para, 75).

The judge also made a comment that Kenworthy had no mental health issues that contributed to his criminal behavior; therefore, he was participating in these antisocial activities with a full functioning mind. These two statements taken together diminished any trauma or negative experiences Kenworthy experienced as a child. The limited acknowledgement of the individual characteristics was also evident in *R. v. D.D.P.* (2006).

When the judge was explaining the reasoning for his decision, he mentioned D.D.P.’s background twice. The first instance was when the judge was discussing the aggravating and mitigating factors, in which the judge dismissed D.D.P.’s background by stating that “the mitigating personal circumstances of Mr. D.D.P. are sadly, all too common among offenders” (para, 64). The judge did not show any sympathy for D.D.P. and the hardships that he faced as a child; he pushed them aside and did not give them weight as mitigating factors. The second time was when the judge was discussing the possible role of rehabilitation. In this instance the judge acknowledged that D.D.P. had no medical diagnosis to explain his criminal involvement, but he did comment on the difficulties D.D.P. faced during childhood. However, the tone used was more factual, not providing a sense of sympathy by again mentioning that this type of background was "normal" for this population of youth:
Mr. D.D.P. is a young, healthy man with no medical diagnoses that might explain his criminal conduct or inhibit his rehabilitation. It is his unfortunate background, marked by neglect and poor parenting, which is the most likely explanation for his lapse into antisocial and criminal behavior. Such a background is regrettably common among criminal offenders, as is illustrated in many of the sentencing cases (para, 79).

Consequently, this diminished the impact of individual characteristics of offenders and their role in sentencing. Rather than being mitigating and targeted through rehabilitation, they were used as aggravating factors, increasing the length of sentence imposed.

In the case of *R. v. J.K.W.* (2008), the judge briefly touched on the background of the offender, citing two instances of personal history information, both of which portrayed the offender in a negative way. First, in regards to his criminal record, the judge noted, “The offender has a record as a youth containing eighteen convictions, including two prior assault convictions. He has numerous convictions for non-compliance with court orders...despite high expectations for his return to the community, offender quickly returned to serious drug abuse and was living a transient existence” (para, 179). The judge further continued by saying, “J.K.W. was actively abusing drugs and he was living without controls in the community despite being under a youth probation” (para, 184). The judge framed J.K.W. as an individual who was constantly involved in illegal activities, even when he was under the control of the youth system; he was continuously getting into trouble. However, with no context of his childhood, the portrayal of J.K.W. was skewed.

During the analysis in *R. v. Arrieta* (2008), the judge focused on the negative qualities of Arrieta, noting that he was self-centered and not remorseful for what happened. The judge commented that the remorse Arrieta claimed to have was a result of how the consequences his actions had affected his own life, rather than the lives of the victims. Further, the judge noted that he did not have a willingness to change, making Arrieta a poor candidate for rehabilitation; “…his willingness to change, and consequently his treatability, I must candidly say that I am left in a state of uncertainty…I can fairly say that the preponderance of evidence suggests to me that the defendant has not fully acknowledged understanding or responsibility” (para, 301). The judge did not mention Arrieta had been diagnosed with long-standing conduct disorder, which
explained a lot of his aggressive and hostile behavior. However, the judge did focus on the fact that Arrieta’s parents had difficulty accepting that their son had committed the offences, and had their doubts on his degree of guilt. The judge further commented that Arrieta’s parents had been unable to control his behavior since he was 13-14 years old, and there was little chance they would be able to now, meaning he did not have any prosocial community support. All of this information regarding Arrieta’s family was used as an aggravating factor and supported the imposition of a long sentence as the only method to control Arrieta’s behavior, as his own parents were unable too.

In *R. v. Wellwood* (2011), the judge did not mention any personal background of either Wellwood or Moffatt in his analysis. The judge stated that both of the youth were at a high risk to re-offend, both were intelligent and mature for their age, and they were both in need of life-long supervision and treatment. These facts were used as aggravating factors, promoting the imposition of an adult sentence.

There are many similarities between all of the youth, even the two youth who received youth sentences. Many came from broken homes, were involved in substance abuse, their school performance waxed and waned, many experienced violence in the home, were victims themselves of abuse or neglect, and expressed behavioral problems early on. It was how the judge described and used the individual characteristics of the youth that made them aggravating or mitigating circumstances. For the two youth cases, the judge spoke at length about the hardships faced by the youth, and promoted the development of prosocial behaviors, using them as mitigating factors. You felt sympathy for the two youth which lent support for the youth sentence. In contrast, the judges’ in the adult cases rarely talked about the personal background of the offenders’. If they did mention individual characteristics, they were used in an aggravating way by the judge highlighting the negative behaviors of the youth. There was no feeling of empathy portrayed toward the offender, rather these backgrounds were all too normal for young offenders. The normality of the personal history of the youth and framing them as aggravating factors portrayed the youth as being dangerous. Consequently, in order to control their behavior, they needed to be incarcerated for a longer period of time. This again supports the crime control policies and increases the public’s confidence in the administration of justice.
In the two youth cases, the judge outlined the brief history of the two young offenders, and framed their personal circumstances to be mitigating. If it were not for their criminal family members and dysfunctional home life, then the offences would not have happened. The judge tied blameworthiness into the youths’ personal circumstances. In the case of R. v. A.A. (2011), the judge discussed the criminogenic history of A.A.’s family and how that shaped his current behavioral problems, the judge noted “A.A. comes from a troubled background. His mother has pursued a lifestyle of risk in a tumultuous relationship with his father who has a serious criminal record…Attempts by N.A.[A.A.’s aunt] to provide a stable home for A.A…were regularly disrupted as the parents would variously reunite and pick up the children” (para, 77). Even though A.A. had negative role models in his parents and some members of his extended family, the judge did acknowledge that he had no criminal record. Interestingly, this was immediately followed by the criminal activities A.A. had been involved in and his criminal aspirations for the future:

Despite his troubled background, A.A. has no prior criminal record. He does, however, acknowledge involvement in the sale of illegal drugs in school and uttering threat towards a female teacher…he has failed to stick with legal employment, has consumed alcohol and drugs, has had gang leadership aspirations, and has been involved in drug trafficking (para, 78).

The judge began the passage in a positive tone, showing A.A. had come from an unfortunate background and had no criminal record, but the judge changed the tone to be negative by outlining the criminal behaviors A.A. had been involved in, and had just not been caught by law enforcement. By doing this, the judge decreased the impact and importance of A.A.’s unfortunate circumstances in helping to explain why he has engaged in problem behaviors.

The judge continued to discuss the unfortunate background of A.A., framing it to be a “roadblock” for his reintegration. Specifically, the judge brought his attention back to A.A.’s lack of prosocial community support:
...It is difficult to see how either parent will at any time be able to provide any real, positive support for their son, having totally failed in that regard up to this point. The PSR further notes limited suitable alternative supports available to A.A. when he returns to the community...he expressed intention at one point was to live with his father-the victim’s brother and a convicted felon (para, 79).

Outlining the lack of prosocial support that A.A. had in the community was framed as an aggravating factor because all A.A. had in the community were individuals who were entrenched in crime; therefore, his risk of going back to that lifestyle was high. However, the judge went on to note that it was strictly the relationship between A.A. and his uncle that caused the offence, and it was because of this relationship A.A. became involved in drug trafficking. Relating the personal circumstances of A.A. as the direct cause of the offence frames the offence as not being his fault but a by-product of his unfortunate circumstances. The judge stated, “...A.A. was brought into this illegal operation by his uncle...that might not otherwise have existed in the nascence of such family ties” (para, 84). In this case, the judge was very factual about A.A.’s personal circumstances. When he was outlining his background the judge was straight to the point; there was no feeling of empathy for A.A. giving the impression that his unfortunate background did not play a major role in the overall decision-making process.

In the second youth case, R. v. C.H.C. (2009), the judge used expressive and colorful discourse when she was describing C.H.C.’s background, which gave the impression of a troubled youth who had a rough life; “C.H.C.’s chaotic, impoverished upbringing with criminal and substance dependency, his truancy and misconduct at school, and the pre-pubescent onset of antisocial behavior and substance abuse are indicative of an ingrained form of conduct disorder in adolescence” (para, 72). Further, when the judge was describing C.H.C., she framed C.H.C. as an individual who had taken all the appropriate steps while in custody to help identify and treat the underlying causes to his problem behaviors. The judge noted, “C.H.C. was remorseful. He had a chaotic childhood. C.H.C. had successfully completed virtually all treatment programs available, including anger management and cognitive programs” (HELD). A sense of sympathy was felt for C.H.C. and his progress increased his chances of having a successful future. Throughout the entire decision, the judge always discussed the treatment needs of C.H.C., and how he required multi-faceted treatment programs to
combat the risk factors of his personal circumstances. This was in contrast to A.A., as the judge did not give a sense of sympathy for A.A. and his family circumstances, nor did the judge frame rehabilitation as a method to decrease his risk factors. The adult cases mirrored the findings from A.A., but the judges did not use any piece of the offenders’ history as a mitigating factor.

**Adult Cases**

In *R. v. Casavant* (2009), the judge did not mention any individual characteristics or information regarding his personal background. The only information about Casavant was found in the PSR. The information contained the PSR was not analyzed in the judge’s decision in regards to sentencing.

In contrast to Casavant, the judge in *R. v. L.L.* (2014) mentioned the personal history and circumstances of L.L. in a fair amount of detail; however, she focused strongly on the negative attributes of L.L., using them as aggravating factors. There was no sense of empathy for the unfortunate circumstances L.L. faced as a child, which largely contributed to his behavioral patterns. The judge discussed L.L.’s personal background once, at the start of the analysis, and then not again; reinforcing the limited influence it had in the final decision-making process. The judge discussed the personal characteristics of L.L., but framed them as aggravating factors:

> He has been diagnosed with conduct disorder, severe, adolescent onset. According to the DSM IV, individuals with this disorder may be aggressive, show little empathy, may be callous and lack appropriate feelings of guilt or remorse although they may express guilt to reduce or prevent punishment. They may also exhibit poor frustration tolerance, irritability, temper outbursts, and recklessness (para, 32b).

By highlighting the negative attributes of someone with conduct disorder, it depicted L.L. negatively. The judge continued by adding:

> His personality patterns suggest he has a need to project an image of hard-boiled strength. He acts tough, is impulsive and hostile, exhibiting a disregard for and indifference to the rights of others which indicates a ‘lack of social conscience’ and contempt for social and moral conventions. His antisocial character pathology is described as high in comparison with
other offenders…punishment is seen only to reinforce his rebellious and hostile feeling (para, 32c).

Again the judge focused on all the negative aspects of L.L., without giving any context as to why he had developed the behaviors he had. Through these passages the judge did not give any sense of optimism for L.L. and his future. Later on in the same paragraph, the judge did mention L.L. wanted to turn his life around, and gain post-secondary education. What was interesting was in paragraph 32, there were subparagraphs (a-n, 19 total), four talked about L.L. positively. The amount of attention the judge gave the negative attributes or attitudes of L.L. compared to the positive ones, was damaging to L.L. and how he was perceived by others.

The judge mentioned the extensive criminal record that L.L. had generated by highlighting all of his previous offences, when they occurred, what they were, and the sentence he received. The judge also made a point to mention the punishment L.L. had already received was not harsh enough to deter him from continuing to partake in criminal behaviors. Furthermore, the judge made reference that L.L. was too entrenched in criminal activities and his conduct disorder made his rehabilitation more difficult:

All of the witnesses agree the L.L. cannot be easily treated and deterred from the gang lifestyle and the easy money it can provide. His antisocial traits and devotion to the gang lifestyle are said to be well entrenched. Even in his present situation, in care and awaiting sentencing, he has shown signs of difficulty he has in escaping this lifestyle (para, 39).

Using L.L.’s individual characteristics as aggravating factors could cause more harm than good, as the reasons why he had developed his antisocial and criminal behaviors were not being addressed. He was raised in an extremely criminogenic environment, with his mother being involved in drug trafficking, prostitution, and had multiple boyfriends who were involved in crime and drugs. This shaped L.L.’s behaviors and views on criminal behaviors. With multiple antisocial role models and no prosocial role models, the behaviors he had developed make intuitive sense. Punishing him for them with an adult sentence, in a federal correctional facility, further increases his entrenchment into gang lifestyle.
In *R. v. Bird* (2008), when the judge was determining whether to impose an adult or a youth sentence, the judge used Bird's individual characteristics to justify the adult sentence, especially her FASD as it made her easily swayed by peers:

Miss Bird has a most unfortunate background and I have no doubt that is contributed to the offence in many ways...because symptoms of FASD make her readily influenced by peers and contribute to her pattern of responding to her needs of the moment over any sense of empathy she may feel...she likely suffered physical and perhaps sexual abuse when she lived with her biological parents up to about age five (para, 39).

The judge further went on to mention that since grade 11 (age 16), Bird had been homeless, living with other young offenders in West Edmonton Mall. The judge also mentioned that Bird became a regular user of crystal meth and began using crack cocaine. The judge also noted that Bird did not have a criminal record, but that she did engage in illegal such as drug use, “dine-and-dashes” and shoplifting. These attributes were used in conjunction with the lack of community support Bird had, which would put her at risk to go back to her old habits and re-offend. The judge used these unfortunate circumstances as aggravating factors to promote longer sentence for Bird.

As seen with the other cases, the judge did not bring in Bird’s personal circumstances into the final decision-making process. Her individual characteristics were part of the analysis that came prior to the final conclusion. Interestingly, later in the analysis, when the judge was discussing the placement of Bird, she noted the positive behaviors that Bird had engaged in:

As to her period of custody...She has, while there, participated in number of educational and counselling programs. She has obtained her high school diploma...while it is general policy to place offenders reaching 20 years of age in an adult corrections environment, it was agreed that Miss Bird would continue to be house in the EYOC, in part to provide her with the opportunity to complete her high school education (para, 94).

The judge acknowledged the work that Bird had done while in custody, taking steps to better herself. The judge did not want to interrupt the progress she had made; therefore, it was decided that Bird was to remain in the youth facility. This was important as the judge used Bird’s circumstances to rationalize an adult sentence, but she did recognize the hardships Bird had been through, and since she was making progress to better
herself, the judge wanted to promote that prosocial behavior. This was a deviation from the other adult cases, as this promoted a sense of optimism for Bird’s future. By keeping Bird in the youth facility, there was hope she can turn her life around.

Overall, for the adult cases, the judges’ used the offenders’ personal circumstances as aggravating factors. Unlike the youth cases, the judges’ did not use any individual characteristics as mitigating factors, which increased the blameworthINESS and justification of an adult sentence. By the judges ignoring the personal characteristics of youth, the chances of their successful reintegration is reduced. The role of mandated treatment will ensure that the underlying causes to criminal behaviors are targeted, even if judges’ decide to dismiss them.

**Saskatchewan**

**Youth Cases**

In the one youth case, *R. v. C.R.B.* (2009), the judge acknowledged the troubled childhood C.R.B. experienced. The judge was sympathetic to C.R.B.’s circumstances, and rather than punishing C.R.B. for the trouble he had gotten into, the judge wanted to shape his sentence to promote his rehabilitation. The judge recognized the criminal record C.R.B. had, but it was not focused heavily on, nor did it play a persuasive role in the final decision-making process. Through rehabilitation, the underlying causes to C.R.B.’s problem behaviors would be identified and treated. The judge noted:

> His childhood years were filled with alcohol abuse and physical violence, with little to no structure to his life, or parental guidance or support. The accused becomes more aggressive after consuming alcohol, and most of his criminal activities occurred because of his use of alcohol and his poor choice of peer group (para, 31).

Through this passage, the judge recognized the negative experiences of C.R.B.’s childhood, which largely explained his participation in criminal activity. By discussing the individual characteristics, followed by the influence they have had on the current behavior of C.R.B., it provided a sense of sympathy for C.R.B. as his antisocial behaviors were not his fault. This feeling was further reinforced when the judge was discussing all of the progress C.R.B. had made while in custody. The judge made 11
points regarding the progress of C.R.B.; all were positive, depicting C.R.B. to not be a dangerous or bad youth, but as someone who had a troubled childhood. By the judge highlighting all the positive behaviors of C.R.B., along with his future goals a feeling of empathy and optimism was felt for C.R.B., supporting the imposition of a youth sentence.

This was especially demonstrated in the last two paragraphs of the case. The judge made two unique, yet powerful statements regarding the positives that could come out of this offence. The judge placed C.R.B. at the center of them by making several comments regarding how this was an opportunity for C.R.B., but not to forget that he had this opportunity to become a better person because of the victim. The judge said:

C.R.B., Philip Roy helped everyone in his circle of family and friends during his lifetime and brought joy to each and every one of them. Even in his death, Philip Roy is helping other for, without his death, you would not be here before us. You are being given an opportunity to change your life and be a responsible and productive member of the community. I urge you, C.R.B., to remember throughout your life the opportunity that Philip Roy has provided you. When you are successful in turning your life around and joy, happiness and rewards in your life, remember Philip Roy and the major part he played in making all of this possible for you (para, 53).

This excerpt had a positive and sincere tone with the judge showing optimism for C.R.B., especially as the judge said “when you succeed”. Through this quote, the judge was making the best out of a bad situation by allowing C.R.B. to reach his potential, an opportunity he may not have had if it were not for the offence. The judge did acknowledge that there would be challenges C.R.B. would face and it was going to require hard work, but not to forget why he had this chance to better himself when he faced those times:

This is not to say there will not be struggles in your life. It will take a great deal of focus, dedication and hard work on your part to achieve these goals. However, do not forget it was Philip Roy who opened the door for you to sept through a new and better life (para 54).

Through these two passages, the judge was giving meaning to the death of the victim, and using his death to better C.R.B. The judge recognized the potential C.R.B. had, and
to use this opportunity as the gateway to achieve his new life. Overall, the judge used C.R.B.’s individual characteristics and personal history as mitigating factors.

**Adult Cases**

In opposition to the how the judge used the individual characteristics of C.R.B., the two judges in the adult cases used the individual characteristics as aggravating factors. This was largely accomplished by framing the offenders negatively, focusing on their problem behaviors, dismissing any progress made while in custody, and brushing over any mitigating factors. In *R. v. D.R.* (2015), the judge did go through the personal background of D.R. in detail, but focused largely on the negative aspects of D.R. The judge acknowledged D.R. was placed into foster care at the age of three as a result of his parents going to rehab. While D.R. was out of his parents care, he was the victim of a violent sexual assault. Once his parents completed treatment, D.R. was placed back into their care, and the judge recognized the close relationship D.R. had with his parents and older sister. His parents have continued to be supportive, and have been present in court throughout his sentencing hearing. Through these passages, the judge was providing a sense of empathy for D.R. by acknowledging his victimization and rough childhood, especially during his early childhood years. As well the judge painted a picture of a close, supportive, and loving family, which was a protective factor of recidivism. However, the tone quickly shifted from positive to negative.

The judge began to focus heavily on the destructive behaviors of D.R. and discredited the support of his family:

Although D.R. has had parental support…parental supervision has not been an effective deterrent in regards to D.R.’s ongoing antisocial behaviors in the community. Also of concern is that D.R. has several close family members with past and current involvement in the criminal justice system…D.R. and Kody Bear [D.R.’s brother] have a history of offending together, particularly with the use of alcohol (para, 64).

This passage depicted D.R. negatively because he was choosing to associate with family members who were involved in crime, adopting similar antisocial attitudes and disobeying his parents who are trying to be prosocial role models for him. The judge
continued to frame D.R. negatively by focusing on his behaviors in school and lack of educational attainment:

D.R. last received a full academic credit for grade 8...While in the community he had a truancy rate of greater than 50% the last 12 months he was living in the community. D.R. has a history of suspension from school due to his inappropriate and aggressive behaviors. He was expelled during his last year in the community...On that occasion he attended school while intoxicated and verbally threatened students and staff (paras 65-66).

Highlighting D.R. had obtained little academic achievement, and he had been expelled from school due to threatening peers and authority figures, framed D.R. to be a danger to society. This also highlighted D.R. had no education to obtain legal employment, further increasing his risk to society. Interestingly, the judge shifted the tone back to positive, and feelings of sympathy were felt for D.R.

The judge noted D.R. had struggled with substance abuse, but she also stated the whole community had been plagued with substance abuse issues, especially alcohol. This normalized D.R.’s involvement in using substances; “D.R. has personally suffered with substance abuse from a relatively young age, abusing both alcohol and drugs. Within D.R.’s community there is significant substance abuse. Alcohol abuse has significantly negatively affected this community leading to increased unemployment and loss of traditional knowledge and practices” (para, 71). The judge also discussed how D.R. had been affected by poverty. Both his parents and community as whole were struggling financially due to limited employment opportunities on the reserve. Furthermore, the judge acknowledged how D.R. had witnessed multiple instances of violence in his community, which may have normalized that type of behavior. Through the judge highlighting these factors of D.R.’s life, empathy is felt for him as he is largely a by-product of his community.

The judge did comment on D.R.’s progress in custody and his participation in programs, as well as his desire to become involved in Aboriginal programs in order to understand his cultural heritage. Ultimately, in her decision-making process, the judge credited D.R. for beginning to acknowledge his problems, and to start taking the appropriate steps to understand the underlying causes to his behaviors. But the judge
also highlighted the negative aspects of D.R., especially his ARND diagnosis and how that put him at risk, his lengthy criminal record, and his substance abuse issues. The judge in this case portrayed D.R. positively and negatively. She used his individual characteristics in both aggravating and mitigating factors. This was unique to this case. Through some passages the way the judge framed the personal history of D.R. made him come across as a dangerous individual, yet there were other times when sympathy was felt for him, as his behavior was largely caused by his community. D.R.’s individual characteristics did play a part in the overall decision-making process of the sentence, weighing the positive with the negative factors.

The last adult case, *R. v. Turcotte* (2008), the judge focused solely on Turcotte’s negative behaviors. Unique about this case, was Turcotte’s family dynamics. During the description of Turcotte’s childhood, it was all positive. There were no signs according to the case, of any family dysfunction, substance abuse issues, or criminogenic family members:

> Although Nolan’s relationship with his parents has been strained at times, his parents remain a strong support for Nolan. They continually try to work with Nolan and help encourage him to make better decisions. They have been actively involved in case planning with Nolan and what is best for their son...Nolan rates his relationship with his pares as a perfect 10 out of 10. He is really happy his parents have supported him through everything and his father attends all of his court proceedings...Nolan admits his parents often set rules and boundaries but that he would often ignore them. He knows his parents are disappointed with some of the choices he has made but they continue to support him no matter what (para, 33).

In the other cases in the thesis (except D.L.S.), no matter the sentence, family dysfunction and a troubled childhood was a consistent finding; however, in this case a supportive family who had prosocial values was present. This relationship should be used as a mitigating factor as Turcotte had prosocial community support, but this factor was not re-analyzed in the final decision–making process of the judge. In many cases, the judges noted the lack of community support in their final decision, so the fact that the judge did not consider this fact was interesting.
The judge discussed the criminal record of Turcotte and how this was a pattern of escalating violent behaviors. Through this framework, the judge focused solely on the negative attributes of Turcotte and his behaviors, using them as aggravating factors in the decision. The judge began by noting Turcotte’s criminal record began when he was 13 years of age and it was a continued pattern of participating in criminal activities. As a result of his troubled behaviors, this led to problems in school and obtaining academic success. The judge discussed a particular finding from the psychological assessment which concluded:

Of particular concern is Nolan's pattern of generalized trouble with respect to missing school, suspensions, non-constructive use of time, absence of prosocial friends, and his willingness to use violence. He has shown signs of early and diverse antisocial behaviors and is facing his third Disposition in less than a year all before the age of sixteen. He also seems to be supportive of crime and is not strongly connected to prosocial institutions (para, 61).

This passage depicted Turcotte to be an individual who was becoming entrenched in criminality. Through this passage Turcotte was described as an individual who had escalated his involvement in criminal activities, as well as an escalation in the type of crime he commits by stating “his willingness to use violence”. This was reinforced by the judge noting the length of Turcotte’s criminal record, specifically the three dispositions coming within one year, and all prior to Turcotte being 16 years of age. This representation continued when the judge stated Turcotte was involved in a gang and was willing to commit any type of crime the gang requested; “…Turcotte was classified by the police as an associate with the Native Syndicate Killers. According to witnesses, Turcotte has identified himself as a member of the gang and has carved the gangs initials into his hand” (para, 71). The fact that Turcotte was a self-identified gang member did play a role in the decision-making process of the judge. Also playing a pivotal role was Turcotte’s diagnosis of conduct disorder, ADHD, and polysubstance abuse.

As a result of Turcotte’s diagnoses, his attitude towards criminal and antisocial behaviors, and his lack of prosocial friends, the judge claimed Turcotte was a poor candidate for rehabilitation. This was strongly reflected in the final sentencing decision:
In my view, Turcotte, with his personality disorder, represents a poor candidate for treatment. The psychological reports reflect that Turcotte did not want to attend treatment sessions, including anger management courses; as he thought it as a waste of time. He preferred to hang out with his friends and do drugs (para, 86).

Turcotte had many underlying causes to his antisocial behaviors and through target multi-facetted treatment programs they could be addressed, which would decrease his risk of recidivism. Framing the individual characteristics of the youth as aggravating justified the imposition of an adult sentence as the judge framed the youth to be a threat to society. In this case, the judge did not have any optimism for the future well-being of Turcotte and his ability to turn his life around. Rather the judge mentioned he was not a good prospect for rehabilitation, which reinforced the need for a long and punitive sentence. Ultimately, this supports the larger social and political philosophies of crime control.

**Manitoba**

**Youth Cases**

In the first youth case, *R. v. D.R.A.* (2014), the judge took into consideration that D.R.A. was an Aboriginal offender and he was a victim of the inter-generational effects of the residential schools. Both of his parents attended residential schools, which impacted their ability to parent as they struggled with substance abuse, mainly alcohol. Further, their educational attainment was low, making it hard to provide proper structure and support for D.R.A. A consequence of this was D.R.A. spent much time without supervision, as well as he witnessed substance abuse and domestic violence since early childhood, both in his home and community. Also, due to these influences, D.R.A. began abusing substances at a young age; “At the time of the commission of the offence, the accused was 15 years of age. He had been using drugs and alcohol for some seven years…I am satisfied from the comments of the accused’s sister that the accused had little if any adult supervision from an early age” (para, 25). The judge further reinforced this point by commenting:

This accused has suffered from the effects of colonization. The parenting he received from his mother is an all too common example of the effects of this country’s residential school policy. The accused was exposed to
drug abuse and violence from a young age...It is noteworthy that in the course of the 18 months since the commission of this offence while in the structured settings of youth centres, the accused is participating in his programming and beginning to become self motivated. I find this to be an important development in the accused’s case (para, 34).

Through the two passages, the judge was expressing sympathy towards the accused due to the hardships he had faced since early childhood. The fact that his parents were victims of the residential schools, he also was suffering the consequences. Highlighting the troubled childhood of D.R.A. through a tone of empathy, framed his personal circumstances to be mitigating factors because many of the underlying causes to his criminal and antisocial behaviors were beyond his control.

The judge credited D.R.A. for the progress he made while in custody. Specifically, the judge stated that since he had been in a structured environment, D.R.A. had done well by becoming self-motivated to change, highlighting that he was a good candidate for rehabilitation, further supporting that his problem behaviors stem from his childhood. This presented a sense of optimism for D.R.A. because with the proper support and guidance, he understood his behaviors and learned how to change them. D.R.A. was also obtaining high school credits and expressed motivation to complete his high school education. This information again supports the optimism for D.R.A. and his future. Also important in this case was that D.R.A. was not affiliated with a gang, and this did play a role in the decision-making process of the judge. The judge specifically noted in his final analysis that D.R.A. had no gang affiliations; therefore, the risk factors surrounding a gang were not present. All of these factors were considered in the judge’s decision, which were framed to be mitigating, supporting the imposition of a youth sentence.

In the second youth case, *R. v. J.J.H.* (2010), the judge was also very sympathetic to the personal history of J.J.H., and it was one of the biggest influences in the judge’s decision to impose not only a youth sentence, but an IRSC sentence. The judge recognized that if it weren’t for J.J.H.’s childhood, the offence would not have happened. The underlying causes that led to this offence were beyond his control. The offence was a result of the abuse and suffering he had undergone since he was an infant. The diagnosis of PTSD, Reactive Attachment Disorder, and Narcissistic
Personality Disorder, were all caused from his environment. Again, re-iterating that what happened to him was not his fault, and had he been raised in a prosocial, supportive, and structured environment, his development would not have been negatively impacted; “…His personality and development have been adversely affected by his upbringing” (para, 128). Since being out of the aversive environment, J.J.H. was doing very well, and had no infractions since being in custody, and was taking the appropriate steps to begin to heal; “Since the offences, J.J.H. has been going quite well in custody. He has not been charged with any criminal offence. His current case manager, Dale Ward, testified that he is doing well” (para, 131). Knowing that J.J.H. was doing well leads to feelings of optimism for him and his future. As seen with D.R.A., J.J.H.’s personal circumstances were used as mitigating factors and were one of the primary factors in the judge’s decision.

In the last youth case, R. v. R.L.T. (2012), there was a difference in the tone and portrayal of the individual circumstances than the prior two youth cases. There was less focus on the personal factors of C.F. in the decision-making process of the judge. In reality, the judge did not mention the individual circumstances of C.F. in her final analysis. The progress C.F. made in custody was the only personal information used by the judge during her sentencing decision.

Adult Cases

The first adult case, R. v. R.L.T. (2012), R.L.T. had a much more difficult time in custody than C.F; he had many infractions with staff and peers. He was also resistant to participate in programs for the first two years while on remand, and he had yet to take full responsibility for his participation in the offence, or express victim empathy. As with C.F., the judge did not mention his individual characteristics during her analysis. This implied that the personal history of R.L.T. did not play a role in the final decision-making process of the judge.

In the second adult case, R. v. C.G.D. (2014), consistent with R. v. R.L.T. (2010), the judge did not focus much at all on the individual characteristics of C.G.D. With that being said, the judge did note two individual circumstances of C.G.D. in her final sentencing conclusion that influenced the overall decision. First, was in regards to
C.G.D. being entrenched in a gang lifestyle. The offence itself was gang related, and C.G.D. had been involved in the Mad Cowz gang for two years, beginning when he was 13 or 14 years old; “This was a brazen attack by a young person entrenched in gang culture…C.G.D. had a criminal record and was on several probation orders at the time” (para, 36). Second, was the number of incidents C.G.D. had been involved in since being in custody and his initial refusal to participate in programs; “It is certainly commendable that C.G.D. has made some progress and shows some insight and willingness to be rehabilitates…At the same time, I am mindful and troubled that while incarcerated he has had approximately 15 institutional incidents” (para, 37). By the judge commenting specifically on C.G.D.’s gang lifestyle, criminal record, and high number of incidents since being in custody, he was framed negatively, justifying the imposition of an adult sentence.

The third adult case, R. v. J.J.T. (2010), mirrored the findings from the other adult cases. In the final analysis, the judge did not discuss the individual characteristics of J.J.T., other than the offence was gang related, so it was premeditated, and J.J.T. continued his involvement with the Indian Posse gang while in custody. When the judge was discussing J.J.T.’s progress in custody, she began by highlighting the progress he had made, but then concluded by commenting on J.J.T.’s current status with the Indian Posse gang. He was the highest ranking member in the youth facility and how he continued to wear their colors. By ending the conversation by focusing on the negatives, rather than the positives, the judge was decreasing the progress and positive changes J.J.T. had made. The judge was very emotive when explaining the number of youth becoming involved in gangs and how they are a threat to society as a result of their prevalence:

...fundamentally, this is a story of a younger boy following older males. J.J.T.’s vulnerabilities, the absence of any safety net in his life, and the welcoming arms of gangs with their criminal culture replete with guns, turned this age old scenario into a recipe for the most deadly violence. It is a chilling but frank reality that J.J.T. is but one of an entire generation of children being recruited as child soldiers in the small armies we know as street gangs, which are constantly at war - with each other, and with society (para 45).
This passage was filled with powerful and descriptive language especially when the judge framed the recruitment of youth into gangs is synonymous to the recruitment of child soldiers. Consequently, this increased the perceptions of danger and fear surrounding the gangs as they were being portrayed similarly to the workings of rebel forces; justifying the need of an adult sentence.

*R. v. D.L.S.* (2012), the fourth adult case, the individual characteristics of D.L.S. and J.B. were not present in the judge’s concluding decision, other than the fact that they were involved in the Indian Posse gang and the offence was gang related. The judge commented that both D.L.S. and J.B. were using the gang as protection while in custody, which was why they remained involved with the gang. However, the judge noted that they both had new gang related tattoos. This downplayed the claim by D.L.S. and J.B. that they remained in the gang for personal safety reason. By the judge framing the fact that despite what they say, they were actively engaging in gang activities in custody depicted both youth negatively. By the judge focusing solely on the fact D.L.S. and J.B. were gang members it justified the imposition of an adult sentence, as both youth were portrayed to be dangers to society.

In the last adult case, *R. v. Prince* (2012), the judge did not mention any individual characteristics during his final decision other than the length of Prince’s criminal record. The judge noted that Prince had a substantial criminal record for a young person and every option in the youth system had been tried to deter Prince from reoffending but nothing had worked. Noting the length of his criminal record as the only individual characteristic in the concluding decision framed Prince as a threat to society; therefore, justifying an adult sentence.

The seriousness of the offence, society’s interest, and Prince’s criminal record were the three major influences that led to the conclusion that an adult sentence was required. As with the all of the other cases, there were underlying causes to Prince’s behavior that needed to be identified and treated to decrease the risk of recidivism. The differences between the youth and the adult sentences were the judges’ who imposed a youth sentence were more sympathetic to the individual characteristics of the youth, making a point to use them as mitigating factors in their overall decision. Whereas for
the adult cases, the judges’ rarely mentioned the personal history of the youth, and if they did, they focused on the negative qualities and used them as aggravating factors.

6.1.4. Same Offence, Different Sentence: Comparison between Factors Determining a Youth vs. Adult Sentence

The last main theme identified in this analysis was the justifications judges’ used for imposing a different sentence for the same severity of offence. Differences in the way judges’ discussed the circumstances of each offence and offender were found. The main discrepancies recognized were the way the judges framed the aggravating and mitigating factors, along with the overall blameworthiness of the offender. This information taken as a whole revealed the justifications for the differences in the sentences imposed. These results can help inform research on what factors of an offence and offender are given more weight by the judiciary; this can determine if research and the implementation of the law are mirroring one another or if there is a disconnect.²

**British Columbia**


**Aggravating and Mitigating Factors**

In the two youth cases, the judges’ were sympathetic to the youths’ individual circumstances, gave them credit for the progress made while in custody, and acknowledged both were remorseful for their actions. In *R. v. J.A.P. (2008)*, the judge complimented J.A.P. for the progress he made during the seven years following the murder prior to his arrest. He had travelled around the world, settled in Whistler, obtained legal employment, and became a prosocial member of the community. J.A.P.

² Saskatchewan did not have any cases that imposed a different sentence for the same offence.
also had positive ties in the community such as his relationship with his step-mother and his sisters:

…He travelled to India and stayed six months at a Hare Krishna temple. After some further travel, he returned to British Columbia and took work at Whistler. He went back to high school and completed grade ten…He remains estranged from his father but gets along well with the woman his father subsequently married. She and his father have divorced (para, 25)

This offence was the only criminal activity J.A.P. participated in, and the judge placed some of the blame onto the victim and the dysfunctional family environment J.A.P. was raised in; “…this offence was very much a product of the dysfunctional family background and the defendant’s dependency reduced level of maturity” (para, 31). The judge credited J.A.P. for obtaining school credits, enough to complete his grade 10 level of education, and the ambition to complete his training in carpentry.

Similarly, in R. v. B.S.A. (2013), the judge acknowledged that B.S.A. had a troubled childhood where he witnessed domestic violence. When describing the offence, the judge stated that the act was out of impulsivity not intent; meaning this was not a pre-mediated or planned offence; “…Cases that involved factors such a premeditation, prior criminal records, moderate or high risk of recidivism, lack of remorse and poor rehabilitation prospects were more likely to lead to an adult sentence…None of those factors are present in this case” (para, 46). B.S.A. expressed genuine remorse for his actions, and wrote an apology letter to the victim’s family. His lack of criminal record, participation in treatment and counselling programs while in custody, completion of his high school degree, and acceptance into community college were all mentioned and recognized by the judge. The judge credited B.S.A. for his progress and hard work that he had achieved while being in custody. B.S.A. also had support from his maternal and paternal grandparents, along with his mother, meaning he had prosocial community support that would be able to aid him with his reintegration.

In the two adult cases, the way the two judges framed the circumstances of the two offenders, along with the circumstances of the offence were in stark contrast with the two youth cases described above. The circumstances of the offence and the offender were framed as aggravating factors, increasing the public’s desire and support for an
adult sentence. By framing the offence and the offender negatively, the judges’ decisions maintained the publics’ confidence in the administration of justice as well as aligned with the Conservative government’s crime control mentality.

In R. v. J.K.W. (2006) the judge solely focused on J.K.W.’s destructive behavior. The judge was not sympathetic to J.K.W.’s personal history and troubled childhood. The judge also increased the blameworthiness of J.K.W., along with the severity of the offence through the use of emotive language. The judge referred back to the horrific nature of the crime, J.K.W.’s extensive criminal record, the impact the offence had on the victim’s family, and the inability of the justice system to deter J.K.W. from continuing his involvement in criminal behaviors; “…his history strongly suggests that youth community supervision will be insufficient in terms of its ability to monitor J.K.W. and to detect and curtail any significant anti-social or criminal behavior” (para, 182). This framed J.K.W. negatively, justifying the need for an adult sentence.

Consistent with R. v. J.K.W. (2006), the judge in R. v. Arrieta (2010) portrayed Arrieta undesirably, especially when the judge was commenting on Arrieta’s behavior while in custody only hours after the offence; “After the event, having had an hour and a half to think about what he had done, the Defendant displayed disturbing callousness by joining Mr. Chantabouala in chanting violent rap lyrics while in police cells (para, 219). The judge discussed how Arrieta’s parents were unable to control him and they were naïve in his participation of the offence, in addition to his drug dealing activities. As a result, the judge mentioned Arrieta did not have prosocial community support which would increase his risk of returning back to his “dial-a-dope” and “gangsta” lifestyle. Ultimately, the judge increased Arrieta’s blameworthiness by using emotive and moral discourse when he was talking about the offence and Arrieta:

…the Defendant’s actions on the night of the shooting cannot fairly be portrayed as involving the impulsive, thoughtless behavior of a youth who fails to understand consequences and exhibits the reduced empathy of adolescence. Rather, the shootings in this case are the manifestations of a long-standing and severe conduct disorder, a dysfunctional state which led to the Defendant into an ongoing pattern of behavior where fundamental social values were of no consequence of significance to him (para 315).
Consequently, by the judge highlighting Arrieta’s problem behaviors while glossing over any positive factors, increased the number of aggravating factors and decreased the number of mitigating factors, justifying an adult sentence.

**Alberta**

For the Alberta cases, there was one youth sentence for first degree murder, *R. v. A.A.* (2011), and one adult sentence for first degree murder, *R. v. Casavant*, 2009. There was also one youth sentence for second degree murder, *R. v. C.H.C.* (2009), and one adult sentence *R. v. L.L.* (2014). The first degree murder cases are discussed first, followed by the two second degree murder cases.

**Aggravating and Mitigating Factors**

In *R. v. A.A.* (2011), the judge mentioned his troubled childhood and dysfunctional family members who were also involved in criminal matters. It was discussed by the judge that A.A.’s family largely shaped the current problem behaviors that A.A. was participating in; “A.A. comes from a troubled background. His mother has pursued a lifestyle of risk in a tumultuous relationship with his father who has a serious criminal record dating back to 1989” (para, 77). The judge also placed some of the blame onto the victim, which decreased A.A.’s overall moral culpability. Further, the judge credited A.A. for the progress he had made in custody. He had participated in programs available along with completing credits toward his high school education; “…During that time in custody…he has advances in his education and taken at least 12 ancillary courses with counselling that may be of assistance in dealing with a variety of personal issues” (para, 76). This information justified the imposition of a youth sentence as it portrayed A.A. to also be a victim and he was taking the appropriate steps to make a better future for himself.

In contrast, the judge in *R. v. Casavant* (2009), made no reference to the unfortunate personal circumstances of Casavant. There was also no acknowledgement by the judge regarding the progress Casavant had made while in custody, especially in completing enough credits to obtain his high school diploma. The judge stated that Casavant was not a good prospect for rehabilitation, and in order to ensure the safety of
the public, Casavant required a lifelong sentence; “…Mr. Casavant is not a good prospect for successful rehabilitative treatment…the maximum youth sentence would not be long enough to foster Mr. Casavant’s rehabilitation in a meaningful and realistic fashion” (para, 53). The judge placed all of the responsibility for the offence onto Casavant, increasing his blameworthiness; “The level of Mr. Casavant’s moral blameworthiness for this crime is extremely high. The risk created by Mr. Casavant’s act could not be greater. Indeed risk is in a sense not an appropriate word in this context” (para, 51). Overall the analysis was very short, filled with punitive and strict language, framing Casavant to be a danger to society, ultimately justifying an adult sentence. These findings were consistent with the two second degree murder cases, *R. v. C.H.C.* (2009) and *R. v. L.L.* (2014).

The judge in *R. v. C.H.C.* (2009) acknowledged the dysfunctional childhood C.H.C. had, through the use of colorful and descriptive language; “…C.H.C.’s chaotic, impoverished upbringing with criminal substance dependency influences, his truancy and misconduct at school and the pre-pubescent onset of anti-social behavior and substance abuse are indicative of an ingrained conduct disorder in adolescence” (para, 72). She also credited C.H.C. multiple times on the progress he had made in custody by participating in almost all of the treatment programs and counselling services available to him, along with working on completing his high school diploma; “…his successful completion of virtually all treatment programs offered at EYOC, including anger management and cognitive programs, is evidence of positive treatment motivation” (para, 72). The judge framed the sentence to be largely centered on rehabilitation, and C.H.C.’s need of multi-faceted treatment in custody as well as in the community.

In opposition to C.H.C., was the case of *R. v. L.L.* (2014). The judge in this case mirrored the discussion and justification used in *R. v. Casavant* (2009). The judge focused heavily on L.L.’s problem behaviors, as well as his criminal record, with little discussion on the positive behaviors L.L. had developed while in custody. Also, the way the judge talked about L.L.’s diagnosis of conduct disorder along with his substance use, gave the impression that L.L. was not a good prospect for rehabilitation; “L.L. has been diagnosed with a severe conduct disorder made more complicated by his drug use disorder. His prognosis is made worse by the co-occurrence of these disorders. It is
characteristic of this disorder that a person lacks empathy for others and lacks real remorse” (para, 46). The judge framed L.L. to be a dangerous individual, especially for a young person, who had yet to be deterred by any form of intervention from the criminal justice system:

This offence was among the most serious of crimes. It was committed by an offender who was near adult. He has amassed a criminal record at his young age that can only be described as shocking. He has continued to offend notwithstanding all previous efforts to aid him and conditions imposed on him” (para, 60).

The judge portrayed an adult sentence as the last method to use in order to keep L.L.’s behaviors under control and protect society.

Interestingly, in these two cases, both of the offenders were diagnosed with a severe form of conduct disorder. The judge in the case of L.L. used his diagnosis as an aggravating factor as it decreased his chances of being rehabilitated. Whereas, in C.H.C.’s case, the judge acknowledged the diagnosis, but realized that this disorder can be treated, and did not mean that C.H.C. cannot receive help. The difference in the way the judges’ framed the diagnosis was very interesting, and supported the justification of the two different sentences. Overall, the tone and language of the judge, in addition to the information they focus on, largely justified the imposition of a youth or an adult sentence.

**Manitoba**

For the Manitoba cases, there were two youth sentences (R. v. D.R.A. (2014); R. v. J.J.H. (2010)) and two adult sentences (R. v. C.G.D. (2014); R. v. Prince (2012)) for second degree murder. For the youth cases, the judges’ were more sympathetic to the personal history of the offenders’, as well as they both provided a sense of optimism for their future, framing the sentence to be in the best interest of the offender. In contrast, the two adult cases, the judges’ did not spend much, if any time, on the individual characteristics of the two offenders’ and when they did, they focused on the negative attributes of the offender. Further, there was no optimism for their future as seen in the youth cases. The sentences were centered on maintaining the public’s interest and confidence in the administration of justice. Also, one of the other defining features
between the youth sentences and the adult sentences was the progress made while the youth were in custody.

**Aggravating and Mitigating Factors**

In the case of D.R.A., the judge was sympathetic towards the information regarding the effects of colonization, and the victimization of racism, poverty, substance abuse, and violence that plagued D.R.A.'s community. Both of his parents attended residential schools which greatly impacted their ability to parent, leaving D.R.A. with little supervision or structure during childhood. The judge also mentioned the fact that D.R.A. did not know his biological father, and his mother's relationship with his step-father was characterized by alcohol abuse and domestic violence:

Both of the accused's parents were products of the residential school system. Both parents were subject to physical and emotional abuse while attending school. The effect of this treatment can be seen in their parenting of the accused...The accused grew up in a home with his mother and her long term partner...The accused described frequent exposure to his mother’s use of alcohol which would lead to verbal and physical confrontations between her and her long term partner (paras, 7 and 9).

The judge noted that these are many of the reasons as to why D.R.A. developed antisocial behaviors that have escalated into criminal behaviors. Further, the judge specifically noted that D.R.A. was not associated with any gangs and had made progress since being in custody, obtaining credits toward his education, and participated in counselling programs:

...The accused was involved in a program focusing on anger management and developing social skills. He was described as being a positive contributor listening well to the more mature members of the group. The accused used his time effectively completing his Grade 9 math and appears motivated to complete his schooling while in custody” (paras 30-31).

The judge presented his overall decision in an empathetic tone, and framed the sentence to continue D.R.A.’s progress in a structured environment to help increase his chances for a successful reintegration.
Similar methods were used in the case of J.J.H. The judge in this case was very sympathetic to the trauma J.J.H. was victim to during his childhood. J.J.H.’s victimization began when he was an infant and continued through until the offence. The judge continuously noted the aversive environment J.J.H. was living in, filled with physical and emotional abuse by his adoptive mother. The judge placed blame onto his mother, noting that the offence was a by-product of the abuse and J.J.H. struck back against it; “I have found previously that J.J.H. struck back at his mother as many other children had done in similar circumstances” (para, 123). Also reinforced was the fact that J.J.H. was unlike many youth who commit murder. He had no criminal record, he was not involved in a gang, and he was not addicted to substances. Since being in custody, J.J.H. had undergone counselling, participated in other programming available, and had no incidents. By the judge recognizing the underlying cause to this offence, he constructed a sentence that would promote a successful future for J.J.H. Imposing an IRSC sentence, J.J.H. would receive the intensive rehabilitation he required in order to cope with the suffering he has been through.

For the two adult cases, the judges’ focused mainly on the negative attributes of the offenders’, placing the blame solely onto the youth. There was no sense of sympathy for the offenders’ or optimism for their future, as seen with the two youth case. The judges’ did not mention the personal history of the two offenders’ unless it was to increase the justification of an adult sentence, for example, gang affiliations. Ultimately, the aggravating factors outweighed the mitigating factors in both cases.

In the case of C.G.D., the judge highlighted the fact that the offence was gang related and C.G.D. had become entrenched in gang life; “…I think it is significant that this crime was not an impulsive act. The planning and the deliberate acts reflect adult qualities. The crime followed a discussion amongst gang members to commit a retaliatory shooting. C.G.D. knowingly carrying a loaded handgun…aimed his gun at Mr. Harper…and shot several times” (para, 33). Further, the judge commented that C.G.D. had developed his criminal behaviors early, having a criminal record that began in early adolescence, and at the time of the offence the judge noted that C.G.D. was on several probation orders. The judge did mention the progress that C.G.D. had recently made in
custody, but that acknowledgement was followed up with C.G.D. being involved in 15 incidents and he still has strong pro-criminal attitudes:

It is certainly commendable that C.G.D. has made some progress and shows some insight and a willingness to be rehabilitated...At the same time, I am mindful and troubled that while incarcerated he has had approximately 15 institutional incidents...C.G.D. continued to verbalize a strong pro-criminal belief system and the use of violence to solve problems (para, 37).

These negative features overshadowed the positive strides C.G.D. had started to make. These facts had a large influence in the judge’s final decision to impose an adult sentence.

The judge in the case of Prince used very similar methods to justify an adult sentence. The judge in this case focused on the length of Prince’s criminal record, which started when he was 13 years old; “…Mr. Prince’s criminal history goes back to 2004 when he was 13 years old. Since then, Mr. Prince has been before the courts on numerous prior occasions” (para, 39). In regards to his extensive criminal involvement, one of the strongest comments made by the judge was the fact that there were no more options available to Prince in the youth system, as everything had been used already without success in deterring his behavior; “…He has a lengthy history of involvement in the justice system. Many, if not all, of the resources available to the Act have been employed in an attempt to rehabilitate Mr. Prince. Despite that, nothing seems to have worked” (para, 73). Another influential factor in this case was Prince’s involvement in the Notorious Bloods gang. He had been entrenched in gang life for a few years and as a result required lifelong supervision. During his final analysis, the judge did not mention any progress Prince had made since being in custody, and focused heavily on society’s interests; “…I have also considered the interests of society. In my view, societal interests, which include respect for the justice system, cannot be attended to by anything less than the imposition of an adult sentence upon Mr. Prince” (para, 76). By focusing solely on the aggravating factors, the judge framed Prince to be a danger to society and in order to protect society, an adult sentence was required. This in turn, would increase society’s confidence in the administration of justice.
By taking a closer examination in the way the judges’ framed the offender, the reasons for the different sentences imposed is clear. Even with the seriousness of the offence being the same, what factors the judge decided to focus on and how the judge framed those factors, justified the different sentences. Understanding the factors judges’ consider when deciding to impose a youth or an adult sentence is important, as it leads to information on how the judges are framing their decisions. Judges who imposed an adult sentence rebutted the moral blameworthiness of the offenders by increasing the severity of the offence, and used their individual characteristics/ personal history as aggravating factors. This information shed light on the justifications used by the judges. Further, how the judges framed the offence largely contributed to the purposes and principles used to construct the final sentence. Through the judges depicting the youth who received an adult sentence as “superpredators”, their judgements align with the larger social and political philosophy of crime control.

As seen in this first analysis, the way in which judges discussed the blameworthiness of the offender greatly influenced the justification for the sentence imposed. The blameworthiness of the offender largely contributed to the sentence being framed to be in the best interest of the offender or in the best interest of the public. For the youth cases, the judges decreased the overall blameworthiness of the offender, and framed the sentence to be in the best interest of the offender. In addition, the judges used rehabilitation as one of the main sentencing principles to construct the final sentence. The judges talked about how through the rehabilitation of the offender, the long term protection of the public would be accomplished. There were some cases when the judges were more emotive and/or harsh in the language used, balancing accountability with rehabilitation, but overall, for the youth sentences, the judges considered the youths’ individual characteristics as mitigating, and framed the sentence to serve the interests of the offender. In turn, the sentence also served interests of the public.

The adult cases were in complete opposition to the rationale used for the youth sentences. In each adult case, the judges rebutted the diminished moral blameworthiness by increasing the severity of the offence, and the offenders’ role in it. In addition, the judges negatively portrayed the offenders, which justified an adult sentence
in order to protect the public from these “superpredators”. The judges also used the personal history of the offenders to be aggravating factors, and in many cases, the judges commented that the offenders’ were not good prospects for rehabilitation. The justification for the adult sentences was to ensure the public’s confidence in the administration of justice, and aligned with the crime control legislation.

6.2. Comparison between Provinces

The second analysis was comparing the provinces between one another to determine if there are any differences in the decision-making processes of the judges; specifically examining if certain factors such as circumstances of the offender (i.e. personal history, criminal record, and psychological disorders), and/or circumstances of the offence played a more pivotal role in the overall decision made by the judges in different provinces. Due to the fact that the overarching research question is whether mandated treatment should be implemented through the YCJA, by looking at judicial attitudes toward treatment, there needs to be a comparison on the decision-making processes between judges within provinces and between provinces as the idiosyncrasies of each province will influence the final decision making process of the judge, and their viewpoint on treatment. There were differences identified in the way the judges discussed the circumstances of the offence and the offender, as well as differences among the offenders’ themselves. It is important to consider the differences between provinces because even though the YCJA is a federal statue, enforcement of the Act is left to the individual provinces. Determining how independent provinces are interpreting and applying the Act can lead to a better understanding of provincial discrepancies, as well as the offender population place barriers that may be unique to each province.

6.2.1. Differences among Offenders

One of the main differences found when comparing provinces, was the differences in the offenders’ themselves. Due to the fact that all offenders committed a serious violent offence under the legislative definition, the offences themselves did not distinguish the offenders, but rather their characteristics. There were three prominent
distinctions between the characteristics of offenders, which consisted of the age, gang membership, and Aboriginal status. In regards to age, Manitoba had the youngest mean age of offenders (15.4 years), followed by British Columbia (16.1 years), Saskatchewan (16.7 years), and finally Alberta (16.8 years). The fact that Manitoba’s offenders were an entire year younger than the other three provinces reveals that the youth in Manitoba are committing serious violent offences earlier. This is important to know for preventative programs, as well as leads to the question of why; why are the youth in Manitoba beginning to commit serious violent offences earlier? What is causing these youth to escalate their involvement in criminal behaviors at a faster rate than seen with the rest of Western Canada? One hypothesis is the prevalence of gangs in Manitoba, which leads into the second biggest difference amongst offenders.

For the Manitoba youth, out of the nine offenders, seven were involved in gangs. Meaning 77.7% of the young offenders in Manitoba were gang members. Each youth admitted being initiated into a gang, and identified the gang in which they belonged too. There were four different gangs, Mad Cowz, Indian Posse, LHS, and Notorious Bloods, that the youth were members of. Further, three of the seven offences or 42.8% were gang retaliations. In contrast, in the other three provinces the gang prevalence was low, or even nonexistent. In Saskatchewan, only one offender out of three (33.3%) had identified as being a gang member. He did note that he belonged to the Native Syndicate Killers, but the offence he committed was not gang related. Consistent with Saskatchewan, Alberta had one offender out of five, or 20% who was involved in gang life. For this offender, there was no discussion surrounding what gang he had been initiated into, or even if he had been initiated into one. The judge and the PSR referred to “his entrenchment in gang life” and how “he glorified his gang lifestyle”, so he was counted as a gang member, but it is unknown if he was an actual member of a known gang. Lastly, out of the eight offenders in British Columbia, none of them were involved with gangs. There was no discussion in any of the cases regarding gang lifestyle, or gang mentality. In reality, gangs were not mentioned at all which is in stark contrast to Manitoba. With the high frequency of gangs in Manitoba, and with these gangs recruiting

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3 The statistics presented in this study are only descriptive. There were no further analyses conducted to determine if the differences between the provinces are statistically significant.
young, vulnerable youth, it does make sense that the mean age of offenders was the lowest in Manitoba. This was especially apparent when the one judge compared the youth being recruited into gangs as being synonymous with child soldier recruitment.

The last main difference between the young offenders’ was the number of Aboriginal youth. As expected, Manitoba and Saskatchewan had the highest number of Aboriginal youth; they had an equal distribution of Aboriginals. Specifically, in Manitoba, six out of the nine offenders (66.7%) and in Saskatchewan, 2 out of the 3 offenders, also 66.7% were Aboriginal. In Alberta, one out of the five offenders, or 20% was Aboriginal; and in British Columbia, two out of the eight offenders (25%) were Aboriginal. Having a higher number of Aboriginal youth places barriers onto the province as the effects of colonization will have a greater impact on these areas. This results in higher rates of poverty, substance abuse, neglect, violence, and racism experienced by this population due to the inter-generational effects of trauma. This effect will not be as prominent in the other Alberta and British Columbia as the proportion of Aboriginal people is lower. As a result, the special needs and circumstances of Aboriginals has to be taken into consideration more often, as well as specific programming needs to be developed that is cultural specific for Aboriginals. Manitoba and Saskatchewan have a duty to understand what effects the residential schools have had on the grandparents and parents of these youth, and how those effects impact the youth. The inter-generational trauma experienced is a major risk factor that has to be addressed, as this vicarious trauma can led to explosive rage and anger targeted at their own culture and identity. As a result, Aboriginal youth are vulnerable to gangs, substance abuse, and becoming extremely violent.

The three main differences identified among the offenders from the provinces is valuable information that needs to inform the structure and implementation of treatment and intervention programs, both in the community and in custody. The programming in British Columbia cannot be the same as the programming in Manitoba. The risk factors are different for the youth; therefore, the federal government must work alongside the provincial governments in order to ensure that there is appropriate programming for the specific risk factors and population that is unique to each province. Mandated treatment can be imposed federally, but the specific forms of treatment and their implementation
must be shaped around each province, as every province has different risk and protective factors for these youth.

6.2.2. Youth vs. Adult Sentence Differences

Another interesting difference found between the four provinces was the breakdown in the number of youth who were sentenced as youth or as an adult. Due to the provinces overarching political ideologies, it was believed that Alberta and Saskatchewan would have the highest number of youth sentenced as adults, followed by British Columbia and Manitoba.\textsuperscript{4} In reality, the opposite was true. British Columbia had the highest percentage of youth sentenced as adults, six out of eight offenders (75%), followed by Manitoba (six out of nine offenders) and Saskatchewan (two out of three) with 66.7% of offenders receiving an adult sentence, meaning Alberta had the lowest percentage of youth sentenced as adults with three out of five offenders, or 60%.\textsuperscript{5} This finding has two implications.

First, the larger political framework of each province was not aligning with the number of youth being sentenced as adults. If this were the case, Manitoba and British Columbia should have had the lowest number, as the NDP and the Liberals are considered to be left-wing political parties, meaning they place a greater emphasis on rehabilitation than punishment. The second implication which ties into the first one is the role of judicial independence. In Canada, the judicial system is kept separate from the political system to ensure every individual receives a fair and impartial trial and/or sentencing hearing. The fact that these results do not align with the greater political ideologies of each province, supports the independence of the judiciary; provincial politics are not influencing the ultimate decision-making processes of the judges on

\textsuperscript{4} Alberta and Saskatchewan are considered to be Conservative provinces, whereas British Columbia is viewed as being Liberal and Manitoba as NDP. Due to Conservative governments being focused on crime control tactics, if Alberta and Saskatchewan had the highest number of youth sentenced as adults, then this would align with the predominant political philosophy of each province.

\textsuperscript{5} Number of youth who received a youth sentence: British Columbia, two out of eight offenders or 25%, Manitoba (three out of nine offenders) and Saskatchewan (one out of three) was 33.3%, and Alberta was two out of five or 40%.
whether to impose a youth or an adult sentence. However, what was found were the justifications for the imposition of the sentence, especially adult sentences, aligned with the federal Conservative government of crime control, but the political beliefs of the individual provinces were not apparent in the decisions made by the judges.

6.2.3. Differences between Judges

Throughout the analysis, provincial differences were identified on how the judges described the circumstances of the offence, the offender, and purposes and principles used. The language and tone set by the judges’ changed for each province. It was interesting to note how the judges’ discourse changed and how the offence, offender, and sentence were framed; along with what factors were more important differed with each province.

_Circumstances of the Offence_

The changes in the judges’ discourse surrounding the description of the offence, was one of the central differences between the provinces. In the British Columbia cases, the judges’ used a lot of very emotive and moral language when discussing the circumstances of the offence when an adult sentence was imposed. This was contrasted to the language used when describing the offences when a youth sentence was handed down. The judges’ in the two youth cases were more factual, straightforward, and to the point. There was very little emotional discourse used. As a result, it was easier to disentangle the reasons for a youth sentence vs. an adult sentence by the language used and how offence was framed. By increasing the use of emotion for adult sentences, it increased the overall blameworthiness of the offenders, which justified the imposition of a harsher sentence. This finding was mirrored in the Saskatchewan cases. The same tactic of using emotive and colorful language when describing the circumstances of the offence for the two adult sentences was used by the judges; compared to straightforward and factual language for the one youth sentence. Again, this increased the blameworthiness of the offenders, rationalizing the need for an adult sentence.
In opposition to British Columbia and Saskatchewan, was Alberta and Manitoba. For the Alberta cases, the judges, no matter the final sentence, used very emotional and descriptive language when describing the offence. The rationalization for the youth vs. adult sentences were more difficult to understand as the blameworthiness of every offender was increased through the discourse used. However, it was noticed that the tone of the judges’ did change depending on the sentence. For the adult sentences, the judges’ were more punitive and stern in the way they framed their discussion. The language was harsher than the language used in the youth cases allowing for the blameworthiness of the offender to be increased. Lastly, in comparison to the other three provinces, Manitoba was completely different. For these cases, there was hardly any emotional or descriptive discourse used at all. The Manitoba judges’ were very straightforward and brief in their discussions surrounding the circumstances of the offence. There were a couple instances when a judge would use a few emotional words describing the offence, but this was rarely done. As a result, understanding the differences in the sentences imposed was more difficult as the degree of blameworthiness was equally distributed among cases. The biggest factor noticed for Manitoba that distinguished between a youth or an adult sentence was the progress the accused had made while custody. Those youth who had taken advantage of the programs and education available to them, and had little to no incidents were credited by the judge, rationalizing a youth sentence.

The differences in the way the judges describe the circumstances of the offence between provinces is important to note as it can reflect the unique judicial ideology of each province. With each province interpreting and enforcing the Act, it leads to differences in how the judges’ approach cases. Ultimately, this causes variations in the methods used by judges when framing the offence in order to justify their final decision on which type of sentence to impose.

**Characteristics of the Offender**

The amount of information regarding the individual characteristics of the offender also differed between provinces. The British Columbia cases had the greatest amount of information surrounding the individual characteristics of the offender. The amount of information provided was independent of the sentence imposed. When reading these
cases, an understanding of who the youth were, what their childhood was like, their experiences in the past, and education attainment was achieved. In most cases, their trajectory of offending was transparent which further provided a deeper understanding as to why and how these youth escalated to committing serious violent offences. In contrast to British Columbia was Manitoba. The Manitoba cases had the least amount of information regarding the individual characteristics of the offenders. There was a couple of adult cases when the personal history of the offender was not discussed other than a few lines, which provided very little information. For the two cases that were solely youth sentences, there was some information about their childhood, allowing for an understanding of the environment the youth were raised in, which did provide clarity for the reasons behind the offence. Overall, the personal background of the offenders’ was not pivotal pieces of information used in the final decision-making processes of the judges in Manitoba.

Alberta and Saskatchewan were in the middle for the amount of information discussed around the individual characteristics of the offender. However, the focus of the information differed in the two provinces. For Alberta, the two judges who imposed the youth sentences provided detail regarding the personal history of the youth. From their discussion, an understanding of the childhood experiences of the offender was accomplished. Consequently, this gave context into their antisocial and criminal behaviors. For the adult sentences, there was less information and discussion surrounding the individual circumstances of the offender. In one case (Casavant), the judge did not provide any information in his analysis at all. Yet, in another case (L.L.), the judge did go into detail about his childhood and how his childhood environment played a role in his current situation. As a whole, the two youth cases provided more detail about the offender, and their pathway to offending in comparison to the three adult cases. Opposite to Alberta, were the Saskatchewan cases. For the youth sentence, there was less discussion surrounding his personal history than the two adult sentences. There was enough information to get an understanding of the youth’s individual characteristics, but not to the same depth as the two adult sentences.

A consistent finding was how the judges’ used the information regarding the personal history of the youth. For every youth sentence, the judges used the individual
characteristics of the offenders’ as mitigating factors to some degree. The amount the information was used to rationalize a youth sentence did vary within and between provinces; nonetheless in the majority of the cases the judges did consider the background of the youth. As for the adult cases, the individual characteristics of the offenders’ were used as aggravating factors. The judges’ framed the attributes of the offenders negatively portraying the youth as a danger to society, justifying an adult sentence. As seen with the youth cases, the amount the judges framed the personal history of the youth as aggravating differed, but all youth were depicted negatively through their background.

**Purposes and Principle/Objectives of the Sentence**

The purposes and principles of sentencing used by the judges did differ between the provinces; more specifically, the way the judges discussed the objectives of the sentence was different. In British Columbia, Saskatchewan, and Manitoba, the youth sentences were largely centered on rehabilitation and reintegration. Through the successful rehabilitation and reintegration, accountability and the long-term protection of the public would be accomplished. In the British Columbia and Saskatchewan cases, this was explicitly stated by the judges; however, for the Manitoba cases it was implied by the rationale given by the judges. For example, in one case (J.J.H.), the judge imposed an IRCS sentence, which promoted the rehabilitation of the young person. In the other two cases, the judges discussed how successful the two offenders’ were in the youth system, and this success would be disrupted if an adult sentence is imposed.

In terms of the adult sentences, deterrence (general and specific) and denunciation were the main underlying sentencing objectives. Only the British Columbia cases made a direct connection to the purposes and principles under the *Criminal Code*, directly stating what principles and purposes were being used to construct the sentence. For both Saskatchewan and Manitoba, the judges did not make a link to the *Code*, but like the youth cases in Manitoba, it was through the justification of the adult sentence that the objectives became apparent. This was especially obvious when the judges in both provinces imposed life sentences and were stating why the offenders required lifelong supervision. The judges in every case made a point of stating that in order to promote the long term protection of the public and rehabilitation of the youth, a life
sentence was required. The judges also made note that there was always the threat of custody; if the youth re-offended while serving a life sentence, the punishment would be more severe.

This was also seen in the Alberta adult cases. Only for one case, did the judge specifically state that denunciation and deterrence were the objectives of sentencing used for the case, whereas for the other two, it was through the rationalization of the sentence that the objectives were noted. Similar justifications were used in the Alberta cases as in Saskatchewan and Manitoba. For the Alberta youth cases, there was a stronger emphasis on promoting the accountability of the offenders’, with rehabilitation being of secondary importance. Rehabilitation was still discussed as being important for the overall sentencing objectives for the youth, but rehabilitation was always discussed after accountability and the need for a sentence to ensure it holds the young person accountable. The judges used more of a punitive and stern tone when describing the objectives of the youth sentences compared to the other three provinces.

Another interesting difference between the provinces regarding the objectives of sentencing, which was unique to Manitoba, was an analysis of society’s interest. In every case where an adult sentence was imposed, the judges’ always included an analysis surrounding society’s interest. It was noted in all of these cases that under the YCJA, sentencing needs to be “offender-centric” but that it is not “offender-exclusive” meaning that the interests of society need to be taken into consideration when constructing a sentence. In the final decision-making process of the judges’, there was always a discussion linking the rational of the sentence to include society’s interest and maintaining the public’s confidence within the administration of justice. The fact that in Manitoba, the judges’ were weighing the offenders’ interests against society’s interests decreased the focus off of the offender, meaning sentences are not being constructed in their best interest. This can lead to sentences being more punitive rather than rehabilitative, in order to maintain society’s interests. This was seen in this study, as the

For the adult sentences to be framed in order to maintain the public’s confidence in the administration of justice is not unique to Manitoba, but the actual analysis linking society’s interest into the sentence is.
society’s interest analysis was only done for those youth who received an adult sentence.

6.3. Conclusion

The shift in ideology surrounding the treatment of serious violent youth from a rehabilitative approach to punitive approach was evident in the two analyses carried out. A consequence of this transition is the lack of research guiding the decision-making processes and ideologies of judges, causing an increase in custodial sentences, especially adult sentences. The number of youth sentenced as adults was higher than the number sentenced as youth. Further, for the youth who received adult sentences, there was no developmental research used in any of the judges’ final decisions. Rather, the judges in these cases increased the severity of the sentence as they framed each offender to be a danger to society by highlighting the negative attributes and aggravating factors of the offence and the offender. In turn, the judges justified the imposition of an adult sentence in order to protect the public. The rationalizations used by the judges for the adult sentences are in direct opposition of developmental research, which has consistently shown individualized treatment programs are the best way to decrease the risk of recidivism. While in the cases where a youth sentence was imposed, developmental research was never explicitly stated or referenced, but it was evident in the way the judges justified the imposition of a youth sentence. As demonstrated, in these cases the judges’ decreased the overall blameworthiness of the youth, increased the number of mitigating factors, and placed rehabilitation to be one of the main sentencing objectives.

However, there were too many discrepancies found in the decision-making process and justifications used between provinces. For example, the amount of information provided about the personal history of the offender was almost non-existent in the Manitoba cases, whereas in the British Columbia cases, there were multiple pages regarding the individual characteristics of the offender. Manitoba was also the only province where judges included an analysis of society’s interest during their final analysis. The inconsistencies found in this thesis, specifically the lack of research guiding judicial decisions, and the differences between provinces is the underlying
argument of this thesis for the implementation of a federal law that provides judges the authority to order mandated treatment. This will target the multi-faceted risk factors of these offender, decreasing their risk of recidivism and chances of becoming a career criminal, as well as address the discrepancies found between provinces. This will ensure serious violent youth are receiving individualized, intense, and validated treatment no matter the province they are sentenced in.
Chapter 7.

Discussion and Conclusion

The goal of this thesis was to examine judicial ideologies for sentencing youth convicted of a serious violent offence, in order to develop a better understanding of what factors judges consider when deciding to impose a youth or an adult sentence, as well as how much weight certain information had in the final decision-making process. The research gained from this study will be used to inform the overarching research question of whether mandated treatment should be implemented through the YCJA, especially for serious violent youth. More specifically, this thesis used a developmental and life-course perspective lens to analyze judicial decision-making philosophies in order to determine how the judiciary views youth who commit serious violent offences. It is critical to study this population of youth because of the number of risk factors these youth have, especially compared to the limited number of protective factors (Farrington, 2005a; Lahey et al., 2008; Murray & Farrington, 2010). Many of these youth have individual characteristics, for example, developmental disorders, learning disorders, genetic predisposition, and personality disorders, as well as environmental factors, such as maltreatment, exposure to violence, abuse, neglect, and poor family dynamics. These individual characteristics interact with the aversive environment increasing a youth’s risk of developing antisocial behaviors early on, and for these behaviors to become more persistent and chronic as the youth age. In turn, their risk of becoming serious and violent is amplified (Farrington, 2005a; Lahey et al., 2008; Moffitt, 1993). As a result, the chance that this population of youth will become involved in the criminal justice system is high, meaning the criminal justice system, specifically correctional institutions, may be the best avenue for the youth to receive the treatment they need to decrease their risk of continuing their involvement in criminal activities into adulthood.
Many serious violent youth do not have the resources available to obtain the required treatment on their own. This is for a myriad of reasons; it may be a lack of education on behalf of the parents, single parent household with multiple siblings, or poverty. Therefore, the justice system may be the first opportunity these youth have to receive treatment. Due to the number of risk factors present within these youth, they need to be identified and targeted through evidence-based, individualized treatment plans that address each youth’s individual risks and protective factors (Flash, 2003; Latimer et al., 2003; Lipsey, 2009). By understanding judicial assessments of these youth, it can lead to information regarding how these youth are being handled within the justice system. Judges play a key role in the future of the youth they sentence, as they have the power to frame the sentence in the best interest of the offender, promoting their rehabilitation and successful reintegration back into the community. In contrast, judges’ can take a punitive approach and impose an adult sentence which can have negative effects on the future of youth in terms of recidivism, as shown by the research.

Research has consistently found that the most effective treatment programs target the multi-causality of offending, focusing on each individual offender’s needs (Borduin et al., 1995; Roberts & Biswas, 2008). For example, the RNR model has been found to be effective in custody using cognitive behavioral techniques, having a greater impact on recidivism rates than traditional methods of treatment offered in corrections. Furthermore, these programs are created for the current stage of learning and development the young person is in, as well as their risk level (Dowden & Andrews, 1990). This ensures the treatment is produced around the ability of the youth, increasing the probability of treatment being successful. Another critical finding is making sure treatment is administered by trained and qualified individuals who understand the complexity of serious violent youth offending behaviors (Landenberger & Lipsey, 2005). The idea of “one size fits all” for treatment that is currently being offered in the correctional facilities does not work as serious violent youth are not a homogenous group; they may have common risk factors which on the surface make it seem they are the same, but the interaction of risk factors is unique to each individual, making these youth heterogeneous. Additionally, other factors such as gender, race/ethnicity, and culture need to be considered when discussing the development and implementation of
treatment. Overall, the results of this thesis found a disconnect between research and the sentencing justifications used by judges.

7.1. Overview of Results

It was found that the severity of the sentence is largely influenced by how the judges framed the offence and the offender. In general, for youth who received a youth sentence, the judges’ decreased the overall blameworthiness of the offenders’ and this was done using different methods. First, judges’ would place blame onto the youths’ environment, stating that the circumstances in which the youth were raised largely contributed to the development of antisocial behaviors and the escalation of these behaviors, becoming violent. Second, and keeping in line with the first method, was judges’ placed blame onto the victim, framing the offence to be partially their fault. Third, the judges’ focused on the positive behaviors of the youth, especially their progress while in pre-sentence custody, crediting them for their hard work in changing their behaviors. As a result, many of the sentences were framed to be in the best interest of the offender, promoting their rehabilitation. Furthermore, judges’ were sympathetic to the personal history of the youth, highlighting the turmoil and struggles the youth went through which promoted a sense of empathy and compassion for the youth. Overall, the judges’ gave the impression that youth who received a youth sentence were “not bad youth”, as their actions was a by-product of their environment, and through the appropriate treatment programs, the youth could be successfully rehabilitated. As a result, the long-term protection of the public would be satisfied, as the youth would not be a risk to re-offend. Ultimately, the judges’ who imposed a youth sentence balanced the best interests of the offender, along with the best interest of the public.

In contrast, for the youth who received an adult sentence, the judges increased the overall blameworthiness of each offender. As seen with the youth cases, the ways in which judges accomplished this was using multiple different tactics. First, the language used by the judges’ was a lot more emotive, descriptive, and harsh when describing the circumstances of the offence. This increased the severity of the offence, which in turn increased the blameworthiness of the offender. Second, the judges also increased the severity of the offence by increasing the number of the victims. The judges’ referred to
the impact the offence had on the family members, friends, and community, extending the effects of the offence. Third, the judges’ focused on the negative attributes of the youth. The judges’ consistently discussed the youths’ criminal history demonstrating criminal entrenchment, their lack of progress in custody, and gang membership. Additionally, the judges in these cases did not provide a sense of sympathy for the personal background of the youth, and in many cases this information was not discussed by the judges. This demonstrated that the individual characteristics of the youth that may be seen as mitigating were ignored, and did not play a role in the final decision making process of the judge; only those characteristics that were aggravating were used in the concluding remarks of the judges. By the judges paying attention to these facts while dismissing any positive behaviors demonstrated by the youth, the judges depicted these youth to be “superpredators” who deserve to be locked up for a long period of time, and be supervised for life. The justification for the adult sentences was largely based on the public’s interests as the punitive sentences were framed as a requirement in order to protect the public. As a result, the judges also maintained the public’s confidence in the administration of justice. The rationale of the adult sentences supports the finding that the public has lost confidence in the administration of justice, especially for effectively dealing with serious violent youth. This information was discussed in the literature review, specifically the sentencing chapter.

These results lead to information regarding judicial ideologies surrounding rehabilitation for serious violent youth. With the YCJA including punitive provisions for this category of offences, along with the public’s lack of confidence in the youth justice system, the justifications for the imposition of a harsh sentence are justified. This was evident with the adult and youth sentences. Another interesting finding was the fact that many judges imposed an adult sentence for youth who had not participated in programming while awaiting sentencing or had just began to partake in treatment. The judges’ framed this negatively, as the youth were not willing to take responsibility for their actions, did not understand their behaviors, and were not ready to change their own ideologies from antisocial to prosocial. With mandated treatment, this justification for
adult sentences would not exist, as youth would be partaking in treatment, and taking the appropriate steps to understand and hopefully change their behavior.\textsuperscript{7}

In addition to the results from the two analyses, two other findings emerged that are important to consider when discussing the possible implementation of mandated treatment. These two findings include the high proportion of Aboriginal offenders in Saskatchewan and Manitoba, along with Bird being the sole female offender. These two results are particularly important as both Aboriginals and females are vulnerable populations, which have to be taken into account when imposing sentences.

\textbf{7.1.1. Aboriginal Offenders}

The high rate of Aboriginal offenders in Saskatchewan and Manitoba, in addition with the overrepresentation of Aboriginals in the justice system in general, calls for attention on the prevention and intervention strategies for this vulnerable population of Canadians, both in the community and in custody. Admissions data from 2010/2011 show a disproportionate number of Aboriginal youth entering into the correctional system. Of the eight jurisdictions who provided data, 26\% of the admissions into the correctional system were Aboriginal, when in reality Aboriginal youth in these jurisdictions make up about 6\% of the overall population (Stats Canada, 2012). The disproportionate number of Aboriginal youth admitted to the correctional system was true for males and females. Aboriginal males made up 24\% of all the male youth in the correctional system, and Aboriginal females made up 34\% of the overall female youth in the correctional system (Stats Canada, 2012). This overrepresentation was also documented in the 2013/2014 statistics.

In 2013/2014, Aboriginal youth accounted for 41\% of all admissions into the correctional system, while representing 7\% of the youth population (Stats Canada, 2014). As seen with the data from 2010/2011, this disparity between Aboriginal and non-

\textsuperscript{7} It is recognized that many serious violent youth may not want to participate initially in treatment, but by them consistently going and being in a certain environment which promotes trust, structure, and security, most youth will eventually open up and being to participate. Many of these youth do not trust adults, and do not want to talk about their “feelings” but after some time, many of them will.
Aboriginal youth was consistent for males and females, however, it was more pronounced among girls. In total, 38% of the males admitted into the correctional system were Aboriginal, whereas, 53% of the girls admitted were Aboriginal (Stats Canada, 2014).

In addition to the overrepresentation of Aboriginals across Canada, the number of Aboriginal youth becoming involved in gangs has become a cause for concern. The high prevalence of gang members in Manitoba demonstrates the severity of this problem. Out of the nine offenders, seven were initiated members of a gang. This increases the risk of becoming involved in serious violent crime, and the justice system. Overall, these statistics highlight the requirement for Aboriginal specific programming in the community and custody to target their unique needs and special circumstances. As seen in the cases used in this thesis, many of the Aboriginal youth were victims of the residential schools because of the intergenerational effects of trauma. The inability of the youths’ parents and grandparents to properly parent and guide these youth is a consequence of the residential schools. In turn, Aboriginal communities are plagued with substance abuse, violence, poverty, and abuse because of the victimization caused by the residential schools. In addition, many of their reserves are being displaced. As a result, gang membership provides sanctuary for many of these youth because it is a way for them to gain a family, money, status, and purpose. The idea of culture and identity for these youth is lost or they fight against their Aboriginal status because of the lack of knowledge or connection with what it meant to be Aboriginal prior to their displacement. It is crucial for these youth to re-connect with their traditions and learn about it means to be Aboriginal. This can occur through specific treatment programs, so youth better understand and appreciate their heritage.

What was seen in this thesis with Aboriginals was many of the judges mentioned Gladue and ordered a Gladue report, but later dismissed applying it in the final sentencing decision because the offence was too serious. As a result, the special circumstances of being Aboriginal were not taken into account. This has many negative effects, especially with the majority of the Aboriginal youth in the sample being gang members. Judges’ were imposing adult sentences onto these youth because of their gang affiliations without crediting the factors contained in s. 718.2(e) of the Criminal
**Code.** This means that judges are sending vulnerable youth who have connection to gangs, have no sense of self or identity, to adult correctional facilities which contain a higher percentage of gang members, further entrenching these youths’ criminal behaviors. This finding supports the need for mandated treatment as the specific risk factors for this extra vulnerable population can be targeted and treated, using cultural programming in addition with evidence based practices. Imposing an adult sentence and sending them into federal prison, will not achieve the objective of successful rehabilitation and reintegration.

### 7.1.2. Bird-Sole Female Offender

Out of the 25 offenders in this thesis, one was female. Additionally, she was the only offender who was convicted of aggravated sexual assault. It is well known that males commit violent acts at a higher rate than females; therefore, having only one female was not a surprise. However, the fact that she was the only youth convicted of aggravated sexual assault was. Sexual offences are rare, even in comparison to murder and manslaughter, but stereotypically, they are viewed as being “male perpetrated” offences. Having a female convicted of this offence is outside of gender norms, even more so than having a female serious violent youth. However, the number of females becoming involved in serious violent behaviors has increased.

Over the past few decades statistics have shown there has been a dramatic increase in number of females being incarcerated (Cecil, 2007; Franklin, 2008; Russell, 2013); while the rate of incarceration for males has only slightly increased (Hennebecker, Oudekerk, Reppucci, & Odgers, 2014). Furthermore, the rate at which girls are involved in antisocial behaviors is increasing at a faster rate than boys (McCabe, Rodgers, Yeh, & Hough, 2004). This is also the case for Aboriginal girls specifically in Canada. This reveals that females are increasing their participation in antisocial and criminal behaviors. The steady increase in female offending has narrowed the crime gender gap that has been so predominant throughout adolescence and adulthood.

This has raised questions regarding the pathways to crime: are they the same for females as they are for males? Are the theories that have been formulated using male
samples, theories for female offending as well? It is vital to understand the pathways for female serious violent youth, in order to determine if gendered specific pathways, risk assessment tools, and intervention and treatment programs are required to combat serious violent behavior in females. Having Bird has an offender in this thesis, demonstrates the importance to consider the possible differences between males and females, especially when discussing the possible role of mandated treatment.

7.2. Provincial Youth Correctional Facilities and Treatment Programs Offered

The implementation of mandated treatment can only be successful if the proper treatment programs are also implemented into the correctional system, both in custody and community. Due to the fact that each province has sole jurisdiction of the youth correctional system, there will be disparities in the programs available. Examining the youth facilities of each of the provinces analyzed will allow for a better understanding of what programs youth are receiving while in the correctional system, and if the programs implemented mirror the characteristics of an effective treatment program. In British Columbia, there are currently two youth correctional centers. In each center, there are four programs available to youth; basic programs, core programs, specialized programs, and reintegration programs, in addition to ongoing case management (Government of British Columbia). Basic programs address the basic needs of youth, for example, education, religious, family visits, and recreational/leisure activities. In addition, there are also enhanced programs available for Aboriginal youth and female offenders. Core programs are designed to address the beliefs, attitudes, lifestyle, and skill deficits of the youth that are believed to have contributed to their involvement in criminal behaviors. Examples of core programs are drug and alcohol counselling, life skills, and pre-employment. These programs are administered to youth individually or in groups. Specialized programs are available for youth who have committed violent and/or sexual offences. These programs are delivered by members of the Youth Forensic Psychiatric Services. Lastly, reintegration programs are aimed to aid offenders on their reintegration into the community by providing support and supervision while in the community. For
youth to participate in these programs (excluding basic programs) referrals must be made by their case manager (Government of British Columbia).

In Alberta, there are two youth correctional facilities, in Edmonton and Calgary, each offering 11 programs, including case management, and referral and placement. The nine other programs include educational/day programs, library, life skills program, medical and mental health services, offender work program, recreational programming, reintegration leave program, community based open custody programs, and Aboriginal programs (Government of Alberta). Synonymous to the Basic programs in British Columbia would be educational/day programs, library, recreational programming, and Aboriginal programs. Life skills program and offender work program are similar to the Core programs. Programs available under the medical and mental health services include sex offender treatment, life skills, suicide, trauma, sexual and physical abuse, addictions counseling, anger management etc. The reintegration leave program is aimed to help youth successfully transition from custody back into the community. When youth are released, they are typically placed on conditions in which they must abide by in order for their behaviors to be supervised in the community, as well as continue their rehabilitation. If youth fail to abide by their conditions, they will be sent back to custody (Government of Alberta).

Saskatchewan has five youth correctional centers, located in Saskatoon, Regina, Yorkton, Prince Albert, and North Battleford (Government of Saskatchewan). The programs available to youth in any of the five correctional facilities are based on risk/needs assessment, risk management, and risk reduction. Overall, there are eight overarching areas programs have been designed to target. These include education, health, mental health, substance abuse, employment, cultural and chaplain services, violence reduction, and recreation. It is stated that youth are required to participate in all programs that match their level of risk needs assessment, as well as assist in meal preparation, do their own laundry, participate in group meetings, and complete their assigned chores (Government of Saskatchewan).

Manitoba currently has two correctional facilities for youth, Agassiz Youth Centre and Manitoba Youth Centre (Government of Manitoba). Agassiz Youth Centre offers the
EQUIP program in order to change the youths’ attitudes, beliefs, and behaviors from antisocial to prosocial. The Manitoba Youth includes case management, spiritual care, and programming (unspecified) which are offered regularly and designed to help youth make better choices to avoid continued involvement in criminal activities (Government of Manitoba).

On the surface, it seems that each province is offering the appropriate multi-faceted programs to successfully treat the youth. However, the specifics of the programs in general were unavailable. It was found in the British Columbia cases the judges consistently recommended youth to participate and complete the violent offender program, but there is no specific violent offender program. The type of treatment (cognitive behavioral, psychoanalysis etc.), and duration is different depending on the psychologist or psychiatrist that is assigned to each individual youth (Government of British Columbia). This can result in a problem because if a psychologist is trained in psychoanalysis then that youth will receive psychoanalysis, but that may not be the best mode of treatment for that particular youth. The type and length of treatment administered to each youth has to be designed around their risk/need assessment and not by the professional they are assigned to. The effectiveness of the treatment will only occur if it is properly adapted to the youth (Lipsey, 2009; Lipsey & Cullen, 2007). This is why individualized specific treatment plans are essential for serious violent youth. Therefore, when judges are recommending youth partake in the violent offender program, the judges do not necessarily know what that program entails and how it will be administered.

Similarly to British Columbia, the Agassiz Youth Centre in Manitoba offers the EQUIP program. The EQUIP program, has mixed results on its overall effectiveness to decrease serious violent youth participation in criminal activities. Specifically, the EQUIP program is a multi-dimensional program that combines peer helping with cognitive behavioral techniques in order to decrease youths’ cognitive distortions regarding antisocial behaviors (Brugman & Brink, 2011). This program is more commonly used with general delinquency rather than serious violent behaviors. There was one study in the Netherlands that examined the effects of the EQUIP program on males in three high-security juvenile correctional facilities. It was found that 77.6% of youth in the
experimental group and 75% in the control group recidivated. Further follow up at 6 months showed 25% of the experimental group and 18.2% of the control group re-offended, and at 12 months 52.8% of the experimental group and 28.6% of the control group recidivated. The experimental group continued to have higher rates of recidivism at 18 and 24 months compared to the control group (Brugman & Brink, 2011). For general delinquency, the EQUIP program may have stronger results, but it may be for the unique population of serious violent youth, this program is not effective.

It is critical for youth correctional facilities, as well as adult correctional facilities, to ensure the programs available are evidence-based, administered by trained professionals, and are designed around the unique needs of each offender. If mandated treatment were implemented through the YCJA, provisions could be established that included a proper risk/needs assessment and mental health screening to build treatment and management plans for each young person admitted into custody, whether it is a youth or adult facility.

7.3. Limitations

There are many limitations of this thesis that need to be addressed. First, it is impossible to know the true feelings and ideologies of the judges’ by examining discourse. Further, how judges’ weigh the information or certain factors cannot be known by reading cases. This information can only be presumed by the rationale of the sentence imposed. The actual thought-processes and beliefs of the judges’ regarding treatment may not be apparent in their final decision. Second, by examining cases, it is the interpretation of what the judges are implying rather than knowing their exact reasoning. It is difficult to interpret the tone set by the judge in text, as it is common to misunderstand the tone or context of words. Text based data analysis maybe weakened in the absence of auditory and visual clues around tone and language. This can be overcome by talking to judges or being present at the sentencing hearing. Getting firsthand information from judges about their ideologies when sentencing serious violent youth, what factors they give more weight in order to arrive at a conclusion, and their thoughts on research informing policy, could have strengthened the overall findings of this thesis.
Third, the differences found between provinces, specifically the way the judges framed the offence and the offender, cannot be definitively differentiated as judicial ideology or provincial norms, and which one takes priority. Again, this leaves gaps in the results, as the underlying justification for the sentence is not known for certainty. Fourth, specifically focusing on serious violent youth, the results from this work cannot be generalized to the broader offender population. This is a unique group of offenders with multiple underlying causes and risk factors to their criminal behavior, meaning the implications of this work can only be applied to them. With that being said, mandated treatment should be enforced for all offenders, but the types of intervention, the intensity of treatment programs, along with the developmental pathways discussed in this thesis, is focused on serious violent youth. Fifth and lastly, the research was guided by developmental and life-course theory with the specific intention of examining the role of treatment in judicial sentencing decisions, knowing the research, specifically the multi-causality of serious violent youths’ behaviors, biases may have been present when interpreting the judgements. This is acknowledged, but is a limitation of this study. Biases were recognized prior to the study starting, and were consciously checked throughout the research process; nonetheless, biases will still have occurred and influenced the results.

7.4. Future Research

Examining whether mandated treatment should be implemented through the 
YCJA is an ongoing research project, with many angles of inquiry. This thesis specifically examined western Canada; it is of interest to expand this study to include the rest of Canada, in order to determine how serious violent youth are being viewed by the judiciary across the country. This would further our understanding of what factors and circumstances are weighed more heavily by judges, allowing for a larger amount of research to inform the potential policy of mandated treatment. In addition to Canada, exploring other juvenile justice systems from other commonwealth countries such as New Zealand and Australia, along with the United Kingdom, United States, Norway, and Sweden to understand how other countries juvenile justice systems deal with serious violent youth. Are there provisions established in these countries, regarding treatment or
punishment, that is not seen in Canada, and how effective are they? How are other countries sentencing this population of youth, and how are their recidivism rates in comparison? Gaining information from other countries can help shape future policy in Canada, as learning from or through other justice systems will increase the amount of research being used to guide future legislation.

A result that was found in this thesis was the high gang prevalence, especially in Manitoba but also in Saskatchewan. Due to the high rate of Aboriginal youth in this part of Canada, there is an increased risk for these youth to become involved in gangs. The formation of youth gangs in these provinces has grown dramatically over the last few years, and poses a problem for the future of many Aboriginal youth. Examining the gang culture in this part of Canada is of particular interest. What causes these youth to become involved in gangs? What prevention and intervention strategies need to be developed in order to combat the temptation of becoming a member of a gang? Examining the decision-making processes of these youth would extremely informative of why they decide to join a gang. There is important research that needs to be done examining the risk and protective factors for this vulnerable population, and the attraction of gangs in order to decrease the amount of youth becoming involved. As seen by the results of this study, those were involved in a gang, received adult sentences, and one of the primary justifications for an adult sentence was the risk factor of being a gang member. Therefore, there are multiple hazards for Aboriginal and non-Aboriginal youth to become a gang member.

One limitation of this thesis was the fact that judges’ reasons for their decisions were being interpreted through text. Being able to interview judges would allow in-depth information from the judges’ themselves on what factors they consider when deciding to impose a youth or an adult sentence for serious violent youth.\(^\text{8}\) This would overcome this limitation and add an extra layer of information to the case analysis that would provide

\(^8\) Approval was granted by the Chief Judge in British Columbia to interview retired provincial court judges for this thesis; however, only one judge responded, not providing a large enough sample to include the findings from the interview into this study. Extremely important and relevant information was gathered from the interview, and would have added a unique angle to this research project. Knowing the depth of information available from judges, this would like to be attempted again, and in other provinces as well.
insight into the actual decision-making processes of judges. Further, from these interviews, judges’ perceptions and opinions on neuroscience and developmental research can be explored, and whether they consider this information, or would consider this information in their sentencing decisions.

7.5. Conclusion

The central finding from this thesis is the lack of theory based empirical research used in the judicial decision-making in the 22 cases from the four provinces included in the analysis. The need for utilizing the most recent psychological and criminological theory and research in judicial decision-making regarding the unprecedentedly complex YCJA is a main theme argued in this thesis. Notably, in no case involving the far more serious adult length sentences did a judge explicitly utilize the now well confirmed developmental based research to explain and/or justify their final decision. Yet, there is considerable case law, especially involving the YOA, where this form of judicial reasoning was evident. Nonetheless, with regard to youth alone sentences, this reasoning was more apparent. In effect, the latter sentencing decisions could be interpreted as reflecting themes from the developmental and life-course theories. More specifically, judicial reasoning appeared more sensitive to the mitigating factors, the decreased culpability of the offenders, and, even in some cases, mentioning how young offenders, even in the context of the YCJA, needed rehabilitation. Yet, treatment was not mandated. Arguably, the most current and largely Canadian criminological research strongly suggests that without mandated treatment for multi-level risk factors, the likelihood of recidivism and longer term criminal trajectories increases substantially (Corrado, Lescheid & Lussier, 2015). Again, when the judicial ideologies for the adult length sentences were considered in opposition to the youth sentences, it was asserted that developmental and life-course research were not explicitly evident. This discrepancy is considered the essential basis to asserting ideologies, the need for a federally mandated law that gives judges the authority to make compulsory treatment orders in order to address the risk factors for the most serious and violent young offenders, thereby decreasing their risk of recidivism. This pattern was evident in a more detailed summary of case analyses by provinces.
Differences between Provinces

Seeing the differences in the way the judges discussed the circumstances of the offence, the offender, and the objectives of sentencing between provinces can lead to important policy implications, as offenders are being treated differently depending on where they live. These findings show inconsistencies in judicial ideologies amongst provinces. Another important difference found was among the offenders themselves. Understanding the provincial differences in how the Act is enforced, and the offender population helps to understand judicial attitudes towards treatment. As a result, the patterns that emerge seem to reflect the distinctive provincial cultures and models of justice (Corrado, Gronsdahl, & MacAlister, 2007). For example, Alberta focused the least on rehabilitation compared to the other three provinces, Manitoba focused on society’s interest when framing the sentence more than the other provinces, and British Columbia provided the most information regarding the offender’s personal background. Recognizing these provincial discrepancies in the way the Act is being implemented, further demonstrates the need for a federal law that ensures offenders’ are receiving individualized sentences that are directed at targeting their person risk factors, and are not being sentenced differently because of provincial differences.

Policy Summation

The rate of violent crime committed by youth has remained stable over the last decade, but it has more than doubled compared to 20 years ago (Jutistat, 2008). Antisocial and violent behaviors during adolescence are a social, legal, political, and health phenomenon, with many youth being perpetrators and/or victims of violent acts. Adolescents have triple the mortality rate compared to any other developmental stage across the life course. This is largely due to the fact that adolescents are at higher risk to become involved in antisocial and criminal behaviors than children or adults (Casey, Getz, & Galvan, 2008). As a result, their chances of death or becoming involved in the criminal justice system increases. This is particularly true for serious violent youth.

Serious violent youth have multiple underlying causes to their criminal behavior that heightens their risk of becoming involved in violent crime during adolescence and adulthood (Farrington, 2005a; Lahey, Waldman, & McBurnett, 1999; Moffitt, 1993). Many
youth who become involved in serious violent behaviors do not receive the necessary treatments that they need, which further increases their chances of offending into adulthood. The cost of a criminal career beginning in adolescence is approximately $2.0 million US per youth, placing a massive economic burden on society (Moretti & Obsuth, 2009). The justice system, particularly the correctional system, could serve as a gateway to the treatment serious violent youth require to decrease their risk of recidivism.

Implementing mandated treatment through laws, such as the YCJA, will provide the best chance at decreasing the risk of recidivism for this population of youth. As argued in this thesis, the current set up of the Canadian juvenile justice system, which is premised on proportionality and punishment for youth who commit serious violent offences, has not been effective in dealing with this group of youth. The existing ideology of the YCJA is a result of the political and public pressure to “get tough” on serious violent youth. This pressure has largely been caused by the media sensationalizing rare cases, leading the public to believe there is an increase in the rate of violent youth. As a result, the Canadian juvenile system ignores developmental and life-course theories which have consistently shown individualized, intense, and validated treatment programs are the most effective method of reducing the risk of recidivism.

Mandated treatment is not currently stated explicitly in the YCJA, and this was reflective in the judges’ decision-making process, with one exception. In the case of C.H.C., the judge “bound” C.H.C. to continue his multi-faceted treatment during the conditional supervision portion of his sentence. This finding demonstrated that out of the 25 youth sentenced, only one was bound to treatment after release. With the first 6 months being the most critical once an offender has been released back into the community, 96% of the sample did not have to continue to undergo treatment, this in turn, greatly increases their risk of recidivism. This finding supports the need for mandated treatment as the developmental themes (reduced culpability, aggravating vs. mitigating factors, and punishment vs. rehabilitation) were not a consistent focus of judicial ideologies. With the majority of judges in this thesis not using research to guide their final sentencing decision, as well as the differences found among the rational judges used to justify their decision, showed that many judges are not fully educated on
this research; therefore, implementing federal legislation is required to overcome these limitations. It is not realistic to rely on judges to be able to determine the risk factors of serious violent youth, as well as the most effective methods for dealing with this population, as they are not trained to identify the risk and protective profiles of these youth.

Additionally, judicial ideologies were found to be varied across provinces, highlighting another problem with relying on judges; therefore, going forward, the federal government has to consider mandated treatment. This legislation will have to be within the limits of the Charter, but as discussed in this thesis, there have already been decisions made by the court where mandated treatment has been found to be in line with the principles of fundamental justice, not violating section 7 of the Charter. Currently, the courts have ruled that mandated treatment can be ordered as part of a conditional sentence, a long term or dangerous offender status, or probation order. These findings are critical as they show the court is beginning to recognize the importance of treatment, but these three avenues are too narrow, leaving a gap as many youth convicted of a serious violent offence do not meet one of the three avenues. However, it can be argued for those youth who receive a youth sentence, the conditional supervision portion of their sentence is synonymous with a conditional sentence, meaning precedence is set for judges to mandate treatment. Yet, the results in this thesis found only one judge who mandated treatment after release, and the majority of youth received an adult sentence; therefore, no precedence has been set for mandated treatment orders to be part of their sentence. Further, the current case law does not address treatment in custody, which is where treatment needs to begin, and then continued in the community once the youth have been released. As a result of these limitations, a federally mandated law that gives judges the authority to implement treatment without consent is required. This is especially important for youth because of their vulnerability of their age as research has shown that the younger an individual starts treatment, the more successful the treatment is.

Mandated treatment would bridge the gap found between the justifications judges used in their decision-making process and research. Also, the burdens placed on society-legally, politically, and economically—would decline. Moreover, the contributions
to society would increase, as youth who would be costing society, would become contributing members of society. The idea of mandated treatment through the YJCA may be the best way to ensure youth are receiving the appropriate treatment programs based on their personal risk/needs assessment, and tackle violent crime committed by this vulnerable population of youth.
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