YOUTH PROBATION OFFICERS' INTERPRETATION AND IMPLEMENTATION OF THE *YCJA*: A COMPARISON OF THE SUCCESSES AND CHALLENGES IN 2004 VERSUS 2007

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Sarah Kuehn
First State Examination in Law, Freie Universität Berlin, 2005
Master of Arts, Simon Fraser University, 2007

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Name: **Sarah Kuehn**

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Examining Committee:

Chair: **Brian Burth**
Professor- School of Criminology
Simon Fraser University

_____

Raymond R. Corrado
Professor- School of Criminology
Simon Fraser University

_____

David MacAlister
Associate Professor- School of Criminology
Simon Fraser University

_____

William Glackman
Associate Professor- School of Criminology
Simon Fraser University

_____

Kim Polowek
Professor- School of Criminology & Criminal Justice
University of the Fraser Valley

_____

Kevin Douglas
Associate Professor-Psychology Department
Simon Fraser University

Date Defended/Approved: April 19th, 2010

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Abstract

Many juvenile justice systems are characterized by an amalgam of different principles and ideologies, which have been incorporated into laws and policies regarding youth crime. This study examines the perceptions of youth probation officers (YPOs) concerning the 2003 *Youth Criminal Justice Act* (*YCJA*) in Canada, which is one recent case example of a mixed model of juvenile justice. YPOs were asked about their understanding of the *YCJA* and their ability to apply the act in their daily work as well as their access to community programs in 2004 and 2007. In addition, qualitative interviews with a subsample of YPOs, conferencing specialists, and policy consultants were conducted in 2008 to gain more insight into YPOs' work under the *YCJA* and the current youth justice policy. The results as well as previous research on the *YCJA* and policy implications are discussed. YPOs generally were able to comprehend the complex *YCJA* but had continued difficulties with the sections that involved either multi-ministry cooperation or the application of special sentencing provisions for Aboriginal young offenders. The results further disclosed regional variation in the access to community programs and resources.

Keywords: Youth Probation Officers; *Youth Criminal Justice Act*; Comparative Juvenile Justice; Mixed Models of Juvenile Justice.

Dedication

To my parents.

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Glossary

BC	British Columbia
CCM	Crime Control Model
CM	Corporatist Model
D&A	Drug and Alcohol
ICM	Integrated Case Management
IRCS	Intensive Rehabilitative Custody and Supervision Order
ISSP	Intensive Support and Supervision Program
JDA	Juvenile Delinquents Act
JM	Justice Model
MCFD	Ministry of Children and Family Development
MJM	Modified Justice Model
PSR	Pre-Sentence Report
US	United States
WM	Welfare Model
YCJA	Youth Criminal Justice Act
YOA	Young Offenders Act
YOT	Youth Offending Team

Chapter 1: Introduction

1.1 Global Trends in Youth Justice

Many juvenile justice systems in contemporary Western jurisdictions have shifted away from the welfare model focus on informal judicial processing and rehabilitative dispositions, which were dominant during most of the 20th century. Instead, mixed models of juvenile justice now are commonly utilized. This approach was first evident in England with its 1908 *Children's Act*, which combined justice and welfare model principles, i.e., formal judicial processing and the rehabilitation of young offenders (Corrado and Turnbull, 1992). Muncie (2009), in a recent review of current global trends in juvenile justice, confirmed that contemporary youth justice has "developed into a particularly complex agglomeration of competing and contradictory policies, including retribution, responsibility, rights, restoration, and rehabilitation, which simultaneously exhibit strong exclusionary and inclusionary tendencies" (Muncie, 2009, p. 353). In other words, mixed models of juvenile justice, characterized by an amalgam of different, complex, and, sometimes, conflicting principles and ideologies have been incorporated globally into laws and policies regarding youth crime and delinquency.

New Zealand, for instance, adopted a radical approach by emphasizing Corporatist model principles (Pratt, 1989), which involve administrative as opposed to judicial processes, into its 1989 *Children, Young Persons, and their Families Act*. This act, more specifically, created a legal system of youth justice based on restorative justice principles while still emphasizing welfare principles such as rehabilitation. In addition, the youth court is reserved for a minority of young offenders and even fewer youth are then transferred to the district (adult) court, which processes the most serious and violent offenders over the age of 15 (Morris,

2004).[1] In contrast, other youth justice systems utilize crime control approaches, such as incapacitory and punitive measures, which stress long-term custody sentences in both youth and adult prisons. This punitive trend is most apparent in the United States (US), where more than 20 of the 50 states permit children as young as 7 to be prosecuted and tried in criminal courts. Many states such as New York and Florida have automatic transfers to adult criminal court for index, i.e., the most violent offences, for youth 16 and older (Deitch, Barstow, Lukens and Reyna, 2009) and some US jurisdictions impose mandatory life without parole sentences for serious young offenders less than 16 years of age (Feld, 2008). Not surprisingly, the US has had the highest number of long-term incarcerated young offenders since the 1990s (Muncie, 2009). Increasing custody rates and other crime control trends such as zero tolerance policing, i.e., processing of most minor offences, and pre-trial detention as a form of "short sharp shock" deterrence experience were also evident in Scandinavian and certain other European countries, which have historically retained a strong welfare orientation. According to Muncie (2008),

> "An American-inspired institutionalized intolerance towards these aged under 18 has gained wide spread global recognition and punitive measures are often deemed a legitimate and efficient response to young offenders to the detriment of the traditional principles of rehabilitation, protection, and care." (p. 109)

For instance, the predominant consideration of children's welfare in Scotland's Child Hearings has been undermined by the introduction of fast track hearings and pilot youth court initiatives for serious violent young offenders. Another example is the amended 2006 *Youth Protection Act* in Belgium and the introduction of Extended Youth Courts as well as increased referrals of young offenders to adult court, which might have set the stage for a more punitive turn towards young offenders despite the longstanding preservation of welfare protectionism towards young offenders (Christiaens and Nuytiens, 2009). These

[1] Morris (2004) reported that in 2001 less than two-fifths of the cases in youth court resulted in a court order and 7% of those cases got transferred to district court. The majority of cases, however, were withdrawn or discharged after the successful completion of a family group conference.

global youth justice trends and models, especially the above assertions concerning the growing pervasiveness of punitive trends, need to be qualified, however, as youth justice laws are increasingly complex and lengthy, and vary substantially even within countries depending on regional jurisdictions, e.g. states or provinces, political culture, and local practice. According to Muncie (2008),

> "Classificatory models often fail to do justice to the myriad ways in which broad trends can be challenged, reworked, adapted or resisted at the local level and the degree to which any system is likely to be in continuous flux as it implements, imitates or rejects policy and practices developed both internally and externally." (p.117)

The Canadian *Youth Criminal Justice Act* (*YCJA*) is one of the most recent examples of a complex piece of legislation, which reflects the above global trends in youth justice. While the *YCJA* is a federal law, its implementation, similar to the US, is the responsibility of each of the 10 provinces and 3 territories in Canada. While it was introduced to overcome the problems under its predecessor, the *Young Offenders Act* (*YOA*), one of the fundamental criticisms of the new youth justice policy is that the *YCJA* is enormously complex and includes, to some extent, conflicting principles, and, therefore, far too subject to misunderstanding, and difficult to apply at the case level (Trepanier, 2004). This criticism was already pointed towards the *YOA*, which was even shorter and less lengthy than the *YCJA* (Bala, 2009; DeGusti, 2008). These concerns, therefore, raise several hypotheses concerning the ability of youth justice agents, including police, youth probation officers (YPOs), and judges, to understand and implement these multi-model laws. This case study explored the views of YPOs in the province of British Columbia (BC) concerning their level of difficulty understanding and implementing the 2003 *YCJA* during the first year of its implementation and three years later in 2007 as well as their level of access to community programs and their perception of the youth justice system. In addition to a standardized survey, in-depth interviews with a subsample of YPOs, conferencing specialists, and youth justice consultants were conducted to gain more insight into YPOs' work under the *YCJA* and their view of the implementation of the current youth justice policy. Thereby, this study enters the

policy cycle at the last stage -policy evaluation-, which is according to Dunn (2004) "a process of multidisciplinary inquiry designed to create, critically access, and communicate information that is useful in understanding and improving policies" (p. 2).[2] The evaluation of implemented policies (programs) is as important as the policy design since the execution of policies in practice can be conceptually different from the design, although they can overlap in practice. A policy can be well designed, that means there is an accurate problem definition and appropriate choice of an instrument and goal to address the problem but the implementation can be a failure due to a lack of resources, organization, or personnel (Pal, 2006). Therefore, it is necessary to examine how successful the current youth justice policy is implemented. More specifically, this study was co-initiated by researchers and senior policy officials in BC's Ministry for Children and Family Development (MCFD) to provide some policy feedback on how YPOs in BC implement the complex and mixed model based *YCJA*. It was hypothesized, first, that the interpretation and implementation of the *YCJA,* generally, did not cause large difficulties for YPOs and had generally become easier over time. Yet, the second hypothesis was that the most complex sections, particularly those that required both the cooperation with youth justice professionals or experts from other departments and extensive resources, were initially and remained difficult for YPOs to understand and apply. Prior to these examinations, however, it is important to describe the creation of the *YCJA* and its overall objectives, review research since its implementation, and explain YPOs' role in the youth justice system.

1.2 History of Canada's Youth Justice System and Models of Juvenile Justice

After almost a century of the welfare-based *Juvenile Delinquents Act* (*JDA*) the two most recent youth legislations, the 1984 *YOA* and the 2003 *YCJA,* both combine

[2] Generally, policy-making consists of several stages: identification and definition of the social problem, agenda setting, policy formulation and legitimation, policy implementation, and, eventually, policy evaluation (Dye, 2005).

different juvenile justice principles to deal with youth crime. They can be best described as Modified Justice Models (MJM), i.e., they are both mixed models of youth justice combining elements, although differently emphasized, from the Welfare, Corporatism, Justice, and Crime Control Model (Corrado, Gronsdahl, and MacAlister, 2007).

These models can be placed on a continumm of youth justice. The Welfare Model (WM) is located on the extreme left of the continuum of youth justice models and reflects a positivist approach; the causes of juvenile delinquency are explained by socio-ecological factors, such as poverty and disruptive families. The WM's main objective is the rehabilitation of young offenders. This is best accomplished through individualized diagnosis and treatment, and there is a focus on the "special needs" of young offenders. Social workers and probation officers, whose work is guided by the "best interests" of young delinquents, play key roles. The WM focuses on offenders, their families, and informal processes, while the seriousness of the offence, prior records, and the protection of the public are given far less consideration in the sentencing process. The *JDA* can be classified as such a model.

In contrast, the Crime Control Model (CCM) is on the far right, the opposite extreme of the continuum of youth justice. Instead of focusing on the young offender, as seen under the WM, the CCM's main rationale is the protection of the public through general and specific deterrence, retribution, and incarceration. Young offenders must take responsibility for their actions and are held accountable for them. In comparison to the WM, which lacks legal rights for offenders (for instance, through indeterminate sentences until the offender is successfully rehabilitated), the CCM emphasizes, as does the Justice Model, due process: legal protection and fair hearings are ensured through lawyers and other criminal justice officials who are the key personal under this model. Crime control model elements are typical for the youth justice system in the US with its transfers to adult courts and mandatory minimum sentences for young offenders. Yet, crime control approaches have also been common during elections in Canada, when politicians

announce “get tough” approaches to young offenders to please public’s demands for harsher sanctions and address its fear of (perceived) rising youth crimes rates.

The Justice Model (JM) can be found towards the middle of the continuum. It represents a neo-classical approach to youth crime and assumes that all criminal behaviour is wilful and rationally calculated. However, it also takes into consideration that socio-ecological factors and the immaturity of young offenders can mitigate the degree to which youth are responsible for their actions. While the WM and the CCM are focused on either the offender or the protection of the public, the JM focuses on neither of them. Instead, it emphasizes the justice process itself. The offender’s legal rights and a fair process are as important as proportionate sentencing and the offender’s punishment. The main objective is to hold offenders accountable for their actions. Given this, the least restrictive measurement should be imposed. Key personnel under the JM are judges, Crown, and defence lawyers.

Pratt (1989) introduced the Corporatist Model (CM), located between the WM and the MJM on the continuum. He found that a youth justice system that emphasized the legal system and due process was too costly and inefficient. His main rationale for a youth justice system was to implement policies, which guided youth away from the court, and created alternatives to custody in order to retrain and socialize them in the community. Key personnel are the police and probation officers who use a multi-factored approach through integrated case management and administrative decision-making. Custody should be reserved for serious and violent offenders who could not be dealt with in the community (Pratt, 1989).

These models of youth justice only theoretically exist in their pure form. In practice, there are overlaps of “approach, procedures and outcomes under the different models” (Corrado, 1992, p. 3). As previously mentioned, youth criminal justice systems are not generally based on one rationale, but an amalgam of different, complex, and, sometimes, conflicting principles and ideologies, drawn from the different justice models (Muncie, 2009). Corrado (1992) considered this

typical characteristic of youth justice systems when he introduced the MJM.[3] It is located midway on the continuum and can be described as a mixture of the other justice models by using rationales from different models at the same time to explain one justice system. It is the appropriate model for a justice system "where the emphasis at the pre-adjudication stage of juvenile justice is on adult criminal procedure criteria, or due process, while sentencing criteria include a mixture of offence consideration (severity of offence and prior record) and offender considerations (special needs)" (Corrado, 1992, p. 12). Key personnel under the MJM are lawyers and probation officers as well as social workers and mental health workers. Both the *YOA* and the *YCJA* can be best characterized as MJMs.

The *YOA* came into force in 1984 and caused a major change in juvenile delinquency philosophy as it represented a shift from the social welfare approach to a more criminal justice orientation. The welfare approach, developed under the previous *Juvenile Delinquents Act (JDA)*, still maintained a strong presence under the *YOA* by considering the limited maturity of juveniles and the special needs of young offenders as well as their rehabilitation and reintegration. A new emphasis, however, was placed on the protection of society, accountability for offences, due process, and respect for legal rights of young offenders, thereby reflecting a neoclassical approach to youth crime. Components of the CM were also visible in the legislation. Section 4 of the *YOA* (Alternative Measures) reflected the main objective -diversion- of the CM. Thereby, the *YOA* intended a bifurcated system, trying to divert non-serious and first-time offenders away from the formal justice system into the community and imposing lengthy custody sentences for serious violent young offenders (Corrado and Markwart, 1992).

[3] Originally, the author introduced the Modified Justice Model to categorize and compare juvenile justice systems in Canada, the U.S., and Britain (Corrado, 1992, p. 11).

1.3 Criticism towards the *Young Offenders Act*

During the time of the application of the *YOA*, however, it became apparent that the policy intent and interpretation of the act varied significantly from the actual implementation. The *YOA* was highly criticized because it lacked a clear legislative direction and a clear distinction between minor and serious offences (Department of Canada, 2009). The key problem was the lack of hierarchy in guiding principles which often led to conflicting objectives, unfairness, and sentencing disparity between jurisdictions (Carrington and Schulenberg, 2004; Department of Justice, 2009; Bala, 2009). Decision-makers such as police, prosecutors, and judges could justify almost every decision under the act. For instance, judges could choose from a variety of sentences for the same offence (Barnhorst, 2004). Other complaints included that there was no real distinction between serious violent and less serious offences, and that courts were overused for minor cases that could have been better dealt with by informal responses (Department of Justice Canada, 2009). This was reflected in Canada's youth incarceration rate, which had doubled the rate in the US and was ten to fifteen times higher than in many European countries, New Zealand, and Australia, and was even higher than the adult incarceration rate in Canada (Department of Justice, 2009). Although the guiding principles of the *YOA* declared that incapacitation should be the last resort and the use of alternative measures was promoted by the legislation, one-third of convicted young offenders received a custody sentence, including many first-time and non-violent offenders. Young offenders even received longer custody sentences than adults for their most frequent offences except for robbery (Hogeveen, 2005).

While youth advocates were concerned with the overuse of the formal justice system for minor youth crime, the public and victim advocate groups had a completely different perception of the juvenile justice system due to the media's distorted presentation of youth crime (Doob, 2004). The extensive media coverage of youth crime caused a moral panic, based on the widespread public belief that serious violent youth crime was on the rise and "out of control" (Corrado and

Markwart, 1994). Critics argued that serious violent offenders would receive too lenient sentences under the *YOA* and requested a "get tough approach" for these offenders (Bala, 2009). Moreover, it was a common belief that the legislated societal response to youth crime caused the (perceived) rising violent youth crime rates. A cartoon in the Toronto Sun in May 1996 showed a store window that featured a "Little murderer's tool kit: Free copy of the *Young Offenders Act* inside" (Doob and Cesaroni, 2004, p. 3). While there was in fact an increase in violent youth crime at that time it did not justify the moral panic and the requests for harsher sentences and "get tough" approaches to young offenders (Corrado and Markwart, 1994).[4] Paradoxically, the justice system was blamed for its inadequacies to effectively prevent youth crime and protect the public but, at the same time, it was also seen as the best hope against crime by introducing harsher sentences. The wide spread public belief that a too lenient justice system was the main reason for increases in violent youth crime neglected the increased vigilance by police, "zero tolerance" policies toward youth violence due to heightened public fear and pressure, and a lack of rehabilitative resources to address young offenders special needs (Corrado and Markwart, 1994).

Conclusively, with regard to the *YOA*, the demands for government action to change the legislation were based on two different issues: first, the identification of the real problem (over-use of the formal justice system for young offenders), and second, a socially constructed problem, i.e., the negative public opinion of the juvenile justice system, claiming that the judicial responses to youth crime was too lenient. This policy process reflected an "outside initiation model", where "issues arise from non-governmental groups and are then expanded sufficiently to reach, first the public (systemic) agenda and then, finally, the formal (institutional) agenda" (Cobb, Ross, and Ross, 1976, cited in Howlett and Ramesh, 2003, p. 133). Yet, it is questionable whether the public's demands were sufficient in pushing the dissatisfaction with the *YOA* on the government's agenda. After all, an issue that is

[4] For a detailed discussion on whether the violent youth crime was on the rise see also Carrington, Markwart, and Roberts (1995), and Bell (2007).

popular among the public is not necessarily sufficient to draw an active political response to it (Howlett and Ramesh, 2003).

The pressure on the government to act and implement change significantly increased rather due to a couple of isolated, but highly publicized, cases of violent youth crimes. Cases such as the killings of Jesse Cadman[5], Reena Virk,[6] and Anthony Biegun[7] opened up agenda-setting opportunities - so called "random policy windows" - and moved the criticism towards the *YOA* and calls for actions on the political agenda. An example for how public pressure reaches the political agenda is reflected in the following quote by MP John Williams. He stated that,

> "Somewhere along the way, through our soft and fuzzy and pat them on the head and ask them not to do it again concept, we have lost the notion that we have to teach our kids the difference between right and wrong...we hear in the crime capitals in the United States, for example, New York City, that crime is down 10% to 20%, and that murders are down 10% to 20%…They are tough on crime. Perhaps there is a correlation there...If we are tough on crime, then people get the message." (Canada, House Debates, 25 September 2000, cited in Hogeveen, 2005, p. 74)

Another MP warned that if government did not take responsibility and get tough on young offenders members of the public would take "justice" in their own hands (Hogeveen, 2005). Interestingly, some members of Parliament raised the public debate to the point where they requested a wide range of sentences for young offenders, reaching from reintroducing the strap to re-establishing death

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[5] Jesse Cadman was stabbed to death in a random street attack by a group of young people in 1992. Issac Deas, the main actor in this murder, received an adult life sentence without eligibility for parole for seven years (R. v. Deas, [1996] B.C.J. No. 893, BCCA).

[6] Reena Virk was murdered in 1997 after she was bullied, swarmed and beaten by several teenagers. The main perpetrators in this crime, Kelly Ellard and Warren Glowatski, were given life sentences after being convicted of second-degree murder (R. v. Ellard, [2005] B.C.J. No. 2987, BCSC; R. v. Glowatski, [1999] B.C.J. No. 1278, BCSC).

[7] The senior Anthony Biegun was so seriously injured with a fence board by two teenagers that his face required re-constructive surgery. Biegun's case inspired activism in the name of him and other victims and resulted in a "People for Justice" rally in front of the Manitoba Parliament to protest against the *YOA* and its failure to protect the public (Hoogeveen, 2003, p. 83).

penalties for young offenders convicted of murder in adult court (Hartnagel, 2004).[8] Government followed the public demand to some extent and signalled its intention to implement change and get tough on young offenders (Bala, 2009). It launched the creation of the Youth Justice Renewal Initiative in 1998 to establish a fair and effective youth justice system and address the public concerns (Department of Justice, 2009).

1.4 Quebec's Opposition

While the Federal government launched the creation of the Youth Justice Renewal Initiative, Quebec vehemently challenged the notion that a reform of the *YOA* and the introduction of the *YCJA* were necessary. A number of organizations and individuals involved with professional work in youth justice as well as political actors in Quebec formed a strong opposition against the *YCJA*, assuming that the legislation was mainly politically motivated (Trépanier, 2004). Prevailing criticisms of the *YOA*, such as overused courts and an over-reliance on custody, were not considered problems in Quebec. Even under the *YOA*, Quebec reported a very low number of cases in youth court and an even lower number of custodial dispositions than the rest of the country (Trépanier, 2004). The rates of incarceration in Quebec were only about half as high as the overall Canadian rates. This disparity can be explained with the administration of youth justice and the responsibility's for youth justice resources being a matter of provincial jurisdiction. For decades, Quebec had successful youth criminal justice policies to educate, support, and rehabilitate youth, and resources had been in place to keep them out of the formal court system (Trépanier, 2004).[9] Quebec did not blame the *YOA* itself for problems faced by the rest of the country but rather noted that implementation in other provinces was

[8] The process of the development of the *YCJA* also shows that the government, however, was able to resist some of populist forces. Other right wing demands were to lower the age of criminal responsibility from 12 to 10 years, reduce the maximum age of juvenile jurisdiction from 17 to 18 years, and introduce automatic transfers to adult court (Roberts, 2003).

[9] Quebec even enacted the *Youth Protection Act* in 1970 to divert youth from the justice system (Doob and Sprott, 2004).

responsible for the overuse of courts and custody. Quebec was convinced that new legislation was unnecessary and that diversion was possible under the *YOA* if implemented properly. One Bloc MP asked,

> "Why? Why an approach reflecting such intolerance, an intolerance that seems mainly to come from English Canada, but which unfortunately is echoed in this House? As I said earlier, by dint of being alarmists, you end up colouring facts. Some members have crying wolf for so long that they are seeing his tail. Let us stop telling ourselves horror stories and face facts." (Canada, Hansard Debate, 12 May 1994, cited in Hogeveen, 2005, p. 79)

The enactment of the punitive provisions under the *YCJA* were thus regarded as a political attempt to calm public fear of youth crime and increase public confidence in an effective justice system. Quebec also had two other concerns: Firstly, if the government chose to follow the unjustified public demands and set up new legislation the public's erroneous perception of rising youth crime rates would be confirmed (Trépanier, 2004). Secondly, the causes of public fear (ignorance of crime statistics and misleading media reports) would not be addressed and youth crime would continue to be perceived as a serious problem.

Despite Quebec's opposition, the House of Commons' Standing Committee on Justice and Legal Affairs (1997) undertook a comprehensive two-year review of the *YOA* and made fourteen recommendations regarding the treatment of offenders, the application of resources, and the role of the offenders' families and victims. The Federal government considered these recommendations and introduced the first version of the *YCJA* in Parliament in 1999. The legislators' intention was to build on the strengths of the *YOA* and to introduce significant reforms that would address its weaknesses as well as improve the situation for youth and decision-makers (Department of Justice Canada, 2009). Although the proposed legislation was initially put on hold when an election was called, it was reintroduced in 2001 and eventually led to the implementation of the *YCJA* in 2003 (Bala, 2009). While Quebec's opposition could not prevent the later introduction of the *YCJA*, the strong emphasis on rehabilitation and mandatory diversion provisions under the *YCJA*

were grounded in Quebec's influential input during the debate that a rehabilitative approach to young offenders was necessary.

1.5 The Introduction of the *YCJA*- Selling Diversion As Crime Control

The notion that the enactment of the *YCJA* was more a political strategy rather than the actual necessity for a new law, as argued in Quebec, was also supported by the way the Federal government introduced the *YCJA*. While one of the main policy intents of the *YCJA* was to reduce the over-reliance of court and custody by diverting first time and non-serious young offenders out of the formal justice system, the government controlled the information that was released about the *YCJA* and the press release announcing the introduction of the *YCJA* drew a complete different picture of the act. The government only emphasized the crime control elements under the *YCJA* and completely neglected to announce the emphasis on diversion and community measures in the press release and subsequent newspaper reports on the *YCJA*; using the media and only disseminating specific, limited information about the *YCJA*, the government was able to address public concerns about being too soft on crime and introducing "get tough" measures to young offenders to counteract the (perceived) increasing youth crime rates, while, in reality, reducing the level of punitiveness towards young offenders (Doob and Cesaroni, 2004). Some of the changes mentioned in the press release were to lower the age for an adult sentence for youth; allow Crown greater discretion in seeking adult sentences; expand list for presumptive offences; permit publication of names when adult sentence; using voluntary statements by youth to the police as evidence; and permit tougher penalties for adults who wilfully fail to comply with court order to supervise youth (Doob and Cesaroni, 2004). Most of the changes would not really affect the way young offenders would be treated. One example was the last latter point, harsher consequences for parents, because this perceived punitive provision under the *YCJA* only sent a symbolic message to the public and has had no practical implication; almost no adult has ever been charged or sentenced with wilfully failing to comply with court order to supervise youth (Doob and Cesaroni, 2004).

Chapter 2: The *Youth Criminal Justice Act*

2.1 The Overall Youth Justice Policy

After "7 years of strategizing, hundreds of hours of debate in the House of Commons, 160 amendments, 3 separate drafts, and 1 year of planning and training sessions for youth justice practitioners", the *YCJA* replaced the *YOA* in April 2003 (Hogeveen, 2005, p. 287). Again, the Canadian government chose a mixed model of youth justice to respond to youth crime. Effectively, the current *YCJA* draws from several and to some extent conflicting, juvenile justice principles including components of the Welfare, Justice, Corporatist and Crime Control Model (Corrado et al., 2007). The act explicitly prescribes the new federal youth justice policy in the *Declaration of Principle*[10]:

> "The youth criminal justice system is intended to prevent crime by addressing the circumstances underlying a young person's offending behaviour; rehabilitate young persons who commit offences and reintegrate them into society; and ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;"

To achieve those objectives, the act is based on a tri-furcated system: first, minimal or no interventions for minor offences (diversion); youth who commit minor (even multiple) offences or are first-time offenders, are generally to be dealt with outside the formal court system in the community (e.g., Extrajudicial Measures and Extrajudicial Sanctions).[11] Second, youth courts imposing 'intermediate' sanctions (e.g., probation, and short term custody and supervision sentences) for offenders who are neither first-time offenders nor serious and violent offenders with a strong rehabilitative focus. Third, the possibility of adult sentences for

[10] Section 3(1)(a).
[11] Section 4 and 10.

serious and violent offenders. These sentences are restricted to cases where a youth sentence would not be of sufficient length to hold the youth accountable for the serious offence or pattern of multiple moderate offences, and when no appropriate alternatives are available. The Crown prosecutor has to prove that an adult, not a youth sentence, is required to hold the youth accountable.[12]

2.2 Aboriginal Young Offenders

Within this tri-furcated system, the *YCJA* attempts to improve the situation of Aboriginal young offenders in the youth justice system by considering their culturally specific needs at different stages of the youth justice system. Numerous studies have shown that both adult and young Aboriginal offenders, similar to other ethnic and immigrant minority groups in the US and Europe, are over-represented at all stages in the criminal justice system in Canada. In particular, at the remand and custody stage, Aboriginal offenders are represented in higher proportions as compared to their proportion in the general population and young offenders are almost eight times more likely to end up in custody than their non-Aboriginal counterparts (Latimer, 2004). The 2001 Census in Canada claimed that approximately 8% of the population were Aboriginal youth while in 2002/03 Aboriginal young offenders accounted for 44% of admission to remand, 46% of sentenced to custody admissions, 32% of probation admissions and only 21% of alternative measures reaching agreement. This over-representation particular applied to Western Canada and the Territories where Aboriginal populations were larger and to female Aboriginal offenders (Reitano, 2004). In addition, while previous research has shown that Aboriginal youth have been incarcerated for more serious offences than Caucasian youth, they have also received longer custody sentences for may offence groupings (Latimer, 2004).[13] These statistics show that the *YOA* had a significant impact on Aboriginal young offenders, as they were the

[12] R. v. D.B., [2008], S.C.J., No. 25, SCC.

[13] Note, however, that this analysis did not control for offence history and and the offence seriousness within the offence grouping, two important factors usually considered in the sentencing decision.

ones most adversely affected by the skyrocketing court and custody rates. The Royal Commission on Aboriginal Peoples (1996) stated in this regard:

> "…over the past several years government attention has focused increasingly on changing the *Young Offenders Act*, to shift the balance away from its rehabilitative purpose in the direction of punitive objectives. The apparent mood of the country, fuelled by widely publicised crimes of random violence perpetrated by both young and adult offenders, has given rise to calls for the system to be 'toughened up'. These calls are not specifically directed to Aboriginal young offender, but because of the already great over-representation of aboriginal young offenders in the corrections system, measures designed to tighten the correctional screws have a disproportionate impact on aboriginal youth, placing the promise of alternatives to imprisonment even further out of reach." (p. 120)

To counteract Aboriginal youth's over-representation in the justice system, the *YCJA*'s *Declaration of Principle* states that the measures imposed on young offenders should "respect gender, ethnic, cultural and linguistic differences and *respond to the needs of Aboriginal young persons* and of young persons with special requirements".[14] In addition, section 38(2) (d) of the *YCJA*, which is equivalent to section 718.2(e) of the Criminal Code, instructs judges that "all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with *particular attention to the circumstances of Aboriginal young persons.*"[15] The Supreme Court of Canada discussed the extent of the section 718.2(2) in R. v. Gladue [1999] 1 S.C.R. 688 and recognized that this provision was a response to the "acute problem of the disproportionate incarceration of Aboriginal peoples" and the failure of incarceration to reduce offending.[16] Earlier, in 1996, before section 718.2(e) was introduced the Royal Commission on Aboriginal Peoples (1996) stated that:

> "The Canadian criminal justice system has failed the Aboriginal peoples of Canada … in all territorial and governmental jurisdictions. The principle reason for crushing failure is the fundamentally

[14] *YCJA*, 2002, c. 1, section 3(1)(c)(iv). Emphasis added.

[15] Emphasis added.

[16] For a more detailed discussion of the case see Rudin (2005).

> different world views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice." (p. 309)

With section 718.2(e) of the Criminal Code and section 38(2)(d) of the *YCJA* the government thus explicitly intended to ensure that the special status and history of Aboriginal offenders as well as alternatives to custody and culturally specific sentencing options must be considered at the sentencing stage. Both legislative reforms do not imply an automatic sanction discount for Aboriginal offenders. Rather, systemic and cultural specific background factors of Aboriginal offenders should be taken into account and sanctions imposed accordingly. This regulation applies especially to offenders who commit less serious crimes and who can be hold accountable through community based sanctions, even if they have a significant record of prior offending (Rudin, 2005).

Moreover, the *YCJA* contains several Aboriginal justice principles, such as the inclusion of the family and victims in the justice process, the objective of "repairing harm", Aboriginal youth justice committees, and the opportunity to have community based conferences at several stages of the justice system (Morgan and Brown, 2004).[17] Gladue Reports, which are culturally specific Pre-Sentence Reports (PSR) for Aboriginal offenders written by YPOs, were introduced to implement the Aboriginal youth policy and address the culturally specific background and special needs of Aboriginal young persons at the sentencing stage (Appendix A).

2.3 Court Ordered Conferences

Under the *YCJA*, a conference is defined as a group of people brought together to give advice to a police officer, judge, justice of the peace, prosecutor, provincial director, or youth worker who is required to make a decision under the act.[18] Conferences may give advice on decisions such as appropriate extrajudicial measures; conditions for release from pre-trial detention; appropriate sentences;

[17] Emphasis added.
[18] Section 19(1).

and plans for reintegrating the young person back into his or her community after being in custody (Ministry of Children and Family Development, 2003). They are encouraged at several stages of the justice system and, generally, involve bringing together the victim, the offender, their family, supporters, and other community stakeholders to talk about the harm caused and possible solutions to it. Thereby, the term conference under the *YCJA* was purposely kept vague and is not directive of any specific type of conference. Different forms of conferences under the *YCJA* are family group conferences, victim offender mediations, community accountability panels, and sentencing circles, and integrated case management (ICM) conferences (Hillian, Reitsma-Street, and Hackler, 2004; Bala, 2009).

Most of these conferences are based on Restorative Justice (RJ) principles and processes, i.e., the focus is on the reparation of the harm caused rather than the violation of the law and the subsequent punishment of the offender (Zehr, 1990). Van Ness, Morris, and Maxwell (2001) adapted five key principles of RJ stated by Canadian mediator Susan Sharpe (1998) as follows: "Offering an invitation to full participation and consensus; seeking to heal what is broken; seeking full and direct accountability; seeking to reunite what has been divided; and seeking to strengthen the community to prevent further harm." (as quoted in Hillian et al., 2004, p. 346) Although Canada had already been using RJ-based community programmes and conferences under the *YOA*, especially for first-time and non-serious offenders, the *YCJA* opened the door for a wide range of processes and principles commonly associated with RJ. One reason for the consideration of RJ values into the new act were complaints by victim support groups, arguing that the juvenile justice system was too offender focused and would neglect victims' needs when sentencing young offenders. In effect, the *YOA* did not directly mention the role of victims or the reparation of harm other than the opportunity to submit a victim impact statement (Justice of Canada, 2009). The introduction of RJ principles was also based on the recognition that these processes are less stigmatizing and socially excluding and thus better promote the reintegration of young offenders than formal court processes (Walgrave, 2005; Hillian et al., 2004). As seen in New Zealand and

Australia, countries that have their legal system of youth justice based on restorative justice principles while still emphasizing welfare principles such as rehabilitation, RJ-based processes can work well with young offenders and also lead to higher satisfaction rates of victims (Maxwell and Morris, 2006).

Another important reason for the introduction of RJ principles to the juvenile justice system was the over-presentation of Aboriginal young offenders in the formal justice system under the *YOA* (Morgan and Brown, 2004). Based on that recognition, the government tried to enhance the juvenile justice system by integrating culturally specific justice and sentencing principles and processes, which are commonly associated with RJ. While Aboriginal justice programs and practices can be distinct from RJ, many RJ programs draw principles and processes from Aboriginal programmes (Dhami and Joy, 2007; Rudin, 2005).[19]

2.4 Youth Probation Officers

YPOs have always been essential in youth justice because of their pre-court inquiries and supervision role in the community. Under the *JDA*, which was introduced at the beginning of the 20th century in 1908, YPOs had a central role. They conducted investigations and subsequent interventions based on a pre-sentence reports to rehabilitate juvenile delinquents and address their underlying causes of crime. They worked closely together with the juvenile delinquent's family. The main theme under the *JDA* was "parens patriae", i.e., the state could intervene into lives of youth and their family if it was in the "best interest" of the juvenile delinquent. This responsibility was transferred to YPOs, who had extensive power and discretion in decision-making. Due to the broadly defined legislation and a lack of clear principles and few limits on their authority, they could, together with other

[19] Rudin (2005) argues that colonialism and systemic discrimination have taken away the vital function and confidence of Aboriginal people to take responsibility for their lives and communities. Therefore, Aboriginal programmes have to focus on re-establishing this ability by building and strengthening communities. While this community building can be the result of a RJ process, it is not a inevitable a result or requirement of a process associated with RJ in a non-Aboriginal setting, for instance a victim offender mediations, which focus more on a resolution between the offender and the victim.

justice and childcare officials, "justify virtually any decision and intervention as long as they were guided by the 'best interest' of the child" (Corrado, 1992, p. 9).

Under the 1984 *YOA*, YPOs' role changed significantly. While YPOs did not have a law enforcement role, similar to that of adult probation officers, under the *JDA*, this role became important in their work under the *YOA*. The *YOA* instructed YPOs to shift their primary role to reflect regulatory, due process, and public safety principles. This new emphasis led to an increased emphasis and importance of Crown and defence counsel and diminished the role of YPOs (Corrado, 1992). Their discretion was further diminished by the introduction of legal rights for young offenders and their families, who were now protected from arbitrary and indeterminate interventions by judges and YPOs.

Under the *YCJA*, YPOs' role changed again and their influence and involvement of YPOs at the sentencing stage has increased. They work closely with Crown Counsel in preparing pre-court inquiries to assist the latter in choosing the wide range of initial decisions on whether and how to proceed. They also conduct diversion interviews and write PSRs, in which they make sentencing recommendations for youth court judges. These PSRs are extremely important in court as disclosed by previous research, which reported a strong correlation between PSRs recommendations and judicial decision-making in Canada (80%) (Maurutto & Hannah-Moffat, 2007). Moreover, YPOs have the role of being the primary administrators responsible for convening judicially ordered conferences in some provinces, for instance British Columbia and Alberta. As mentioned, conferences can be convened in many different forms at several stages of the justice system (Hillian et al., 2004). YPO work typically involves two forms of conferences: multi-disciplinary integrated case management conferences or RJ conferences in form of victim offender mediations. The latter can be conducted in the community as a diversionary measure (Extrajudicial Sanctions), pre-disposition (i.e. the youth has pled guilty), or post-disposition. Specialist probation officers, who do not hold any regular probation duties, facilitate these conferences. At the time of the introduction of the *YCJA*, there were 10 of those designated conferencing specialists

in BC. Once they receive a referral, they convene initial meetings with the potential participants, and, if appropriate, facilitate a conference with the victim and young offender and their support people. The outcome of this conference is reported back to court.

The other kinds of conferences important to YPO work are multi-disciplinary ICM conferences. Together with other professionals such as social workers, teachers, and mental health workers, and community agencies, YPOs convene to discuss the risks and needs of youth and develop integrated service and treatment plans (Hillian et al., 2004). These ICM conferences are intended to review service implications such as housing, treatment, supervision, family support, and report recommendations back to court, particularly for serious and chronic offender and should give advice on conditions for judicial interim release, sentencing options, and reintegration plans (Ministry of Children and Family Development, 2003). While these conferences were already held informally under the *YOA,* it is expected that the conferences will be conducted more frequently under the *YCJA* since they are now legally encouraged.

Besides regular probation, which has always been the most common youth sentence since its introduction under the *JDA,* YPOs had to adjust to the following new sentencing options under the *YCJA,* which require YPOs' supervision work in the community: Deferred Custody and Supervision Program (s. 42(2)(p)); Custody and Supervision Order (s. 42(2)(n),(o),(q) and (r)); Intensive Support and Supervision Program (s. 42(2)(l)); and Intensive Rehabilitative Custody and Supervision Program (s. 42(2)(r)). The new "custody and supervision order" stipulates that young offenders spend two-thirds of their custody sentence in custody and one-third of their sentence in the community. This community time is, as it is with regular probation, supervised by YPOs, who provide assistance and support for youth and their families, monitor probation conditions set by the court, and implement reintegration plans.

Although the *YCJA* is a federal law, its administration is provincial and territorial responsibility. Therefore, the role of YPOs slightly differs, depending on

the territory or province they work in. For instance, in Quebec, where a corporatist based youth justice model has been in effect since the 1979 *Youth Protection Act*, the YPO role was integrated with all the key related youth service roles to maximize the use of either outright diversion for cases involving minor offences and no serious risk factors, diversion to multi-resources for minor and moderate offences, or case planning for young offenders sentenced by the youth court (Trepanier, 2004).

The province of BC has taken a similar approach to youth justice. BC had already strongly encouraged alternative measures and the rehabilitation of young offenders under the *YOA*. Together with Quebec and Prince Edward Island, BC has always had the lowest court and custody rates compared to other provinces and territories rates in Canada (Department of Justice Canada, 2009). These trends have continued under the *YCJA*. BC's corporatist approach to youth justice was also supported by the creation of many integrated offices, which was part of the reconstruction of youth justice when youth justice was moved from the Ministry of the Attorney General to the Ministry of Children and Family Development in 1997 and all relevant services were integrated.

While there have generally been a large number of studies examining the impact of the *YCJA*, research on YPOs' work in Canada is scant despite YPOs' central role in the youth justice system. One study was conducted on YPOs' workload in Calgary, Alberta (DeGusti, 2008). DeGusti (2008) found that, generally, the new supervision sentences entail more reporting frequencies, more exhaustive case notes, and timely interventions for suspended offenders according to the youth's level of risk ad needs. YPOs also reported that the demands associated with their cases have increased because of youths' drug and mental health issues, more complex profile and background characteristics, and consulting work with other youth professionals. These reports are not surprising given the *YCJA*'s diversion of non-serious offenders and the use of court and custody for more serious offenders. Young persons that are eligible for custody sentences followed by a supervision period in the community are commonly characterized by multi-problem profiles, including psychosocial deficits such as personality disorders, hyperactivity,

impulsivity, substance abuse, family dysfunction, early victimization, low school achievements, sexual promiscuity, physical and sexual abuse, negative self-identities, and chronic criminality (Corrado, Cohen, and Odgers 2003). These various inter-connected individual, familial, and environmental risk factors do not only present a challenge for custodial staff but also for YPOs, who work with them after their release from custody in the community, trying to coordinate rehabilitative treatment and other services for these youth. In DeGusti's (2008) study, YPOs suggested that they were, generally, optimistic about the *YCJA* one year after its introduction. They welcomed the new sentencing options as well as the explicit sentencing principles and emphasis on community measures. However, the study also discovered that YPOs criticized that the restraint of custody for welfare reasons was difficult to implement because of the lack of resources and social services in the community. However, as previously mentioned, the implementation of the *YCJA* is a provincial and territorial responsibility, and it is, therefore, possible that YPOs in BC have had a different experience under the *YCJA* than their counterparts in Calgary.

MacMillan and Abramson (2004) conducted a study in BC with, among other juvenile justice personnel, probation conferencing specialists on their experience with RJ conferencing under the *YCJA.* While conferencing specialists were generally excited about their job, they reported common barriers to successful conferencing such as low referral rates due to the smaller numbers of youth going through the formal justice system, a lack of knowledge among court professionals about the *YCJA,* and the conferencing provisions, and some resistance to implement this new process within the traditional adversarial court system.

A third study asked YPOs to review five actual cases from across Canada and apply the different models of youth justice to those cases. Overwhelmingly, YPOs rejected sentencing recommendations drawn from polarized models of youth justice such as welfare and crime control. Instead, they preferred a model that represented a mixed approach such as corporatist and modified justice. Yet, the study also found some

variation in the application of the different youth justice models (Corrado, Gronsdahl, MacAlister, and Cohen, 2010).

Besides these three studies, however, there has not been any more research on YPOs' work under the *YCJA* and, particularily, YPOs' implementation of the act. This study intends to fill this gap. Although justice system officials, including YPOs, received extensive training on the new youth justice policy, it is likely that the implementation of this complex multi-model law continues to present a challenge on a day-to-day basis.

2.5 Previous Research on the Implementation of the *YCJA*

Several studies have examined the initial impact of the *YCJA* on the youth criminal justice system in Canada. Key themes included the introduction of legally mandated diversion for first-time and non-serious offences applied by the police, new sentencing options and principles, restorative justice based conferences at several stages of the justice system, and the stipulated custody restraint, which reserves custodial sentences to the most serious and violent offenders (Bala, Carrington and Roberts, 2009; Moyer 2005; Roberts, 2003; Cesaroni and Bala, 2008). Diversionary measures and custody restraint were introduced to overcome Canada's high incarceration rate, which had substantially risen in the 1990s. In effect, research since the *YCJA*'s adoption shows that the use of the courts and custodial options, especially for minor offences, has dropped significantly since the enactment of the *YCJA* without increasing youth crime. These results particularly apply to those territories and provinces, which had consistently high court and custody rates under the *YOA* (Bala et al., 2009). Overall, most first-time and non-serious offenders are now dealt with in the community across Canada. Moreover, lengthy youth custody and adult sentences, which continue to be an option in Canada, appear to be reserved for the most serious and violent young offenders (Doob and Sprott, 2005; DeGusti, 2008; Bala et al., 2009).

However, despite the act's preliminary success, research since the *YCJA*'s introduction also disclosed some implementation challenges and inconsistent

decision-making processes of judges, police, and probation officers across the different provinces. For instance, several Supreme Court decisions were necessary to clarify the meaning and interpretation of the *YCJA* (Corrado et al., 2010). As well, some jurisdictions have higher court and custody rates than others and the accessibility and usage of Restorative Justice Programs, conferences, and treatment programs varies widely across and within provinces, depending on the availability of resources and community partnerships (Dhami and Joy, 2007; Milligan, 2008; Thomas, 2008; DeGusti, 2008). In addition, it is unclear why remand rates remain high despite the legislated custody restraint under the *YCJA* (Bala et al., 2009; Thomas, 2008). These results are very surprising considering the changes in the pre-trial provisions from the *YOA* to the *YCJA*. The *YCJA*, in contrast to the *YOA*, explicitly states that the use of pre-trial detention as a substitute for child welfare, mental health or other social measures is prohibited. Moreover, there is a presumption against the use of detention if the young person could not be sentenced to custody if found guilty of the offence, and judges have to inquire about the possible availability of a "responsible person".[20] These provisions, theoretically, should have caused a significant decline in the use of pre-trial detention for young offenders.

Recent research has also found that extrajudicial measures, i.e., diversionary measures applied by the police, are not used as frequently as they could be under the *YCJA* (Marinos and Innocente, 2008). While the *YCJA* emphasises that extrajudicial measures can be used again even if youth have been previously dealt with extrajudicial measures or have committed previous offences, recent research has found that a youth's past police contacts made the possibility of extrajudicial measures considerably less likely, regardless of the severity of the current offence (Marinos and Innocente, 2008). Police were not only influenced by the severity of the current offence in their decision to use extrajudicial measures (as prescribed under the *YCJA*) but also by the youth's prior contact with the police and the youth's attitude towards the offence. The impact of the last two factors prevents police

[20] Section 31(2).

officers from using extrajudicial measure). The research also indicated that youth caught for the same offence two or three times (even if it was a minor offence such as shoplifting) would likely be charged and put through the formal justice system despite the *YCJA*'s provisions to use these measures repeatedly for non-serious offences. The implications of this study are that police officers, while using diversionary measures more frequently than they used to under the *YOA*, have not yet completely reoriented their attitude towards the effectiveness of extrajudicial measures at the front-end of the juvenile justice system (Marinos and Innocente, 2008).

It is also unknown why some of the new youth sentences such as Intensive Rehabilitative Custody and Supervision Sentence[21], which was specifically designed as an alternative to an adult sentence for serious and violent young offenders and provided with additional funding, are rarely used (Bala et al., 2009; Moyer, 2005). It is further unknown why the *YCJA*'s emphasis on diversion has not worked as well for Aboriginal youth as for Caucasian young offenders. Although the overall number of Aboriginal young offenders sentenced to custody and remand declined dramatically with the introduction of the *YCJA*, the proportion of Aboriginal young offenders in corrections sharply rose during the first year of the implementation. While custody and remand admissions declined by more than half (51%) and 17% for non-Aboriginal youth, custody rates, in comparison, only declined by 33% and admissions to remand even increased by 3% for Aboriginal youth. These rates of over-representation were greater for Aboriginal female youth than for males (Brzozowski, Taylor-Butts, and Johnson, 2006). More recent research disclosed that the proportion of Aboriginal young offenders in custody has significantly increased under the *YCJA* (Kuehn, Corrado, McCormick, Freedman, and McCuish, 2010). Moreover, Aboriginal offenders are more likely to receive secure custody, longer sentences, and they are less likely than non-Aboriginal young offenders to receive community dispositions (Rudin, 2005; Latimer, 2004). While these results might be affected by the severity of the offences committed by Aboriginal youth, controlling

[21] Section 42(2)(r).

for this variable shows that Aboriginal offenders are receiving custody sentences at a higher rate, and even three times more for administrative offences (Rudin, 2005). These statistics show that the emphasis on diversion is more successful for Caucasian than for Aboriginal youth. Aboriginal young offenders are still highly over-represented in all types of correctional service. Despite their lower numbers in the formal justice system, their rising proportions in custody and remand show that their situation has not improved substantially under the *YCJA*. These initial implementation problems indicated the need for further research investigating how YPOs interpret and implement Canada's Aboriginal youth justice policy.

In conclusion, the *YCJA* is a very lengthy and complex piece of legislation that requires youth justice system officials to be familiar with a wide range of principles, provisions, and processes embedded in the new law (Bala, 2009). Based on both the theoretical discussion concerning the inherent complexity of mixed youth justice model laws and the above themes in this previous research on the *YCJA*, the following conceptual framework was employed in this study.

Chapter 3: Conceptual Framework

3.1 YPOs' Level of Difficulty Understanding and Applying the *YCJA*

It can be argued that the *YCJA*'s tri-furcation, its *Declaration of Principle*, and several sections with specific principles and guidlines throughout the legislation, specifying for decision-makers how to deal with certain kinds of young offenders at different stages of the justice system, provides more guidance to decision-makers than the *YOA* did despite the act's different and, to some extent, conflicting youth justice principles, (Trepanier, 2004; Carrington and Schulenberg, 2004). In contrast, however, other researchers claim that the *YCJA* is subject to the typical problems of a MJM and cannot overcome those that existed under the previous act. Besides the length and complexity of the act it is argued that decision-makers are still challenged with the range of different and conflicting principles when dealing with young offenders (DeGusti, 2008; Corrado et al., 2007; Corrado et al., 2010). In effect, a closer look at section 38 suggests that the different sentencing goals might cause confusion. Holding a young person accountable, imposing meaningful consequences, promoting the young person's rehabilitation and reintegration into society, and, finally, contributing to the long-term protection of the public are the goals that are supposed to be simultaneously addressed when a sentence is imposed. Roberts and Bala state: "No sanction can accomplish all these goals. What if some goals are fulfilled while others are not? What happens if the goals conflict?" (2003, p. 403). With section 38(1), legislators tried to overcome the flaws and the subsequent confusion about the sentencing purpose under the *YOA* and intended to provide more guidance to decision-makers. However, this section does not necessarily provide judges with clear guidance on how to apply and prioritize the different sentencing goals. In other words, section 38(1) might fail to execute the original clarification intent of this section. Therefore, it is possible that decision-makers and,

specifically, YPOs in their PSRs might have difficulty understanding and applying the sentencing purposes and principles.

Another example of the conflicting principles is the Intensive Rehabilitative Custody and Supervision order (IRCS), which was newly introduced for serious violent offenders. To be eligible for this order, the young person must be found guilty of a presumptive offence or a third serious violent offence (offence eligibility); the young person must be suffering from a mental or psychological disorder or an emotional disturbance (clinical eligibility); an individualized treatment plan must have been developed for the young person; and an appropriate program must be available for which the young person is suitable for admission (Department of Justice, 2009; Bala 2003). The order was intended to be an alternative to adult sentences; it thus materializes the direct conflict between elements of a Welfare Model and a Crime Control Model, providing specialized treatment to the most serious offenders who are also eligible for a lengthy adult sentence. The sentencing provisions and the IRCS order are only two examples to indicate that the complex and lengthy *YCJA* still has the potential to pose a challenge to decision-makers when applying the act on a daily basis despite its policy intent to provide more guidance and clear sets of principles on how to deal with different types of young offenders.

Despite the above criticisms of the *YCJA*, it is hypothesized that YPOs will generally not have substantial problems understanding this legislation, particularly not if sections apply to their day-to-day functions such as writing PSRs or suspending community supervisions. YPOs received extensive training in both understanding and applying the youth legislation before the *YCJA* came into force. Since then, there have been two up-date trainings on the *YCJA*. In addition, it is likely that YPOs have, over time, become familiar with the complex legislation and found their own way of applying the act on daily basis. Therefore, their overall understanding and implementation should be less problematic in 2007 than in 2004. It is also hypothesized, however, that some sections, especially complex sections and the ones that requires extensive resources or the cooperation with other justice system professionals still present a challenge to YPOs.

3.2 RJ Court Ordered Conferences

As previously described, the *YCJA* encourages conferences at different stages of the criminal justice system. However, a fundamental problem exists with the broad definition of the term and the discretional use of conferences as their implementation depends on decision-makers' willingness and the policies, guidelines, and provision of funding and resources in each jurisdiction. The participation of judges, YPOs, community members, victims, offenders and their families, as well as provincial funding are necessary to support this approach to youth crime (Bala 2009; Hillian et al., 2004). The government has already indicated conferences require intensive and additional resources (i.e., trained facilitators; time for preparation with victims and offenders, etc.) and might thus not be provided if there is a lack of resources (Ministry of Children and Family Development, 2003). While YPOs and conferencing specialists were generally optimistic about RJ conferencing under the *YCJA*, previous research conducted shortly after the introduction of the *YCJA* also identified several barriers to successful conferencing such as time restraints (i.e. to prepare and convene a conference and report to court within a certain time frame), low referral rates and offender's or victim's resistance. Other barriers stemmed from defence lawyers' and judges' adherence to the traditional adversarial and retributive system, their lack of knowledge and unfamiliarity about this relatively new concept, and their subsequent doubts concerning the potential of conferencing (MacMillan and Abramson, 2004). Based on this previous research, it is assumed that YPOs and conferencing specialists continue to be somewhat challenged by the implementation of court ordered RJ conferences.

3.3 Interagency Work

The intention of the *YCJA* is to provide the opportunity for an integrated and multi-disciplinary approach to youth crime. In its *Preamble*, the *Declaration of Principle*, and several other sections throughout the legislation, the *YCJA* encourages

different people and agencies, such as the youth's families, the community, and other agencies to work together to support the youth's rehabilitation and reintegration by addressing the underlying causes of criminal behaviour. Since Youth Justice was moved from the Ministry of the Attorney General to the Ministry of Children and Family Development in 1997, many of the YPOs work in multidisciplinary offices or in integrated teams with social or mental health workers, and community agencies. The *YCJA* also provides the opportunity to have ICM conferences, where the different professions discuss treatment and rehabilitation plans for young offenders. Further, YPOs can recommend in their PSRs that the judges should refer a youth to a "child welfare agency for assessment to determine whether the young person is in need of child welfare services" in addition to any other order that is imposed.[22]

However, this interagency approach of the *YCJA*, while ideal in principle, might be problematic in practice. It has already been recognized under the *YOA* that child welfare, social services, and mental health agencies should work together to keep youth out of prisons and address their needs in the community. In practice, however, this interaction between child welfare agencies and the justice system did not work as originally intended. Under the *YOA*, youth were frequently incarcerated for welfare reasons. Especially girls were subject to, and disadvantaged by, this protective motive of the justice system as they were incarcerated for their own protection and to take them off the streets (Corrado, Odgers, and Cohen, 2000). Due to cuts in funding and a lack of resources, child welfare agencies often felt overburdened and were reluctant to deal with charged youth. These agencies often transferred troubled youth to the justice system in order to avoid further effort and costs (Bala, 2009).

An additional inhibition is that interagency cooperation involves key players from multiple agencies with different training, values, resources, and professional objectives (Burnett and Appleton, 2004). The result is a complex process which

[22] Section 35.

makes it difficult for decision-makers and people involved to work together effectively, even if they have the same goal: to mitigate risk factors and prevent youth crime. Certain sections and processes under the *YCJA* were enacted to facilitate information sharing between professionals dealing with young offenders, for instance courts can order ICM conferences to connect the professions. However, there is still no mandatory integrated approach, which legally mandates the different professions such as YPOs, mental health agencies, teachers, and social workers to collaborate and share information. Not all YPOs work in multidisciplinary teams, and social workers and YPOs, for instance, are subject to different mandates, i.e., YPOs are subject to court orders, while social workers follow provincial policy based on apprehension and care orders. As long as there are no clear and mandatory regulations in terms of responsibilities, information sharing, and joint-up services, it will be difficult to implement an interagency approach under the youth justice system in Canada.

In addition, time restraints and a lack of available resources might be problematic. If a court orders an ICM conference, the different professions have to report to court within a certain time frame and it might be difficult to compromise different schedules and priorities. As well, the report back to court is supposed to include recommendations for treatment and services, which are available at this time. Yet, many programs and services have waitlists and are not immediately available. Therefore, is is anticipated, that the logistic effort to facilitate ICM conferences might, therefore, presents a challenge for YPOs.

3.4 Aboriginal Youth Policy

As previous research has shown, absolute numbers of Aboriginal young offenders have decreased since the introduction of the *YCJA*. Yet, there has been an increase in the proportion of Aboriginal youth in custody in BC (Kuehn et al., 2010). It appears as if diversion and custody restraint have worked better for Caucasian youth than their Aboriginal counterparts and Aboriginal youth are still highly over-represented at all stages of the criminal justice system (Brzozowski et al., 2006).

The Aboriginal policy has not successfully met its objective of addressing the over-resepsentation of Aboriginal youth in court and custody. It was, therefore, assumed that YPOs are somewhat challenged with the implementation of this policy at the sentencing stage.

3.5 Community Programs

One of the major criticisms towards the *YOA* was a lack of community resources, both general and specialized, and particularly in rural and isolated areas. As Nuffield (2003) reports, "Justice services to support bail, diversion, alternatives, and reintegration are in scant supply; specialized services are needed for serious alcohol and drug, fetal alcohol, mental health, and family-related problems that affect the lives of many accused individuals" (p. i). With the introduction of the *YCJA*, the focus of youth justice shifted substantially from court and custody to diversion and community measures. Therefore, it needs to be ensured that, in order to properly implement this policy embedded in the *YCJA*, sufficient and effective community resources are provided. Failure to do so will result again, as experienced under the *YOA*, in the unsuccessful implementation of the youth justice legislation. This most recent change in youth policy was based on the inherent assumption that all communities have sufficient resources. Yet, research since the introduction of the *YCJA* has revealed that the accessibility and usage of community programs and treatment services varies widely across and within provinces (Dhami and Joy, 2007; DeGusti, 2008; Milligan, 2008; Thomas, 2008). Consequently, it was hypothesized that YPOs are not satisfied with the community programs and resources available in their province. Particularly, it was assumed that YPOs would report a lack of gender-specific programs for girls and Aboriginal programs as previous research already disclosed a shortage thereof (Dean, 2005; Nuffield, 2003).

Chapter 4: Methodology

4.1 2004 and 2007 Surveys

4.1.1 Sample

The study used two samples of YPOs: the first sample was collected in 2004, shortly after the introduction of the *YCJA*, and the second one in 2007. At both time points, the same survey on the *YCJA* was handed out to all attendees of regional update trainings on the *YCJA* in five different regions in BC, Canada, and everyone attending the training sessions was asked to fill out the survey.[23] After being informed about the purpose of the study and ensured anonymity of the answers, all attendees agreed to participate. To be included in the data analysis, respondents had to be actively involved in applying the *YCJA* as YPOs. Probation interviewers, policy consultants, and conferencing specialists were excluded from the sample. The final sample size in 2004 was 110, and the more recent 2007 sample had 77 participants. While the 2004 sample consisted of nearly all YPOs in BC, the 2007 sample captured approximately two thirds of the YPOs in this region. The latter sample reflected the five different regions and average age of the whole YPO population in BC and was, therefore, assumed to be representative despite the lower number of YPOs.

[23] Youth probation officers in British Columbia work under the Provincial MCFD. This Ministry is divided into five geographic regions (Vancouver, Vancouver Island, Fraser, Interior, and Northern), in which the data were collected.

4.1.2 Measures and Analysis

4.1.2.1 Understanding and Applying the *YCJA*

The study examined YPOs' current self-reported level of difficulty of their interpretation and implementation of the *YCJA* and how their perceived level of difficulty had changed since the introduction of the *YCJA*. More specifically, YPOs rated their level of difficulty in understanding and applying 18 sections of the *YCJA* that were related to their work in 2004 and 2007 (Appendix A). For each section, YPOs could choose among the following response options: "not applicable", (1) "not difficult", (2) "somewhat difficult", and (3) "very difficult". Consequently, the higher the reported mean for each section, the more difficulty YPOs had in understanding and/or implementing this section. Participants were asked to check off "not applicable" if they believed that his section did not relate to their work. For instance, it was assumed that the section *Adult Sentencing* would have many "not applicable" responses as this process is reserved for the most serious and violent youth, who only reflect a minority of youth cases. The majority of YPOs likely never had to apply this section, as most youth on their caseload would not have committed serious violent offences. Therefore, high numbers of "not applicable" answers did not call into question the validity of the research instrument. Rather, these answers provided insight into which sections were applied by YPOs on a daily basis and which ones were rarely used. YPOs' perceived difficulty in understanding and implementing the 18 different sections of the *YCJA* in 2007 and the differences between the five regions were examined first.

H_0: There is no difference in YPOs' perceived level of difficulty understanding and applying the *YCJA* between the five different regions in 2007.

The hypothesis was tested conducting Kruskal Wallis tests for each of the 18 sections. These multiple, simultaneously performed significance tests increased the likelihood that a significant result would emerge simply by chance (type I error). One strategy to guard for this was to adopt the Bonferroni correction (Green and Salkind, 2008). Consequently, for all these non-parametric tests for several

independent samples a reduced significance threshold of p= .003 (p= .05/18) was chosen. While this adjustment has been criticized for being too conservative and, therefore, increasing the chances that a null hypothesis will be falsely accepted (type II error) (Nakagawa, 2004; Perneger, 1998), it was decided to apply this more cautious approach to account for the increased probability of falsely rejecting the null hypothesis. Furthermore, the results that were significant at the .05 but not at the adjusted significance level did not substantially were rare and did not substantially differ from the overall results.

The next step was to explore the relationship between YPOs' understanding and application of the *YCJA.* Therefore, the correlation coefficient for each section and YPOs' understanding and application thereof was calculated. It was assumed that YPOs' application of the *YCJA* was positively related to YPOs' understanding of the *YCJA*. In other words, it was expected that the more difficulty YPOs had in understanding a section, the more they would be challenged by its implementation

It was then explored whether there had been any changes in YPOs' perceived level of difficulty understanding and applying the *YCJA* in 2004 versus 2007. The following null hypothesis was tested:

H_0: There is no difference in YPOs' perceived level of difficulty understanding and applying the *YCJA* between 2004 and 2007.

The hypothesis was tested conducting a Mann-Whitney U test, i.e., a non-parametric test for independent samples. YPOs in both samples were ensured anonymity of their responses and, therefore, the two samples could not be paired-up and compared, as would have been required for a dependent sample test. [24] The independence assumption of the Mann-Whitney U test is most likely not problematic because only 59.7% of the participants in the 2007 follow-up survey reported that they participated in the 2004 survey. In addition, there was a long time lag of 3 years between the first and second questionnaire.

[24] In fact, the permission by the MCFD to conduct the study explicitly dictated to keep the questionnaire anonymous and not collect the names of the participants.

4.1.2.2 Community Programs and Resources

The survey also provided some data on YPOs' satisfaction with programs and resources in their community and regional differences in the provision of community programs. YPOs were asked in both 2004 and 2007 whether they had access to 10 programs in their community. This did not include access to programs outside their community, i.e., access to programs in other regions. For instance, Wilderness programs are only offered in the Vancouver Island and Northern regions. Yet, they are open to referrals from other regions. This access was not measured. To examine the change in the level of access to programs between the two surveys, tests of two population proportions were conducted. Again, an adjusted significance threshold of $p \leq .005$ (.05/10) was chosen applying the Bonferroni correction. The following null hypothesis was tested:

H_0: There is no difference in the access to programs between 2004 and 2007.

Based on previous research on regional variation in the provision of community programs and resources, it was then explored whether the more densely populated regions, which had the highest number of youth going through the formal justice system, e.g. the Vancouver and Fraser regions, would have more resources than rural or isolated regions, such as the Vancouver Island and Northern regions. It was further explored whether there were sufficient community resources for Aboriginal and female young offenders, considering the *YCJA*'s emphasis on diversion and cultural and gender-specific needs of young offenders.

4.1.2.3 YPO's Perceptions of the Juvenile Justice System

The survey also provided some data on YPOs' perceptions on the juvenile justice system concerning the youth justice policy, the Aboriginal policy, community resources, and interagency work. They could agree or disagree with different 17 different statements (Appendix B). Their responses were differentiated by region. Instead of conducting significance tests, those responses are evaluated describtively to supplement the discussion of the previous results.

4.1.3 Limitations

Arguably, YPOs' hypothetical application of the *YCJA* might not be the exact parallel to actual YPO decision-making or knowledge of the *YCJA*. In other words, there are fundamentally different decision-making contexts between a research situation, and the pressure and complexity of actual individual cases. YPOs' work usually varies from relatively simple cases involving minor property offences to very serious violent offences such as murder, requiring the application and knowledge of different sections of the *YCJA*. In addition, YPOs have to work together with other justice system professionals, the young people, and their families when implementing the *YCJA*. However, YPOs' feedback concerning their perceived level of difficulty for each individual section has important policy implications including training and even potential amendments to the *YCJA*. This study was co-initiated by the researchers and senior policy officials in British Columbia's Ministry of Child and Family Development to provide exactly this type of policy feedback.

The generalizability of these empirical results, and theoretical and policy conclusions, are further limited by differences in provincial *YCJA* youth justice systems within Canada and, even more so, with other national jurisdictions. Most importantly, the *YCJA* is a federal statute yet its implementation is a provincial and territorial responsibility. There are differences among these jurisdictions in terms of youth justice history, political culture, funding levels, and availability of community programs. The interpretation of youth justice laws by YPOs or equivalent roles in countries with unitary political systems and bureaucracies likely differs from the Canadian context. However, there is a long history of countries including Canada drawing policy implications from both shared political experiences and research from highly diverse youth justice laws (Corrado, 1992).

Thirdly, the analyses for YPO's level of difficulty in understanding and applying the *YCJA* and their access to programs in their community were based on non-paramtric tests for independent samples, which did not allow comparing YPOs' individual changes in the level of difficulty over time.

4.2 Qualitative Interviews in 2008

4.2.1 Sample

Following the quantitative inquiry, qualitative data was collected with a subsample of the 2007 sample including of 16 participants that were considered key experts in the field of probation and youth justice. In-depth interviews were held with 11 YPOs, 3 conferencing specialists, and 2 policy consultants. The selection of these interviewees was purposively selected by ensuring that they had work experience under both the *YOA* and the *YCJA*, would reflect both genders, and represent the five different regions that were canvassed in the quantitative surveys. The 16 interviews can be divided into 4 interviews each conducted in the Vancouver, Interior and Fraser regions as well as 3 in the Vancouver Island and one interview in the Northern region. The participants were contacted via phone to introduce the study and asked for their cooperation. Anonymity and confidentiality of their responses were ensured. All YPOs and people in related positions contacted gave consent to participate and have the interview tape-recorded. Times and dates for the interviews were then agreed upon at their convenience. The interviews, some in person and some via phone, took from forty minutes to two hours and were later transcribed.

4.2.2 Measures and Analysis

The in-depth interviews were semi-structured and intended to combine structure with flexibility, i.e., open-ended questions were not strictly stipulated but rather served as a guideline through the interview process and thus varied from person to person, depending on the expertise and responses of the participants (Appendix C). Yet, generally, all questions yielded information on YPOs' work under the *YCJA*, perceived success of the act, YPOs' implementation challenges, including court ordered conferences, Aboriginal policy, interagency work, youth sentencing, and community programs and resources, and suggestions on how the implementation of the *YCJA* could be improved.

To organize the data, each interview was grouped according to YPOs' views on the *YCJA* and key and sub themes were identified. Once each interview had been grouped, a second round of re-coding was conducted to review how the data had been initially sorted and, if necessary, re-organized. If responses made reference to more than one theme, they were included in different parts of the analysis. Direct quotes were cited in order to accurately reflect YPOs' responses.

4.2.3 Limitations

The objective of the qualitative interviews was to clarify the quantitative result and gain an in-depth knowledge about the work of YPOs under the *YCJA*. While this objective was met, the generalization of the qualitative results is limited given the purposively collected and relatively small number of participants. The individual opinion of YPOs in the subsample might not be reflective of the population of YPOs in BC, specifically, and Canada, generally. Nonetheless, the qualitative interviews provided important explanations for YPOs' increased difficulty with the *YCJA*, and suggestions for improvement. The advantage of interlocking qualitative and quantitative data is to receive more a comprehensive understanding of YPOs' work under the *YCJA*, which could not be achieved by one method, i.e. quantitative or qualitative research, alone.

Another limitation was that participants were ensured anonymity and confidentiality of their responses. Therefore, it was not always possible to disclose identifying information such as the participant's region they were employed in when discussing the results of the qualitative interviews.

Chapter 5: Quantitative Results

5.1 Demographics

Table 1 indicates that the two samples had very similar demographics, which is not surprising given that more than half (59.7%) of the participants were represented in both samples. Most of the participants were Caucasian (86.4% and 85.7% in 2004 and 2007, respectively) and a slight majority were female (54.5%). In 2004 and 2007, the majority of the samples worked in the densely populated Fraser, Interior, or Vancouver Coastal regions (29.1%, 22.7%, and 16.4% in 2004; and 22.1%, 28.6%, and 18.2% in 2007, respectively), while the Northern and Vancouver Island regions, when combined, reflected less than one third of the sample with 31.8% in 2004 and 31.2% in 2007. The average years of work experience of YPOs was almost ten years and the large majority (93.3%) of YPOs had work experience under both the *YOA* and the *YCJA*.

Table 1. Sample Demographics

	2004 Sample (N=110)		2007 Sample (N=77)	
	N	Per cent	N	Per cent
Gender				
Male	50	45.5%	35	45.5%
Female	60	54.5%	42	54.5%
Ethnicity				
Caucasian	95	86.4%	66	85.7%
Aboriginal	2	1.8%	3	3.9%
Other	13	11.7%	8	10.4%
Region				
Northern	15	13.6%	9	11.7%
Interior	25	22.7%	22	28.6%
Fraser	32	29.1%	17	22.1%
Vancouver/ Coastal	18	16.4%	14	18.2%
Island	20	18.2%	15	19.5%
Mean age	39.8 years		42.3 years	
Mean years of work experience	9.8 years		9.8 years	

5.2 YPOs' Understanding and Implementation of the *YCJA* in 2007

For each of the eighteen sections (Appendix), YPOs could choose among the following response options: "not applicable", (1) "not difficult", (2) "somewhat difficult", and (3) "very difficult". Tables 2 and 3 indicate YPOs' percentage distributions of their responses. The results were only based on valid answers, i.e., if YPOs chose the answer option "not applicable", their answers were not included. The eighteen sections can be grouped into four categories; the *YCJA*'s general philosophy, daily functions, sentencing and custody, and interagency work. The results indicate that YPOs overall did not have very large difficulties with the eighteen sections of *YCJA* in 2007. Yet some sections were more challenging to understand and implement than others. When comparing YPOs' level of difficulty by gender, no significant differences were found, i.e., female and male YPOs reported the same level of difficulty for all sections.

Generally, YPOs had no or little difficulty in understanding and applying the underlying philosophy of the *YCJA* as described in the *Preamble* and the *Declaration of Principle,* as well as their daily functions such as *Extrajudicial Sanctions (EJS), Enforcement of Community Orders,* and *Writing Pre-Sentence Reports (PSR)*. However, a large number of YPOs had problems understanding and applying two of their daily functions: almost half reported the *section Suspensions of Supervision in the Community and Conditional Supervision* to be at least somewhat difficult to understand (49.4%), and more than half (59.6%) indicated the same for understanding *Gladue Reports.* The application of the latter section was perceived to cause some difficulties for 42.1% of the YPOs and more than one-fourth (26.3%) admitted to finding the application of this section very difficult.

While the general philosophy of the *YCJA* and daily functions, overall, did not cause large difficulties to YPOs, the sections concerning sentencing and custody were perceived to be more difficult. The section *Sentence Calculation Formula* was reported to be not difficult to understand and apply only by one-tenth (11.0%) and one-sixth (17.2%) of the participants, respectively. This section is difficult to grasp conceptually due to the complex language in the act around calculating a sentence. Further, many YPOs reported having at least some difficulties understanding and applying the sections *Committal to Custody Rules* (40.7% and 51.4%, respectively) and *Detention Before Sentencing* (50.7% and 51.4%, respectively). The section *Adult Sentencing Process* was reported to be even more difficult; more than half of the YPOs stated they had at least some difficulties understanding (62.1%) and applying (66.7%) this section. Only the two sections *Sentencing Purpose and Principles* and *Youth Sentences* were perceived to be easier to understand and apply: approximately two-thirds of the YPOs stated that they had no difficulty understanding the sections *Youth Sentences* (63.6%) and *Sentencing Purpose and Principles* (73.7%) and the application thereof (66.7% and 59.5%, respectively).

Table 2. YPOs' Perceived Level of Difficulty in Understanding the *YCJA* in 2007

Section		UNDERSTANDING				
		N	Not applicable	Valid responses in per cent*		
				Not difficult	Somewhat difficult	Very difficult
General Philosophy	Preamble	76	3.9%	75.3%	23.7%	0.0%
	Declaration of Principle	76	2.6%	82.4%	17.6%	0.0%
Daily Functions	Extrajudicial Sanctions	77	1.3%	86.8%	11.8%	1.3%
	Enforcement of Community Orders	77	0.0%	88.3%	11.7%	0.0%
	Pre-Sentence Reports	77	0.0%	89.6%	10.4%	0.0%
	Gladue Reports	77	26.6%	40.4%	45.6%	14.0%
	Suspensions of Supervision in the Community and Conditional Supervision	77	0.0%	50.6%	44.2%	5.2%
Sentencing and Custody	Sentence Calculation Formula	77	5.2%	11.0%	47.9%	41.1%
	Committal to Custody Rules	77	1.3%	59.2%	36.8%	3.9%
	Pre-Trial Detention	77	0.0%	49.4%	44.2%	6.5%
	Youth Sentences	77	0.0%	63.6%	28.6%	7.8%
	Adult Sentencing Process	77	14.3%	37.9%	48.5%	13.6
	Sentencing Purpose and Principles	77	1.3%	73.7%	21.1%	5.3%
Interagency Work	Viewing Psych. Forensic Assess.	77	0.0%	35.1%	35.1%	29.9%
	Court Ordered Conference	77	5.2%	61.6%	34.2%	4.1%
	Info Sharing with Others	76	0.0%	42.1%	47.4%	10.5%
	Non-Disclosure of Youth Records	77	1.3%	44.7%	50.0%	5.3%
	Referral to a Child Welfare Agency	77	9.1%	55.7%	31.4%	12.9%

*Valid responses exclude "not applicable"-answers.

Table 3. YPOs' Perceived Level of Difficulty in Applying the *YCJA* in 2007

Section		APPLICATION				
		N	Not applicable	Valid responses in per cent*		
				Not difficult	Somewhat difficult	Very difficult
General Philosophy	Preamble	74	21.6%	65.5%	29.3%	5.2%
	Declaration of Principle	74	5.4%	61.4%	32.9%	5.7%
Daily Functions	Extrajudicial Sanctions	74	5.4%	88.6%	10.0%	1.4%
	Enforcement of Community Orders	74	1.3%	82.2%	17.8%	0.0%
	Pre-Sentence Reports	75	1.3%	91.9%	8.1%	0.0%
	Gladue Reports	75	49.3%	31.6%	42.1%	26.3%
	Suspensions of Supervision in the Community and Conditional Supervision	75	2.7%	61.6%	32.9%	5.5%
Sentencing and Custody	Sentence Calculation Formula	74	13.5%	17.2%	48.4%	34.4%
	Committal to Custody Rules	75	1.3%	48.6%	47.3%	4.1%
	Pre-Trial Detention (Bail)	74	2.7%	48.6%	47.2%	4.2%
	Youth Sentences	75	8.0%	66.7%	27.5%	5.8%
	Adult Sentencing Process	75	36.0%	33.3%	47.9%	18.8%
	Sentencing Purpose and Principles	75	1.3%	59.5%	35.1%	5.4%
Interagency Work	Viewing Psych. Forensic Assess.	74	5.4%	32.9%	51.4%	15.7%
	Court Ordered Conference	74	16.2%	53.2%	38.7%	8.1%
	Info Sharing with Others	74	1.4%	38.4%	58.9%	2.7%
	Non-Disclosure of Youth Records	73	2.7%	52.1%	45.1%	2.8%
	Referral to a Child Welfare Agency	75	20.0%	40.0%	46.7%	13.3%

*Valid responses exclude "not applicable"- answers.

Equally as difficult as the sections related to sentencing and custody were the sections concerning interagency work. More than half reported finding it at least somewhat difficult to understand the two sections *Information Sharing with Others* (57.9%) and *Non-Disclosure of Youth Records* (55.3%), and a considerable number of YPOs indicated the same for applying these sections (61.6% and 47.9%, respectively). The section *Exempt from Viewing and Receiving Forensic Psychiatric Assessments* was reported by almost two-thirds to be at least somewhat difficult to understand (65.0%) and apply (67.1%) while the application of the section *Referral to a Child Welfare Agency* caused at least some difficulties to more than half (60.0%) of the respondents. Approximately half (46.8%) of the YPOs perceived the application of the section *Court Ordered Conference* as somewhat difficult.

It is also noteworthy that some of the sections received high numbers of "not applicable" responses. In particular, a large number of YPOs stated that the two sections *Gladue Report*s and *Adult Sentencing Process* were not applicable to their work. While it was hypothesized that the section Adult Sentencing Process would not be applied on a daily basis by YPOs because this process is reserved for the most serious and violent offenders and most YPOs have likely never had a serious and violent youth on their caseload, the high number of "not-applicable" answers for *Gladue Report*s is concerning. These reports are similar to *PSRs*, but designed specifically for Aboriginal offenders to address their distinctive cultural and familial circumstances. They were newly introduced under the *YCJA*. More than one quarter (26.6%) of the YPOs reported that understanding *Gladue Report*s was not applicable to their work, and approximately half (49.3%) stated the same for applying this section. In other words, it appeared that *Gladue Report*s were not a typical task for most YPOs, which is surprising given the over-representation of Aboriginal youth in the formal justice system, especially in probation, and the *YCJA*'s focus on the special circumstances and needs of Aboriginal offenders. It appeared that *Gladue* reports, which involve time-consuming paperwork and access to significant resources (e.g. travel time to remote reserves and collecting extensive information), had not been

frequently ordered by judges. Therefore, YPOs might have felt that these reports were not applicable to their work.

5.3 YPOs' Understanding and Implementation of the *YCJA* in 2007 Compared by Region

In addition to the highest number of not applicable answers for the section Gladue *Reports*, the Vancouver Island region also showed the highest mean for understanding and applying the section *Gladue Reports* (Table 4 and 5). Although the significance level at .003 is not met, the results indicate that the Vancouver Island region had increased difficulty with this section. Surprisingly, this region is characterized by a high number of Aboriginal young offenders (only surpassed by the Northern region, which has the highest number of Aborginal youth on caseload) and, therefore, YPOs in this region were assumed to apply this section more on a day to basis than YPOs from other regions. Therefore, arguably, they should have been more familiar with *Gladue Reports* and less challenged by this section than YPOs in other regions.

Table 4 and 5 further indicate that YPOs' perceived level of difficulty understanding and applying the different sections of the *YCJA* did not significantly differ from region to region. In other words, YPOs consistently perceived the same sections easy to understand and apply and were more challenged by others regardless of what region they were working in. As all YPOs in British Columbia received extensive and standardized training prior to the introduction of the *YCJA* and subsequently during the time of its implementation, this result is not surprising in terms of the interpretation of the *YCJA*. The result, however, was not expected to apply to the application for some of the sections. For instance, it was expected that the results for the sections *Extrajudicial Sanctions, Enforcement of Community Orders,* and *Court Ordered Conferences*, would differ across regions as these application of these sections is strongly affected by the provision of community services and local policies, which are known to differ from region to region.

Table 4. YPOs' Perceived Level of Difficulty in Understanding the *YCJA* in 2007 Compared by Region

	Northern		Interior		Fraser		Vancouver		Island		Kruskal Wallis Test		
	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	χ^2	p
Preamble	9	1.44	21	1.19	17	1.18	11	1.18	14	1.36	72	3.778	.437
Declaration of Principle	9	1.11	20	1.10	17	1.18	12	1.17	15	1.33	73	3.541	.472
Extrajudicial Sanctions	9	1.11	20	1.10	17	1.06	14	1.21	15	1.20	75	3.327	.505
Enforcement of Comm. Orders	9	1.11	21	1.00	17	1.12	14	1.14	15	1.20	76	4.087	.394
PSRs	9	1.33	21	1.10	17	1.12	14	1.00	15	1.07	76	6.814	.146
Gladue Reports	7	1.43	17	1.76	14	1.57	8	1.38	10	2.40	56	13.139	.011
Suspension of Supervision	9	1.56	21	1.67	17	1.29	14	1.57	15	1.60	76	4.982	.289
Sentence Calculation	9	2.33	20	2.20	15	2.33	14	2.14	14	2.57	72	3.194	.526
Committal to Custody Rules	9	1.11	21	1.48	17	1.35	14	1.43	14	1.71	75	8.885	.064
Pre-Trial Detention	9	1.33	21	1.62	17	1.47	14	1.64	15	1.67	76	2.495	.645
Youth Sentences	9	1.44	21	1.57	17	1.35	14	1.29	15	1.53	76	2.151	.708
Adult Sentencing Process	7	1.57	19	1.79	17	1.71	12	1.67	10	2.00	65	2.019	.732
Sentencing Purpose and Principles	9	1.00	21	1.24	17	1.29	14	1.43	14	1.57	75	9.028	.060
Viewing Forensic Assess.	9	1.44	21	1.90	17	2.00	14	2.07	15	2.13	76	4.633	.327
Court Ordered Conference	8	1.50	19	1.32	17	1.18	13	1.62	15	1.60	72	7.301	.121
Info Sharing with Others	9	1.33	20	1.60	17	1.53	14	1.86	15	2.00	75	8.482	.075
Non-Disclosure of Records	9	1.44	21	1.48	17	1.76	14	1.43	14	1.86	75	7.851	.097
Referral to Child Welfare	7	1.29	19	1.74	17	1.59	11	1.64	15	1.40	69	3.451	.485

Means are based on "valid" answers, i.e., "not applicable" answers are excluded from the analysis.
*$p \leq .003$ (p= .05/18) using the Bonferroni correction.

Table 5. YPOs' Perceived Level of Difficulty Applying the *YCJA* in 2007 Compared by Region

	Northern		Interior		Fraser		Vancouver		Island		Kruskal Wallis Test		
	N	Mean	N	Mean	N	Mean	N	Mean	N	Mean	N	χ^2	p
Preamble	8	1.38	16	1.38	14	1.29	9	1.33	10	1.60	72	1.864	.761
Declaration of Principle	8	1.38	20	1.35	15	1.33	12	1.50	14	1.64	73	3.269	.514
Extrajudicial Sanctions	9	1.22	20	1.05	13	1.08	13	1.31	14	1.07	75	4.060	.398
Enforcement of Community Orders	9	1.56	21	1.14	14	1.07	13	1.15	15	1.07	76	11.730	.019
PSRs	9	1.33	21	1.05	15	1.07	13	1.00	15	1.07	76	8.993	.061
Gladue Reports	6	2.00	9	1.67	10	1.80	6	1.83	6	2.05	56	4.944	.293
Suspension of Supervision	9	1.56	20	1.50	15	1.47	13	1.31	15	1.40	76	2.112	.715
Sentence Calculation Formula	7	2.00	19	2.00	12	2.17	10	2.00	15	2.53	72	6.919	.140
Committal to Custody Rules	9	1.56	21	1.62	15	1.40	13	1.38	15	1.73	75	5.013	.286
Pre-Trial Detention	9	1.44	20	1.50	15	1.33	13	1.69	14	1.79	76	4.761	.313
Youth Sentences	8	1.38	20	1.50	13	1.31	12	1.33	15	1.33	76	1.968	.742
Adult Sentencing Process	5	1.80	12	1.83	12	1.75	9	1.67	9	2.11	65	1.583	.812
Sentencing Purpose and Principles	9	1.56	21	1.29	15	1.33	13	1.54	15	1.67	75	5.313	.257
Viewing Forensic Assessments	9	1.56	20	1.80	14	1.86	13	1.92	13	2.00	76	2.498	.645
Court Ordered Conference	7	1.57	15	1.53	15	1.47	9	1.67	15	1.60	72	.464	.977
Info Sharing wit Others	9	1.67	21	1.48	14	1.50	13	1.62	15	2.00	75	8.617	.071
Non-Disclosure of Records	9	1.44	20	1.40	14	1.57	13	1.46	14	1.64	75	2.104	.717
Referral to a Child Welfare	7	1.86	13	1.38	15	1.87	10	1.90	14	1.71	69	4.901	.298

Means are based on "valid" answers, i.e., "not applicable" answers are excluded from the analysis.
*$p \leq .003$ ($p = .05/18$) using the Bonferroni correction.

5.4 Correlation between YPOs' Understanding and Implementation of the *YCJA* in 2007

When the degree of correspondence between YPOs' understanding and application of each of the eighteen sections was examined, the results of the Kendall Tau Rank Correlation Coefficient indicated that all of the correlations can be characterized as positive and mostly moderate in strength (Table 6). Twelve of the eighteen correlations were statistically significant and were greater than or equal to .385 . In addition, the four correlations *Enforcement of Community Orders* (p= .004), *Committal to Custody Rules* (p= .007), *Pre-trial Detention* (p= .004), and Court Ordered Conferences (p= .007) were very close to the very conservative significance level of .003, and the remaining two sections *Preamble* (p= .013) and *Sentencing Purpose and Principles* (p= .026) were at least significantly correlated at the .05 level. Not surprisingly, the positive correlations signify that YPOs' perceived levels of difficulty in understanding and applying the different sections increase together. In other words, if YPOs had some difficulty understanding a section, they were also somewhat challenged by the application thereof.

Table 6. Correlation between YPOs' Level of Difficulty in Understanding and Applying the *YCJA* in 2007

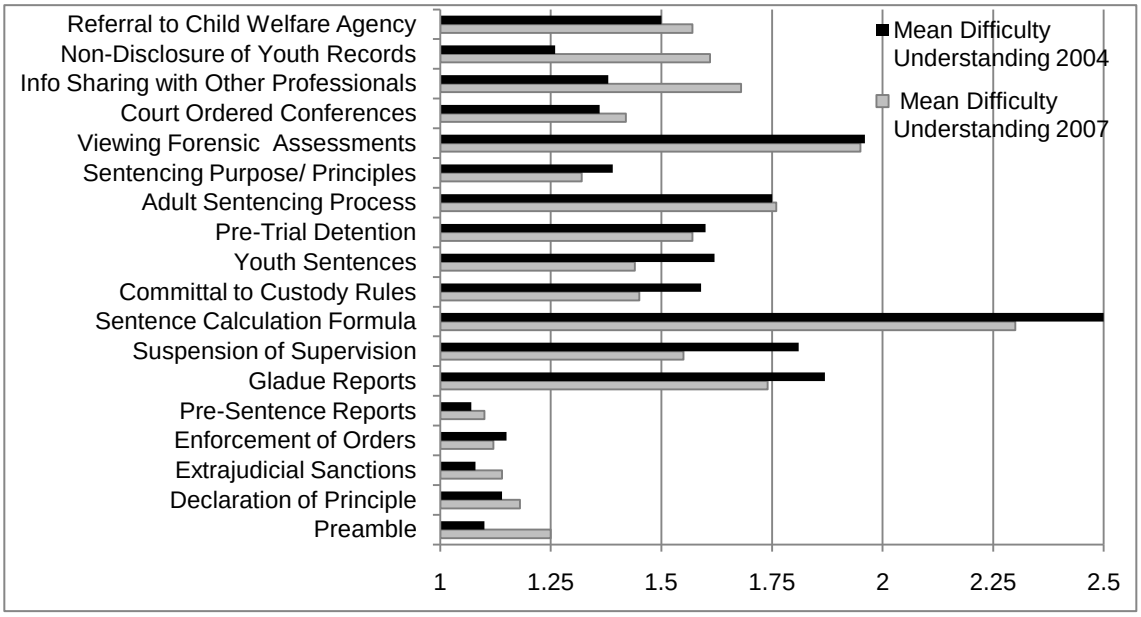
	Understand-Apply	N	Correlation coefficient	p-value
General Philosophy	Preamble	57	.324	0.013
	Declaration of Principle	68	.385	0.001*
Daily Functions	Extrajudicial Sanctions	69	.487	0.000*
	Enforcement of Community Orders	73	.335	0.004
	Pre-Sentence Reports	74	.411	0.000*
	Gladue Reports	35	.569	0.000*
	Suspensions of Supervision in the Community and Conditional Supervision	73	.421	0.000*
Sentencing and Custody	Sentence Calculation Formula	73	.531	0.000*
	Committal to Custody Rules	73	.309	0.007
	Pre-Trial Detention	72	.324	0.004
	Youth Sentences	69	.470	0.000*
	Adult Sentencing Process	46	.432	0.002*
	Sentencing Purpose and Principles	73	.252	0.026
Interagency Work	Exempt from Viewing Psychiatric Forensic Assessments	70	.578	0.000*
	Court Ordered Conference	61	.332	0.007
	Information Sharing with Other Professionals	72	.581	0.000*
	Non-Disclosure of Youth Records	70	.596	0.000*
	Referral to a Child Welfare Agency	59	.436	0.000*

*$p \leq .003$ (using the Bonferroni correction).

5.5 Comparisons Between YPOs' Perceived Level of Difficulty Understanding and Applying the *YCJA* in 2004 versus 2007

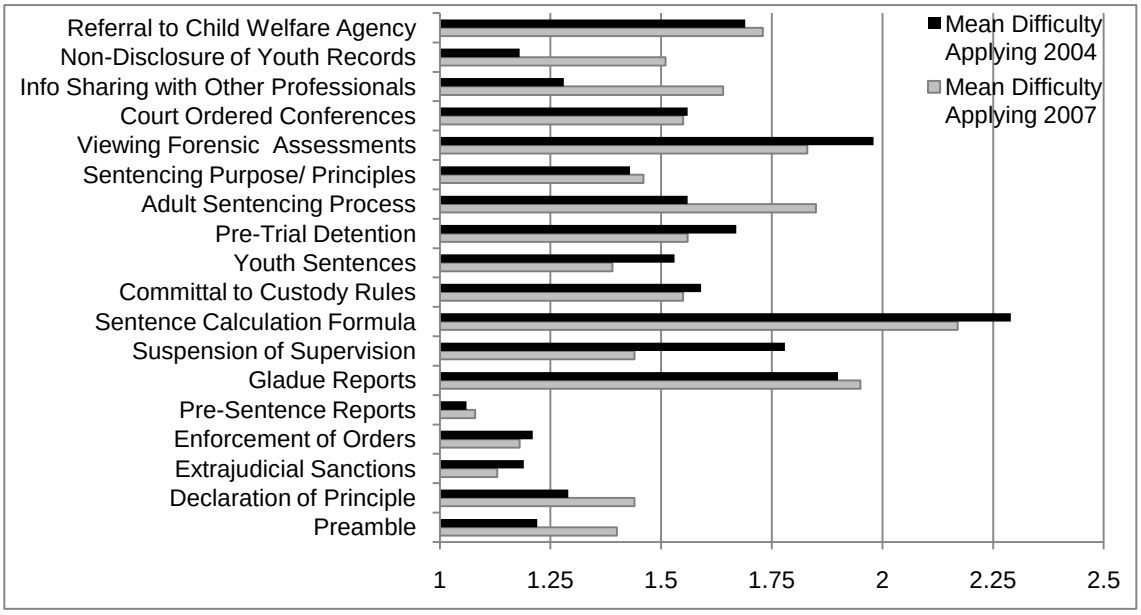
To gain a better understanding of how YPOs' level of difficulty in understanding and implementing the *YCJA* had changed since its introduction, YPOs' responses from 2004 were compared with the 2007 survey. Figures 1 and 2 report averages of the YPOs' responses for the different sections of the *YCJA*. The higher the mean, the more difficulties YPOs reported in understanding and/or applying a section. Clearly, in both surveys, certain sections of the *YCJA* were perceived to be more difficult to understand and/or apply than others. The most difficult section to understand and apply in both surveys was the *Sentence Calculation Formula*, followed by the sections *Exempt from Viewing/Receiving Forensic Psychiatric Assessments,* and *Gladue Reports.* In contrast, the section *PSR* was the easiest section to understand and apply in both 2004 and 2007. Other sections that were perceived as easy to understand and apply in both surveys were among YPOs' daily functions: *the Enforcement of Community Orders, Extrajudicial Sanctions,* and the *Preamble.*

Figure 1. YPOs' Reported Level of Difficulty in Understanding the *YCJA* in 2004 versus 2007



Mean: 1= "Not difficult"; 2= "Somewhat difficult"; 3= "Very difficult".

Figure 2. YPOs' Reported level of Difficulty in Applying the *YCJA* in 2004 versus 2007



Mean: 1= "Not difficult"; 2= "Somewhat difficult"; 3= "Very difficult".

When comparing the 2004 with the 2007 results it appears, as hypothesized, that YPOs perceived many sections as easy or difficult to understand and apply in 2007 as they did when the *YCJA* was introduced (Tables 7 and 8). Surprisingly, however, some sections appeared to be more difficult to understand and/or apply in 2007 than in 2004, such as the sections *Information Sharing with Others, and Non-Disclosure of Youth Records.* The reported levels of difficulty for these sections appeared to be higher in 2007 than they were shortly after the *YCJA*'s introduction in 2004. To examine whether YPOs' mean level of understanding and applying the *YCJA* had changed significantly from 2004 to 2007 Mann-Whitney-U tests were conducted. The results in Tables 7 and 8 indicate that the level of difficulty for most sections did not change significantly over time.[25] In effect, only one section's mean, *Suspensions of Supervision in the Community and Conditional Supervision,* was reported to be significantly lower in 2004 than in 2007. While it is possible that the training YPOs received prior to the *YCJA*'s introduction was sufficient to familiarize them with the underlying concepts and guiding principles embedded in the *YCJA* and the implementation thereof, the results also suggest that, contrary to our hypothesis, sections that were difficult in 2004 did not become significantly easier over time. In particular, the sections *Gladue Report*s, *Referral to a Child Welfare Agency, Adult Sentencing Process, Sentence Calculation Formula, Pre-Trial Detention, Suspensions of Supervision in the Community and Conditional Supervision*, and *Exempt from Viewing/Receiving Forensic Psychiatric Assessments* continued to cause at least some difficulties for some of the YPOs in 2007. Furthermore, Tables 7 and 8 indicate that the two sections *Information Sharing with Other Professionals* and *Non-Disclosure of Youth Records* were, surprisingly, perceived as significantly more difficult to understand and apply by YPOs in 2007 than they were shortly after the *YCJA*'s introduction, when they did not present any problems for YPOs. These results imply that YPOs' initial difficulties with this lengthy and complex legislation cannot be explained by the novelty of the act and YPOs' unfamiliarity with it in 2004. In

[25] As a robustness check, an independent t-test was conducted, which yielded the same results as the Mann-Whitney U test.

other words, it was expected that YPOs and other decision-makers would require some time to adjust to the new policy and the inherent changes in implementation practices and processes and that their initial problems would dissolve over time. Yet the results show that YPOs are still somewhat challenged by the complexity of some of the *YCJA*'s sections, three years after it was introduced.

Table 7. Comparison of YPOs' Level of Difficulty in Understanding the *YCJA* between 2004 and 2007

UNDERSTANDING						
	Section	**Survey**	**N**	**Mean**	**z**	**p**
General Philosophy	Preamble	2004	106	1.10	-2.541	0.011
		2007	73	1.25		
	Declaration of Principle	2004	109	1.11	-1.264	0.206
		2007	74	1.18		
Daily Functions	Extrajudicial Sanctions	2004	108	1.08	-1.080	0.280
		2007	76	1.14		
	Enforcement of Community Orders	2004	109	1.15	-.587	0.557
		2007	77	1.12		
	Pre-Sentence Reports	2004	110	1.07	-.748	0.455
		2007	77	1.10		
	Gladue Reports	2004	61	1.87	-1.004	0.315
		2007	57	1.74		
	Suspensions of Supervision in the Community and Conditional Supervision	2004	108	1.81	-2.969	0.003*
		2007	77	1.55		
Sentencing and Custody	Sentence Calculation Formula	2004	110	2.50	-2.019	0.044
		2007	73	2.30		
	Committal to Custody Rules	2004	110	1.59	-1.631	0.103
		2007	76	1.45		
	Youth Sentences	2004	108	1.62	-.2177	0.029
		2007	77	1.44		
	Pre-Trial Detention	2004	110	1.60	-.407	0.684
		2007	77	1.57		
	Adult Sentencing Process	2004	77	1.75	-.011	0.991
		2007	66	1.76		
	Sentencing Purpose and Principles	2004	110	1.39	-1.340	0.180
		2007	76	1.32		
Interagency Work	Exempt from Viewing Forensic Assessments	2004	108	1.96	-.124	0.901
		2007	77	1.95		
	Court Ordered Conference	2004	99	1.36	-.701	0.484
		2007	73	1.42		
	Info Sharing with Other Professionals	2004	108	1.38	-3.219	0.001*
		2007	76	1.68		
	Non-Disclosure of Records	2004	109	1.26	-4.344	0.000*
		2007	76	1.61		
	Referral to a Child Welfare Agency	2004	105	1.50	-.663	0.507
		2007	70	1.57		

The means are calculated excluding "not-applicable" answers; *$p \leq .003$ ($p = .05/18$ using the Bonferroni correction);

Table 8. Comparison of YPOs' Level of Difficulty in Applying the *YCJA* in 2004 versus 2007

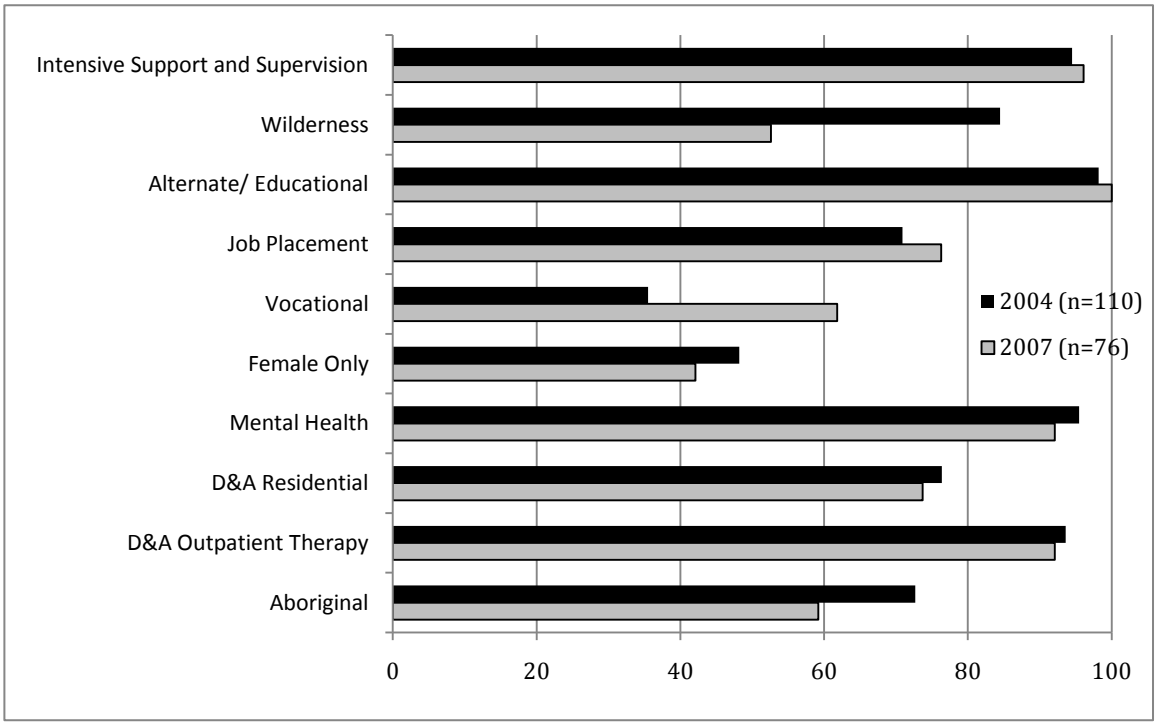
APPLICATION						
	Section	**Survey**	**N**	**Mean**	**z**	**p-value**
General Philosophy	Preamble	2004	98	1.22	-1.978	0.048
		2007	58	1.40		
	Declaration of Principle	2004	107	1.29	-1.703	0.089
		2007	70	1.44		
Daily Functions	Extrajudicial Sanctions	2004	108	1.19	-1.236	0.216
		2007	70	1.13		
	Enforcement of Community Orders	2004	110	1.21	-.273	0.785
		2007	73	1.18		
	Pre-Sentence Reports	2004	110	1.06	-.452	0.652
		2007	74	1.08		
	Gladue Reports	2004	21	1.90	-.203	0.839
		2007	38	1.95		
	Suspensions of Supervision in the Community and Conditional Supervision	2004	102	1.78	-3.497	0.000*
		2007	73	1.44		
Sentencing and Custody	Sentence Calculation Formula	2004	103	2.29	-1.047	0.295
		2007	64	2.17		
	Committal to Custody Rules	2004	109	1.59	-.381	0.703
		2007	74	1.55		
	Youth Sentences	2004	108	1.53	-1.677	0.094
		2007	69	1.39		
	Pre-Trial Detention	2004	108	1.67	-1.010	0.313
		2007	72	1.56		
	Adult Sentencing Process	2004	48	1.56	-2.009	0.045
		2007	48	1.85		
	Sentencing Purpose and Principles	2004	107	1.43	-.117	0.907
		2007	74	1.46		
Interagency Work	Exempt from Viewing Forensic Assessments	2004	107	1.98	-1.153	0.249
		2007	70	1.83		
	Court Ordered Conference	2004	77	1.56	-.052	0.958
		2007	62	1.55		
	Info Sharing with Other Professionals	2004	110	1.28	-4.617	0.000*
		2007	73	1.64		
	Non-Disclosure of Records	2004	110	1.18	-4.317	0.000*
		2007	71	1.51		
	Referral to a Child Welfare Agency	2004	78	1.69	-.486	0.627
		2007	60	1.73		

The means are calculated excluding "not-applicable' answers"; *$p \leq .003$ ($p = .05/18$ using the Bonferroni correction);

5.6 Access to Community Programs and Resources

The study also asked YPOs to report their access to 10 programs and resources in their community. Figure 3 indicates that the programs with the highest access and resources at both time points were the Intensive Support and Supervision Program (ISSP), Alternate School and Educational Programs, Mental Health Services, Drug and Alcohol (D&A) Outpatient Therapy, and Residential D&A Programs. YPOs reported that the least accessible program was Female Only. It was then examined how YPOs' access to certain programs had changed from 2004 to 2007, i.e., whether YPOs had more or less access to certain programs at both time points, by conducting tests of two-population proportions.

Figure 3. YPOs Who Reported Having Access to Programs in their Community in 2004 versus 2007 in Percentages



The results also indicated that YPOs' perceived level of access changed significantly from 2004 to 2007 for Wilderness and Vocational programs (Table 9).

Table 9. Comparison of YPOs' Perceived Access to Community Programs between 2004 and 2007

Program	Access in per cent		Std. dev.	z	p-value
	2004 (n=110)	2007 (n=76)			
Aboriginal	72.7%	59.2%	0.063	2.035	0.021
Alternate/ Educational	98.2%	100.0%	0.000	-0.912	0.181
D&A Outpatient Therapy	93.6%	92.1%	0.032	0.421	0.337
D&A Residential Therapy	76.4%	73.7%	0.063	0.423	0.336
Female Only	48.2%	42.1%	0.077	0.815	0.207
Intensive Support and Supervision	94.5%	96.1%	0.032	-0.445	0.328
Job Placement	70.9%	76.3%	0.071	-0.798	0.212
Mental Health	95.5%	92.1%	0.032	1.078	0.141
Vocational	35.5%	61.8%	0.071	-3.698	0.000*
Wilderness**	97.1%	79.2%	.002	4.071	0.000*

*p ≤ .005 (p=.05/10 using the Bonferroni correction); **Only including the Vancouver Island and Northern regions as this programs was not offered in any other region.

In particular, YPOs reported having significantly more access to Vocational Programs in 2007 than they had in 2004 (35.5% and 61.8%, respectively), while Wilderness programs appeared to be significantly less accessible in 2007 than they were in 2004 (84.5% and 52.6%, respectively). The reported access to Aboriginal programs also appeared to be lower in 2007 than it was in 2004. While the p-value was significant at the .05 level, it did not meet the required threshold of .004 when conducting the Bonferroni correction.

Table 10 differentiates these results by region. While the large majority of YPOs reported having access to Alternate/ Educational Programs, D&A Outpatient Therapy, and Mental Health Services across all five regions, the rates of access to other programs appeared to vary across regions. In particular, the Aboriginal and Female Only showed relatively high access in some and lower access in other regions. For instance, while more than two-thirds of the YPOs in the Vancouver (71.4%) and Vancouver Island (66.7%) regions reported to have access to Female only programs, only approximately one-third stated to have access to these programs in the Interior (28.6%) and Fraser (35.3%) regions. Even more concerning, YPOs in the Northern region reported that they had no access to Female Only Programs in their communities. Surprisingly, the lack of access to some programs did not only apply to isolated regions such as Vancouver Island or the Northern but also to regions that were hypothesized to have very good access because of the relatively high number of offenders in these regions, such as the Fraser and Interior regions.

Table 10. Comparison of YPOs' Reported Access to Community Programs by Region

	Northern (n= 9)	Interior (n= 21)	Fraser (n= 17)	Vancouver (n=14)	Island (n= 15)
	Per cent	Per cent	Per cent	Per cent	Per cent
Aboriginal	66.7%	61.9%	29.4%	92.9%	53.3%
Alternate/ Educational	100.0%	100.0%	100.0%	100.0%	100.0%
D&A Outpatient Therapy	100.0%	90.5%	88.2%	92.9%	80.0%
D&A Residential Therapy	66.7%	66.7%	76.5%	85.7%	73.3%
Female Only	0.0%	28.6%	35.3%	71.4%	66.7%
Intensive Support and Supervision	66.7%	100.0%	100.0%	100.0%	100.0%
Job Placement	66.7%	76.2%	64.7%	85.7%	86.7%
Mental Health	100.0%	92.5%	94.1%	92.9%	80.0%
Vocational	55.6%	57.1%	58.8%	78.6%	60.0%
Wilderness	77.8%	N/A	N/A	N/A	80.0%

5.7 Youth Probation Officers' Perception of the Juvenile Justice System

The survey also asked YPOs whether they agreed with several statements concerning the juvenile justice system. In particular, they were to respond to statements on the youth justice policy, the Aboriginal policy, community resources, and interagency work under the *YCJA.*

5.7.1 Youth Justice Policy

Generally, YPOs shared the same opinion concerning the juvenile justice policy. More specifically, the majority of YPOs agreed that the *YCJA* was a difficult act to understand and implement (Table 11). Yet, their responses differed slightly from region to region. For instance, while more than half (58.8%) of the YPOs in the Vancouver region disagreed that that the *YCJA* was difficult to implement, the slight majority of YPOs in the Fraser (53.3%), Interior (54.5%), and approximately three

quarters of YPOs in the more remote Vancouver Island (73.3%) and Northern regions (77.8%) gave the opposite response and agreed that the *YCJA* was difficult to implement. Despite the *YCJA*'s complexity, however, the majority of YPOs disagreed with the two statements that the *YCJA* did not offer enough guidance and (68.0%) and that the justice system failed to provide appropriate options to deal with young offenders (88.3%). Despite the detailed sets of guidelines and principles throughout the legislation YPOs, overall, also felt that the *YCJA* provided a lot of discretion on how to deal with young offenders with the exception of the Interior region, where more than half of YPOs (59.1%) disagreed with this statement.

Table 11. YPOs' Perceptions of the Juvenile Justice System- *YCJA*

		N	Disagree	Agree
Youth Justice Policy	**The *YCJA* is a complex act to understand**	**77**	**33.8%**	**66.2%**
	Northern	9	33.3%	66.7%
	Interior	22	45.5%	54.5%
	Fraser	17	41.2%	58.8%
	Vancouver	14	28.6%	71.4%
	Island	15	13.3%	86.7%
	The *YCJA* does not offer enough guidance	**75**	**68.0%**	**32.0%**
	Northern	9	77.8%	22.2%
	Interior	22	68.2%	31.8%
	Fraser	17	58.8%	41.2%
	Vancouver	14	78.6%	21.4%
	Island	13	61.5%	38.5%
	The *YCJA* is a difficult act to implement	**75**	**41.3%**	**58.7%**
	Northern	9	22.2%	77.8%
	Interior	22	45.5%	54.5%
	Fraser	15	46.7%	53.3%
	Vancouver	14	57.1%	42.9%
	Island	15	26.7%	73.3%
	The justice system fails to provide appropriate options to deal with young offenders	**77**	**88.3%**	**11.7%**
	Northern	9	100.0%	0.0%
	Interior	22	90.9%	9.1%
	Fraser	17	76.5%	23.5%
	Vancouver	14	92.9%	7.1%
	Island	15	86.7%	13.3%
	The *YCJA* provides a lot of discretion on how to deal with young offenders	77	**40.3%**	**59.7%**
	Northern	9	44.4%	55.6%
	Interior	22	59.1%	40.9%
	Fraser	17	41.2%	58.8%
	Vancouver	14	28.6%	71.4%
	Island	15	20.0%	80.0%

5.7.2 Aboriginal Policy

The majority of all YPOs (60.5%) believed that they had received sufficient training to understand and address the needs of Aboriginal young offenders (Table 12). The highest proportions of YPOs agreeing with this statement worked in the Vancouver (78.6%), Interior (68.2%), and Fraser (64.7%) region. In contrast, approximately the same proportion (71.4%) of YPOs working in the Island region did not believe that they received sufficient training on Aboriginal offenders, followed by almost half (44.4%) of YPOs from the Interior region. These results are suprising given that the latter two regions have the highest caseload of Aboriginal young offenders and it could consequently be assumed that they would be more familiar with the Aborginal youth's special needs. The results are also interesting as all YPOs received the same standardized training on the *YCJA* across BC, including training on Aboriginal issues. Interestingly, however, the opposite appears to be true, i.e., YPOs in regions with more Aboriginal youth on caseload are more aware of their lack of knowledge and the need for more training to understand and effectively address Aborginal young offenders special needs.

Not surprisingly then, the Island and the Northern regions also had the highest numbers (76.9% and 77.8%, respectively) of YPOs who disagreed with the statement that the *YCJA*'s emphasis to address the need of Aboriginal young offenders was successfully implemented. They were followed by more than half (58.3%) of the YPOs in the Vancouver region. YPOs' concerns about the Aboriginal policy under the *YCJA* are consistent with the previous results of the survey, which indicated the low number of Gladue reports ordered as well as YPOs' increased level of difficulty writing those reports. The results also support previous research disclosing that the Aboriginal youth policy under the *YCJA* has not been successfully implemented (Brzozowski et al., 2006). Interestingly, despite these results, two thirds of YPOs in the Interior (60.0%) and the Fraser region (66.%) agreed that the *YCJA*'s emphasis to address the needs of Aboriginal young offenders was

successfully implemented. The result for the latter region is particularly surprising, given that the Fraser region had the lowest number of YPOs reporting to have access to Aboriginal programs. As previously mentioned, it is likely that YPOs in this region are less aware of the problems with the unsuccessful implementation of the Aboriginal youth policy due to the smaller number of youth on caseload in comparison to YPOs from the Island and Northern region.

Table 12. YPOs' Perceptions of the Juvenile Justice System- Aboriginal Policy

		N	Disagree	Agree
Aboriginal Policy	**I received sufficient training to understand and address the needs of Aboriginal young offenders**	**76**	**39.5%**	**60.5%**
	Northern	9	44.4%	55.6%
	Interior	22	31.8%	68.2%
	Fraser	17	35.3%	64.7%
	Vancouver	14	21.4%	78.6%
	Island	14	71.4%	28.6%
	The *YCJA*'s emphasis to address the needs of Aboriginal young offenders is successfully implemented	**69**	**53.6%**	**46.4%**
	Northern	9	77.8%	22.2%
	Interior	20	40.0%	60.0%
	Fraser	15	33.3%	66.7%
	Vancouver	12	58.3%	41.7%
	Island	13	76.9%	23.1%

5.7.3 Community Resources

Consistent with previous research on community programs and resources (Nufflied, 2003; DeGusti, 2008), YPOs across all five regions agreed that budget restraints have limited the ability to experiment with new programs (87.7%), that there have not been enough resources in their community (76.6%), and that services and programs have failed to address the special needs of young offenders (Table 13). The highest level of concerns regarding these three statements were

expressed by YPOs from the Fraser, Northern, and Island regions. These concerns are amplified because the majority of YPOs, in general, believed that number of youth with mental health issues has been increasing (77.3%). YPOs from the Vancouver and Interior region appeared to be the least concerned with the provision and effectiveness of community resources, although still half (50.0%) and two thirds (68.2%) of them, respectively, expressed that there have not been sufficient resources in their communities. Further, only less than one quarter (23.1%) in the Vancouver region and half (50.0%) of the YPOs in the Interior region thought that services and programs have failed to address the special needs of young offenders, compared 70.6%, 77.8%, and 100.0% of the YPOs stating the same in the Fraser, Northern, and Island regions, respectively. Therefore, it generally appeared that the more densely populated regions such as the Vancouver and Interior regions were more satisfied with the services and programs on offer in their communities than the more rural Northern and Island regions. Nevertheless, the results of this survey clearly revealed the variation in the access to community programming, the need for an increased number of programs and resources, and more insight into the questions why so many YPOs believed that programs and services have failed in addressing young offender's needs.

Table 13. YPOs' Perceptions of the Juvenile Justice System- Resources

		N	Disagree	Agree
Resources	**The number of youth with mental health issues is increasing**	**75**	**22.7%**	**77.3%**
	Northern	9	44.4%	55.6%
	Interior	21	23.8%	76.2%
	Fraser	16	12.5%	87.5%
	Vancouver	14	35.7%	64.3%
	Island	15	6.7%	93.3%
	There are not enough resources in the community	**77**	**23.4%**	**76.6%**
	Northern	9	0.0%	100.0%
	Interior	22	31.8%	68.2%
	Fraser	17	5.9%	94.1%
	Vancouver	14	50.0%	50.0%
	Island	15	20.0%	80.0%
	Budget restraints limit the ability to experiment with new programs	**73**	**12.3%**	**87.7%**
	Northern	9	0.0%	100.0%
	Interior	21	28.6%	71.4%
	Fraser	17	0.0%	100.0%
	Vancouver	11	27.3%	72.7%
	Island	15	0.0%	100.0%
	Services and programs fail to address the special needs of young offenders	**76**	**36.8%**	**63.2%**
	Northern	9	22.2%	77.8%
	Interior	22	50.0%	50.0%
	Fraser	17	29.4%	70.6%
	Vancouver	13	76.9%	23.1%
	Island	15	0.0%	100.0%

5.7.4 Cooperation with Other Juvenile Justice Professionals

The survey also asked YPOs about their satisfaction with inter-agency work and the cooperation with other juvenile justice professionals under the *YCJA*. The results indicate that the majority of YPOs felt that other professions lacked some

understanding of their work and the *YCJA* (Table 14). More specifically, when asked to report on their working experience with mental health workers, approximately two thirds (65.8%) of the YPOs across all provinces agreed that mental health workers did not always want to share information that is important for the case-management of young offenders. A contributing factor might be that the majority (70.7%) of YPOs also felt that mental health workers did not understand their job as YPOs. Similar concerns were expressed by YPOs in the Northern, Interior and Island regions, where the majority of YPOs felt that social workers did not understand their job as YPOs. Still half (50.0%) of the YPOs employed in the Vancouver region reported the same. The only region where the majority (58.8%) of YPOs felt that social workers understood their job as YPOs was the Fraser region.

YPOs were also asked about their experience with judges in their community. While the majority of YPOs in the Fraser (64.7%), Island (78.6%), Vancouver (86.7%), and Interior region (59.1%) believed that judges in their community had a good understanding of the *YCJA*, more than half (55.6%) of the YPOs in the Northern region disagreed with this statement. It is likely that the circuit courts in the Northern region are contributing to this result. Circuit courts are commonly held by judges, who usually only process adult cases. Therefore, judges in the Northern regions might not be as familiar with the *YCJA* as judges that deal with young offenders on a regular basis. On a positive note, nearly all YPOs across the five regions felt that that had a good working relationship with judges in their community.

A lack of training or experience with the *YCJA* might also explain why the large majority (88.3%) of YPOs across all regions agreed that police officers did not have a good understanding of the *YCJA*. Police officers have to comprehend and apply a variety of different statutes and provisions. The *YCJA* is only one of those and police officers do not have to implement it on day-to-day basis as young offenders reflect only a minority of their cases. This could explain why they might not be very familiar with the *YCJA*.

Table 14. YPOs' Perceptions of the Juvenile Justice System- Cooperation with other justice system professionals

		N	Disagree	Agree
Interagency Work	**Social workers understand my job as a YPO**	**76**	**57.9%**	**42.1%**
	Northern	9	88.9%	11.1%
	Interior	22	59.1%	40.9%
	Fraser	17	41.2%	58.8%
	Vancouver	14	50.0%	50.0%
	Island	14	64.3%	35.7%
	Mental health workers understand my job	**75**	**70.7%**	**29.3%**
	Northern	9	88.9%	11.1%
	Interior	22	81.8%	18.2%
	Fraser	16	56.3%	43.8%
	Vancouver	14	57.1%	42.9%
	Island	14	71.4%	28.6%
	I have a good working relationship with the judge in my community	**76**	**10.5%**	**89.5%**
	Northern	9	0.0%	100.0%
	Interior	20	9.1%	90.9%
	Fraser	16	25.0%	75.0%
	Vancouver	14	7.1%	92.9%
	Island	15	6.7%	93.3%
	Mental health workers do not always want to share information that is important	**76**	**34.2%**	**65.8%**
	Northern	9	44.4%	55.6%
	Interior	22	36.4%	63.6%
	Fraser	16	25.0%	75.0%
	Vancouver	14	42.9%	57.1%
	Island	15	26.7%	73.3%
	Police in my community have a good understanding of the *YCJA*	**77**	**88.3%**	**11.7%**
	Northern	9	88.9%	11.1%
	Interior	22	86.4%	13.6%
	Fraser	17	88.2%	11.8%
	Vancouver	14	92.9%	7.1%
	Island	15	86.7%	13.3%
	Judges in my community have a good understanding of the *YCJA*	**76**	**32.9%**	**67.1%**
	Northern	9	55.6%	44.4%
	Interior	22	40.9%	59.1%
	Fraser	17	35.3%	64.7%
	Vancouver	14	14.3%	85.7%
	Island	14	21.4%	78.6%

Chapter 6: Qualitative Results

The results of the in-depth interviews with a sample of 11 YPOs, 3 conferencing specialists, and 2 youth justice consultants in 2008 were grouped into the following themes: the *YCJA's* impact and success; BC's need for the *YCJA*; and its implementation, challenges, and suggestions for improvement.

6.1 Impact and Success of the *YCJA*

In terms of the impact of the *YCJA*, all of the YPOs reported that while their caseloads had decreased, the profile of their clients had become more complex, including mental health and drug issues and more serious offences. Yet, overall, participants praised the success of the *YCJA* in reducing the use of court and custody and increasing the use of diversionary measures and community sanctions. They welcomed the diversionary measures for first-time and non-serious offenders, particularly as many of these offenders often received custody sentences under the *YOA* although they could have been dealt with safely and effectively in the community. For instance, YPO #10 noted,

> "Although BC has always been a pioneer in trying to keep youth outside custodial settings through diversion programs, police diversion, or community resources, definitely the *YCJA* has now formalized that by making sure that there are lots of other options are available that are sort of written in stone to address delinquent behaviour."

YPO #9 gave the following example of the successful use of Extrajudicial Sanctions (EJS) for first-time offenders:

> "A kid steals a car, he gets 6 months of probation. Now everyone is looking. I am looking, probation, the court, Crown. He gets conditions. Now the kid is involved in the big system where we are monitoring him. You would be surprised at how often a kid has one charge and ends up with a number of breaches because he is being

> tied up in the system. So you are almost criminalizing the kid. Each PO has their own style. So you could take a situation and overreact, or you can do EJS. It is a lot less involvement for a kid that might not need more."

Participants also welcomed the variety of new sentencing options such as the Deferred Custody and Supervision Order (DSCO). This sentence allows youth to serve their custody sentence in the community. In contrast to regular probation, youth return to court and then directly to custody to serve the remainder of their sentence if they violate their supervision conditions. Youth can also be held longer in arrest cells than with a regular probation breach. YPOs' preference for this sentence is illustrated by the following quote:

> "I love the DCSO. I love it for the fact that I don't like putting kids in jail. Now, the first thing we request is the DSCO because it is such a nice way of having an immediate consequence in the event that they do mess up. I also get longer periods for them without breaching with the DCSO. Because they know I don't want to go to cells." (YPO #4)

Further, YPOs reported on the success of RJ and conferences under the *YCJA*. More specifically, they liked that the *YCJA* emphasizes victims' needs in the process and holds youth accountable for the harm they have caused. YPO #1 explained: "I like restorative measures. It is an opportunity for youth that make mistakes. It is an opportunity for them to deal with taking responsibility for their actions in an informal way."

Integrated case management [ICM] conferencing was also mentioned as an advantage under the *YCJA*. While it already happened informally under the *YOA*, YPOs mentioned that the explicit description of it under the *YCJA* led to more frequent usage and overcame barriers among the different professions to discuss the best options for youth at risk:

> "When used properly it [mandated conferencing] could bring the different people working on each level together. Oftentimes, there has always been a barrier between lay professionals and court professionals, defence lawyers, Crown and the judge. The conferences and meeting informally with the lawyers, the youth, and the family,

> and trying to develop a plan...this has been very helpful and allows a better dialogue in trying to help the youth. It's primarily used for these really complicated cases when there are several professionals involved and the client is still coming before the court... At least on my level, the front line people, ICMs are so important and they were already happening under the *YOA*. But with the conferencing, the defence lawyer gets involved and Crown counsel and the judge is taking interest. Before, the front line people-social workers, mental health, and school teachers, but not the lawyers-would get involved. And then we would get the information to the lawyers, but they would have their own mandates and agendas. And then they would pass the information to the judge, who has his own agenda. Hierarchy is still there in a lot of ways but it is faded because of the ICM." (YPO #10)

In conclusion, the participants generally spoke positively about the new act and particularly welcomed the emphasis on community measures and the variety of new sentencing options. Moreover, it became apparent during the interviews that the large majority of the participants were very enthusiastic about their job and assisting youth at-risk. Yet, many participants also felt that, despite the *YCJA*'s overall success, its introduction was not entirely necessary in BC.

6.2 BC's Need for the *YCJA*

The implementation of the *YCJA*'s predecessor, the *YOA*, was characterized by an over-use of the formal justice system, and processing and sentencing variation across provinces and territories. While some provinces and territories, such as Manitoba and Saskatchewan, had relatively high court and custody rates in Canada, BC and Quebec have always emphasized custody restraint and community measures when responding to youth crime (Department of Justice Canada, 2009). Consequently, several participants in this study mentioned that the *YCJA* only reinforced and supported policy directions that were already in place in BC, and that the objectives of the *YCJA* could have been easily and less expensively achieved under the *YOA*. Their views were consistent with Quebec's opposition to the introduction of the *YCJA*. Quebec's main argument was that the *YCJA* was politically motivated and that not the *YOA* itself but its implementation was the problem

(Trepanier, 2004). The following two quotes reflect YPOs' doubts about the necessity of replacing the *YOA*:

> "Other provinces were literally so far behind BC in their approaches. We are talking literally about the highest incarceration rates in the Western world, but it wasn't BC that was driving those numbers up. It was Alberta, Saskatchewan, etc. that was going through the roof. BC was normal, and the rest of the country is where BC was 10 years ago. So the irony is that BC was doing things really well, we had lots of programs and services for kids on probation, we even had good services in custody. Those were erased when the *YCJA* came into effect." (YPO # 3)

> "As a BC YPO, I feel that that the new act was a bit of a slap in our face and for Quebec, because we federally lead the way for youth justice. We were looking at diversion, we were looking at least intrusive measures, and we had not been over-incarcerating our kids. We were doing the spirit of the *YCJA*, we were already doing and federally leading the country with it. So we were already doing this. I don't think there were a lot of changes, I think it just made it administratively awkward trying to do this." (YPO #4)

Despite participants' notion that the *YCJA* was not entirely necessary in BC, they recognized the positive impact it had on youth justice across Canada. Further, they stated that the new law hardly changed their job description and daily practice of supervising young offenders and supporting their reintegration: "There are lots of things we do the way we used to. The legislation doesn't change our day-to-day practice dramatically. We are just more focused on keeping kids out of custody, I think."

In summary, participants did not believe that the *YOA* needed to be replaced. They suggested that it would have been sufficient to improve the implementation of the act across Canada, i.e., consistently reserve custody for the most serious offenders, provide sufficient community resources, and promote the rehabilitation and reintegration of young offenders across all provinces and territories. Nevertheless, they accepted the new law and appeared to be highly satisfied with the overall Canadian youth justice policy.

6.3 Implementation and Challenges

While the participants in the study generally praised the youth justice policy embedded in the *YCJA* for its underlying theory and principles, the interviews also disclosed some difficulty with the implementation of the act, including the complexity of the legislation, extensive use of diversion, insufficient interagency work and information sharing, barriers to conferencing and RJ, challenges to a successful Aboriginal policy, and a lack of programs and resources.

6.3.1 Complexity of the *YCJA*

All interviewed YPOs agreed that the *YCJA* is a very lengthy and complex piece of legislation, especially when compared to the *YOA*. They reported the sections related to information sharing as being most difficult. These results were confirmed by comments of policy consultants, who stated that the questions they most commonly received from YPOs regarded the interpretation of information sharing policies and legislation related issues, for instance, whether a certain offence would fall under the category of a "violent offence." Another recurring theme throughout the interviews was the amount of paperwork YPOs were required to complete under the *YCJA*, as illustrated by the following quote by policy consultant #1:

> "They [YPOs] have to do quite some paperwork that might be challenging, more so than they had to in the old days. They have a very comprehensive computer system that takes a lot of time and effort. It is probably the administrative things that are most challenging."

YPO #11 criticized that the time needed to complete paperwork and enter information into computers would be better spent with her clients, stating:

> "I have been 24 years in the justice system and I have been around for a while. The way the *YCJA* works, all the notes and reports, it is all about covering your ass. There is way too much paperwork now. All the reports to courts, the time I spend in front of my computer. If we had more resources, lower caseloads and more POs in

> the region, we could actually spend more time with the youth. With the *YCJA*, as I said, it is so much more paperwork. It's paper driven."

Another YPO even went so far as saying that the amount of paperwork would impact his decision on how to proceed with the youth, i.e., not to breach youth and ignore probation violations because of the anticipated paperwork: "The paperwork on enforcement of DSCO and Community Supervision is absolutely overwhelming and many times prohibits or deters taking action." (YPO #5) Moreover, they mentioned that they would often refer to their policy manuals when they were unsure about certain sections of the *YCJA*. Besides their own difficulty with the *YCJA*, YPOs reported that the complexity of the *YCJA* also makes it difficult to explain to youth the court process and consequences of their actions. YPO #7 explained:

> "I think when you have 10-12 different sentencing options for youth, they don't understand. They understand jail and probation. They don't understand absolute discharge, conditional discharge, personal service order, probation order, and DCSO. So they understand more concrete terms, jail or probation. So from a point of view of servicing them, if you want to involve them, they have difficulties understanding the different options that are available for them. They need clear cut options and not a lot of grey."

Some participants mentioned that some changes to the *YCJA,* not to its objectives but to its language, would simplify its implementation, as suggested by policy consultant #2:

> "In some areas it is unnecessarily complex. I wouldn't change the intent or the procedures in the act, I think it could be simplified in some areas. The language and the links. For instance, the sections about custody and supervision and release and the conditions which are similar to adult parole supervision, there are slight differences between the type of offence and type of sentence imposed. That is one area where it could be streamlined a bit. There is also a lot of reference by incorporation in the act, where you refer to a section and another section applies. So it can be quite confusing when you have to flip back and forth between the different sections as well as cross-reference with the criminal code. So there is complexity in this area."

> "There are some areas that are a little bit complex and cause confusion. I think, now, 6 years down the road and the experience

> with the act, we could benefit from somebody going to, not changing the principles or intent, but go through and clean up some of the areas where, interaction with legislation, things aren't as clear as they could be."

In conclusion, while YPOs agreed on the complexity of the act, YPOs did not find that the act dramatically changed their day-to day work, except for the increased paperwork. They also emphasized that they had no difficulty in receiving assistance and support from their team supervisors and policy consultants. Yet, participants suggested that some technical changes to *YCJA* would make it easier to apply the act.

6.3.2 Diversion, Bail, and Custody Restraint

When asked about diversion in form of Extrajudicial Sanctions (EJS) and the legally mandated custody restraint under the *YCJA*, YPOs generally praised the underlying theory and success thereof. In effect, the entire sample was convinced that most first-time and non-serious offenders could be dealt with safely and effectively with informal measures in the community. Further, they believed that putting these kinds of offenders through the formal justice system and placing them into custody would make them even more likely to re-offend and become more entrenched in a criminal lifestyle. They even suggested that EJS could be used more often for more serious offences such as minor assaults.

At the same time, however, YPOs criticized the too extensive use of diversion and too restrictive use of remand and custody in certain cases, especially for sexual assault cases, violent offences, or cases of older youth who have committed several offences. Policy consultant #2 even suggested some changes to the *YCJA* in terms of remand and custody restraint might be helpful because their usage was too restrictive in some cases:

> "The act could use a little bit of tweaking in a couple of areas. For example, the restrictions on the ability to detain youth prior to trial and sentence, and the restriction of the use of custody as a sentence. Not in a way that it would significantly affect the numbers…

> So the way the act is being interpreted by the Supreme Court, there are offences that are potentially quite harmful, such as dangerous driving and arson, which cannot be determined violent offences if nobody was harmed or there was no intent to harm during the offence. There are couple of things in the act like this that could be tweaked a bit so that the courts have the tools to deal most appropriately with those offenders that have not committed a violent offence but really do pose a serious risk of harm. I don't want to overstate it. I am only talking about a handful of cases that would make a difference, not a hundred thousand."

In articulating their concerns regarding inappropriate cases for EJS, YPOs #1 and #8 stated:

> "I have seen many assaults being diverted. But it is a schoolyard fight, two youth having a conflict. Not violence in the community. That's different. Even sexual assaults are diverted. I don't necessarily agree with it. We can still get treatment for this youth, and the youth agreed to go to the forensic sex offender treatment program. The issue we have is that if they don't comply we can't do anything about it, really. They haven't pled guilty and it is not a court order and we can't breach him. So we basically have to wait until the end of the diversion [EJS] and bring it back to court. So the problem is that there is not really as much enforcement. So we requested to Crown that those cases where Forensics are involved are not the most appropriate cases for EJS."

> "EJS, sometimes they go too far. For the vast majority it does work. But sometimes I think that we shouldn't be using it when we are using it. For instance, the sexual offences and for some violent offences because they are so much easier to use and save so much time and piles and piles of work. With kids that are on the line and can go either way, they go EJS. Who wouldn't? You shove the work to the YPO or community EJS people and you wait until it is up and then you get the report it's done. No trial to prepare for, no evidence to collect."

The last statement indicated that EJS have not only been used because of the believed effectiveness of diversion for certain types of youth but because EJS require less work than the formal court process. Yet, these cases might cause a risk for public safety and limit youth's accountability because, in contrast to a supervision sentence such as probation or DCSO, youth cannot be immediately charged with a

breach if they violate their conditions. Public safety was also a concern for YPOs in cases where youth, who had committed several or serious offences, received bail:

> "I don't see the serious offenders being remanded under the *YCJA*. I actually see everybody getting bail. A youth that has been in front of the judge numerous times for breaches could be remanded. But the assumption is that they get bail. That's how I see it being interpreted in court. I have different types of kids on my caseload and I see that the really serious ones, where I see a risk for the public, I see that they are not being remanded automatically. They all get a chance to be on bail. Many of them re-offend." (YPO # 2)

YPOs also suggested that the lack of enforcement with EJS or bail meant that youth were not held accountable for their actions and that some of them would use the system for their advantage, as explained by YPO #10:

> "They need to know what the consequences are if they cross the line. I have clients on my caseload who have been arrested six different times for six different crimes and they get out the next day. And spending a night in jail for assaulting somebody or stealing is not a consequence to them. It may be the first time and then they know 'OK, I am going to get out tomorrow.' Especially kids that are impulsive and aren't thinking beyond three seconds from now. That makes it frustrating for POs, if the kids know that. It happens six times. And you can only warn them that eventually it [custody] will happen. And the community also gets quite frustrated. Foster parents, teachers, social workers, mental health workers are feeling that this kid is not getting any consequence. They are acting out at school, at home. So that becomes a challenge in terms of the overall case management. If the kids are becoming dangerous and there is complete absolute disregard for the court, the kids, they need this little wake up call and I find this is lacking sometimes."

YPO # 11 stated in this regard:

> "We used to do something for the kids right away when we saw that their behaviour was not appropriate or where they were going down a path leading them into more criminal activity. Sometimes this shock of an overnight in custody if they have never been there was enough of an eye opener to shift their lives around. There are kids where we can't do anything. We can't get them in a full time attendance program because they haven't had a series of breaches. We can't get them into custody because they don't have a series of

> breaches. So there are all these stipulations. When we see some of our kids with the wrong crowd, or we see the potential for them to shift, then we don't have the opportunity anymore. And the process to get a breach done can take up to six month to a year and it is irrelevant then. There is no point anymore. They can't remember what they did. And the kids walk a fine line. They know how the system works."

This last response illustrated a recurring theme among the interviewees. Although all YPOs agreed that custody should be the last resort, many of them suggested that in some cases remand and custody eligibility was too restrictive and that a short custody stay could sometimes serve as a deterrent or a "sharp shock" for some youth. YPO #3 added another dimension to the problem of too extensive custody restraint under the *YCJA*:

> "For some kids custody is useful. Where we were under the *YOA*, it's the welfare approach. When you look at it in terms of social harms and harming themselves, custody provided a way of stabilizing them and cleaning them up and keeping them safe. It wasn't necessarily a clear appropriate use under the criminal legislation; it was more a welfare approach. There was a use for it but it was also largely abused under the *YOA*, we had the highest incarceration rates in the 90s and certainly something had to be done. But we have swung so far the other way that we are often constrained if they are criminally active but not under an umbrella that would consider custody. And you have all the other social harms going on at the same time if they really need to be protected from themselves. And we don't have the ability to do that. I am not a huge advocate of custody but it is just one of the clear limitations of the *YCJA* that we are so constrained."

YPO #3 recognized that the extremely high court and custody rates under the *YOA* were to a large extent caused by welfare protectionism, and youth, especially girls, were incarcerated for their own protection. Nevertheless, she suggested that detention should be an option in cases where youth are at risk and needed to be protected. A similar welfare argument was provided by YPO #9:

> "Sometimes a kid just needs to be off the street and be in custody. And that comes from a counsellor and someone who worked at a jail. It is not a nice place, but at times they have to go. Under the *YCJA*, custody is only for the ones that need it most. But that's open to interpretation. Who needs it most? That is a frustration. A judge

sometimes goes backwards to make sure a kid doesn't go to custody. It's so wide open to interpretation."

When asked about remand rates, most YPOs were surprised to hear that these rates continued to be relatively high despite the *YCJA*'s restrictive use of remand. These YPOs reported that in their experience most youth would receive bail and only the most serious youth were placed on remand. YPO #5 provided the following explanation for the use of remand, similar to the previous quote on custody for welfare reasons:

> "With the kids I have been working with, some of them got remanded although this was not supposed to happen. It could be due to a lack of resources like appropriate supervision if they had to get out. So even if it is not a reason to keep them in jail, I had a judge saying 'I am not supposed to do this but I am not stupid either, so I am not letting you out.' We had a kid and no placement for him because he pretty much burned out any foster home in town. And the judge said 'I am not letting you go to the streets with nowhere to go.' It's kind of the kid's fault, too, because he burned every resource we had. The lawyer for sure could have done something. But the lawyer was probably frustrated with the kid as well."

These responses show that judges, in some cases, have continued to order remand or custody for welfare reasons under the *YCJA*. These results are consistent with previous research on girls in custody, which reported that detention for welfare purposes was still happening because the Ministry for Child and Family Development had received cutbacks and there were not sufficient community resources (Dean, 2005). This practice of imposing detention for welfare reasons was supported by YPOs, as described by the following quote: "There are not enough programs to meet the needs of young people and detention is being used when a mental health facility or a lack of housing is the real problem. Judges sometimes make, thankfully, illegal orders to meet the needs of the youth." (YPO #9) Interestingly, the protective theme that forced many non-serious young offenders into custody under the *YOA* was still apparent in YPOs' responses and they did not unconditionally support the *YCJA*'s explicit provision that detention should not be imposed for "child protection, mental health or other social measures aimed at

addressing the needs of the young person."[26] Their perspective was to a large extent based on the lack of specialized resources and supervision in the community. When YPOs discussed the problem of youth who did not commit any new offences but had a lengthy record of breaches of probation, they criticized that many of these youth should not be managed through the justice system, which is often used as the last resort when everything else has failed. Instead, they suggested that these youth should be managed through the health system and that sufficient and appropriate resources in the community were necessary to address the special needs of these youth. As conferencing specialist #2 remarked,

> "Unfortunately, the bulk of the kids have exhausted all their resources and then everyone relies on us [the justice system] because the behaviour is so challenging. Even though it is not criminal, it is challenging. I think what we need is really specialized resources. That's what we need, resources that we don't really have. More one to one, more ISSP stuff. What happens is you get a really low functioning kid with really challenging behaviour and then you put him in a home with three or four other kids who show the same behaviour. And then you under-staff these resources. We need people that are highly trained that know how to work with these kids, take them on outings individually, one on one. The resources are very expensive but they don't have highly trained staff and they only pay 10 bucks an hour to the staff. And then they are under strain, freak out and call the police."

In summary, all participants generally supported the *YCJA*'s objective of diversion for minor and first-time offenders and custody restraint for the most serious offenders. Yet, they also expressed some concern that EJS and bail were used inappropriately in some cases. In particular, they felt that sexual assault or more serious cases should not eligible for EJS, and suggested that some youth, who constantly breach their probation or bail conditions or even re-offend, should not receive bail. Further, they expressed their desire to use custody in some cases as a deterrent or "eye-opener" for youth who consistently neglect court orders and are at risk for entering a more entrenched criminal lifestyle. Although the *YCJA* explicitly prescribes that detention cannot be used for welfare reasons, YPOs also relayed that

[26] Section 29(1).

custody should sometimes be available for protective reasons, for instance, to take youth off the street and address their social welfare needs, and to overcome the lack of specialized resources in the community. Interestingly, YPOs were surprised to hear that remand rates remained relatively high in comparison to court and custody rates under the *YCJA*. In their experience, most of their clients received bail unless they committed very serious offences such as manslaughter, aggravated assault, sexual assault, etc. Their perception was supported by research indicating that BC's remand rates had already been significantly decreasing since the late 1990s, and have remained at a relatively low level since 2001/02. In comparison to the overall Canadian average daily rates of youth in remand custody, which have had substantial increases in the last couple of years, BC and Quebec currently reflect the lowest remand rates in the country (Bala et al., 2009).

6.3.3 Interagency Work and Information Sharing

The quantitative survey disclosed that the sections *Exempt from Receiving Forensic Assessments, Non-Disclosure of Youth Records*, and *Information Sharing* were perceived by YPOs as three of the most difficult sections to understand and apply. The qualitative interviews were intended to disclose why YPOs had difficulty with these sections.

In the qualitative interviews YPOs stated that they sometimes were unsure about who they were allowed to share what kind of information with, for instance, with teachers and community program staff. Policy analyst #2 confirmed this difficulty:

> "The area where I get the most questions from, either directly or indirectly though the regional consultants, it would relate to the record disclosure provisions. That's probably an area that gets the most discussion about what information they can release. Within the justice system there is not a problem with information sharing between YPO and custody staff, forensics, police, and Crown Counsel. That part is pretty clear. Sometimes it's a problem with social workers or extended family members or the members of the public, schools, etc., when they are concerned about the risk a youth may pose. The act is pretty restrictive about that. Sharing in terms of rehabilitation

> with other professionals is usually not an issue. Sometimes it is a bit confusing when the youth may pose a risk to other youth. In many cases, information about the youth can only be released through court and then the court orders a certain provisions to abide."

The interviews disclosed that YPOs perceived the sections pertaining to receiving forensic assessments to be difficult because, under the *YOA*, YPOs used to automatically receive these assessments. In contrast, under the *YCJA*, they have to request them in court. While they reported that they had never been denied these reports, some YPOs remarked that the process of receiving the information was easier under the *YOA*, as explained by YPO #2:

> "With Forensics, we can still get and share information but we don't get it automatically like we did under the *YOA*. Now we have to get permission from court to get and it can take some time to get the report. That part is frustrating because when you write a PSR you want to take the psych. assessment and recommendations into consideration. Sharing information and calling other professions is not a problem."

This response also indicated that information is not only exchanged through the official reports but informally over the phone. As two other YPOs stated,

> "I find we do have a good relationship. And again, we have been engaging as team players a lot more so with the kids we are working with. They [Forensics] are also doing their reports to court and phone us and ask what's going on and what we are thinking. It's good and there is a lot of communication." (YPO #4)

> "We have an unofficial exchange of information, not in written form but over the phone, that is helpful and used in case management to write reports. So we do it both ways. I am telling Forensics where I am going with my recommendations. I don't rely so much on what they think is an appropriate sentence; what I do rely on is their assessment of needs, when I do my programming or conditions recommendations." (YPO #3)

A few YPOs in the sample reported that they were not satisfied with the working relationship with Forensics. Mostly, these were YPOs who started their job in another region and had not yet developed a good rapport with their respective

Forensic team. Another YPO stated that she had problems with someone in Forensics who had left, and she had not yet contacted the new Forensic person.

Many YPOs expressed the desire for better overall communication and information sharing in the form of conferences regarding treatment plans for youth. As YPO #10 indicated:

> "I think it would definitely be helpful to have a better cooperation with them. Some forensic clinics make that proactive and do meet with their local PO office and some don't. Sometimes POs are invited to those meetings with psychiatrists and psychologists. Here in my region, I have never been invited to one. I don't know if this is a policy change or just the personality of the local office."

YPOs also remarked that it sometimes took a couple of months to get the assessment, which made it difficult to case manage the youth. They stated that it was particularly difficult to receive timely assessments and access to treatment for youth that were on probation or bail or lived in rural areas. Many suggested that it would be easier for them if they automatically received these reports in a more timely fashion.

In addition to their working relationship with Forensics, YPOs commented on ICMs. The *YCJA* introduced this kind of meeting as one form of court ordered conferences. ICMs were already possible and happened informally under the *YOA* but it was expected that the explicit provisions in the *YCJA* would increase the frequency of these conferences, where professionals would meet to discuss treatment and rehabilitation and reintegration plans for young offenders and provide this information to court. The formal introduction of these conferences was based on research indicating that the complex profile of serious young offenders requires a multi-disciplinary approach to address their myriad of interconnected risk factors. Considering that the *YCJA* reserves court and custody for more serious offenders, these court ordered ICM conferences play an important role in the rehabilitation and reintegration of young offenders on YPOs' caseloads. As mentioned above, the entire YPO sample reported that their caseloads had been

decreasing since the introduction of the *YCJA* but that their clients' risk and needs were much more complex and work intensive, as illustrated by the following quote:

> "The type of kids that I have on supervision, when I first started probation to now, the kids are definitely more multi-problem. There are a lot of mental health issues, housing, poverty. We are not getting any first time and low-end offenders. We had a lot of shoplifting; petty crime offenders; we had a lot of them on probation under the *YOA*. Now a lot of the kids are diverted out of the system through the police and the courts. I am noticing an increase in violent offenders." (YPO #2)

YPOs highly welcome the joined approach by the different professionals to address the multi-problem profile of their clients, including "all the players that are dealing with this youth, probation officers, social worker, mental health, drug and alcohol counselling, school, and whoever the youth wants involved."

While the entire sample praised the intention and underlying theory of ICM conferences, some YPOs questioned their practicability because of the time constraints and lack of resources such as treatment options and programs:

> "In some cases judges have ordered conferences, but I don't think on a practical level it really works. The timeline is 24 to 48 hours to back to court to deal with the kid's matters. So between the social worker, the PO and other resources it is not functional. Ninety per cent of the time we tell them [youth court judges] that these are the limited resources that we have, and if they are not amenable because of financial strains, then they [the youth] are not able to access those programs. So it is a waste of the judge's time and everyone else. The timeline is just too strict; it [ICM] doesn't work. There are waiting lists for everything. They [youth court judges] want some information about what services are available for the accused in 48 hours, when you are looking at 2-3 month waiting lists in the province. So the social worker, Forensics, and PO can say 'This is a great program', but it doesn't serve a purpose. They can provide the judge with this information, but it is only available in half a year. So I can understand if there were services and resources immediately, if you can get them in tomorrow, and can minimize this risk, but when you are looking at the time restraints, you are just getting the waiting lists." (YPO #7)

YPO #6 also commented on the frequency with which ICM conferences were ordered: "I barely see the ICMs happening. They are informal ones, initiated by probation. I think it would be great to have everyone on board. Sometimes you are missing some key players and it would be really beneficial for the young offender."

Hence, it appeared from the interviews that ICM conferences were not ordered as much as anticipated due to time and resource constraints. However, many YPOs who worked in integrated offices spoke highly of the cooperation with social workers and mental health services:

> "For our office it has been wonderful because we are a co-located team. So we have intake guardian and family social workers on site. Our team leaders also have social work backgrounds. It really works well. I just go down the hall and ask 'How does this work?' There is education happening back and forth. They understand what YPOs are doing and we understand a lot what social workers do. There is a lot of open discussion. At the end of the day we can make the best decision for the youth. There are some differences but they are not standing in the way of kids getting services." (YPO #2)

> "Yes, I am in an integrated office and we work very, very closely together. The team consists of child protection, general caseloads, so everyone that is family and social guardianships." (YPO #5)

The creation of integrated offices was part of the reconstruction of youth justice when youth justice was moved from the Ministry of the Attorney General to the Ministry of Children and Family Development in 1997 and all relevant services were integrated. Yet many 'YPO only' offices have remained and, therefore, not all YPOs work in integrated offices. In response to the question of why not all YPO offices would be re-organized into integrated offices, particularly as all YPOs working in these kinds of offices only spoke positively about their cooperation with other professionals, policy consultant #1 commented:

> "In many big cities like Vancouver and Kelowna, they have probation teams and they are not integrated. It seems smaller offices that are integrated the most. And I think the big offices resisted integration because it is a good thing that you have a probation team and everyone knows what is going on and you can cover each other.

> And in an integrated office you are pretty much left on your own because the other people don't understand your work."

The last comment indicates a typical concern towards interagency work, i.e., the personnel of the different professions might lack a mutual understanding and appreciation of the values, administrative processes, and work culture that guide the different professions. For instance, probation officers are subject to court orders, while social workers follow provincial policy based on apprehension and care orders. These different mandates and inherently different approaches on how to work with youth at risk might hinder cooperation and information sharing among the different professionals in integrated offices. However, this concern was not expressed by any of the YPOs during the interviews. Rather, YPOs working in integrated offices praised the good cooperation and mutual understanding of the different professions as well as the increased effectiveness and reduced effort to access the different treatments and services for youth. As already mentioned, they further reported that much of the information was exchanged informally rather than in court ordered ICM conferences and that they appreciated that everyone involved with the youth would be "on the same page." It appeared as if YPOs working in integrated offices were much more satisfied with the interagency work and, further, more willing to release information to other professionals who were involved with the same youth than YPOs in 'YPO only' offices. The latter group of YPOs, however, emphasized that they appreciated the ability to talk to other YPOs and receive advice about how to proceed with certain youth on their caseload.

6.3.4 Judges, Crown Counsel, and the Police

All participants spoke positively about their relationship with judges and Crown Counsel. Mostly, they felt appreciated in court and reported that judges would normally follow their sentencing recommendations. Yet, one concern, the unfamiliarity of some police court personnel with the *YCJA*, was shared by several particpants, as illustrated in the following responses:

"One of our struggles is around the complexity of enforcement provisions related to the interaction between our system and the police. They have a lot of things to deal with. We have the luxury in BC where things are structured in a way where YPOs specifically deal with youth. Police, like the courts, deal with all types of offenders, so the youth are just a subset of what they deal with. The complexity of the act makes it more challenging for the police to understand and I personally think that the training police receive could be improved. Similarly for Crown Counsel. They are dealing with a lot of different matters as well so they don't have the luxury to be as well versed in youth legislation specifically as we do. So less complexity all around would make it easier for everyone to understand the parts of the legislation that pertain to them and that would make everything run more smoothly." (Policy consultant #2)

"I don't like the fact that the YPO is left with interpreting it [*YCJA*]. And I don't think that judges, Crown and lawyers are really taking the time and it is left us to present. And then if they don't like something we are presenting, the interpreting, then they challenge it and it becomes an issue. I think there should be more accountability and more ongoing training by Crown and the court system to be prepared for the act. Because they are always looking to us saying 'Here is what the act says, and there is the jurisdiction and the authority on it, and this is what you are supposed to do.' It's fine if everyone likes it but if not it's a challenge. And then you have somebody say, 'Does it really mean that? Where does it really say that?' So I think there should be more education to the other partners." (YPO #4)

The same concern was expressed when talking about the police:

"When the *YCJA* was introduced the police thought they couldn't do anything with the youth. And then it took a year to 18 months until they realized that they can do more than just dropping them off at home and proceed with the charge. Even judges rely pretty much on probation to provide them with sentencing options. So if you have new creative sentencing options, then it takes a year or so to come up with speed. Now the police have a better understanding of the *YCJA*. The first two years were pretty bad. They were not given any training. They didn't train them other than a laminated piece of card for the first 6 months and a year." (YPO #7)

It became apparent during the interviews that the police and, in some jurisdictions, judges and Crown Counsel usually have low volumes of youth cases,

and, therefore, do not apply the *YCJA* as often as YPOs. Therefore, they would not be very familiar with the act. YPOs also mentioned, however, that this situation has improved and that juvenile justice system officials know much more about the *YCJA* than they did shortly after the act was introduced. The different levels of understanding are not surprising given limited training and exposure of some court personnel to the *YCJA* and YPOs' extensive training prior to the *YCJA*'s introduction and subsequent update trainings since then.

6.3.5 Sentencing

When asked about the sentencing provisions under the *YCJA*, all YPOs strongly expressed their satisfaction with the increased range of sentencing options and alternatives to custody and the introduction of more intermediate sanctions, such as ISSP and DCSO. As mentioned previously, YPOs also felt very respected in court and reported that judges would usually follow their sentencing recommendations. They criticized, however, that trials usually take a long time and that youth are on bail for extended periods of time, which makes it difficult for them to draw the connection between the offence they have committed and meaningful consequences to their harmful behaviour. For this reason, YPOs particularly liked the DCSO because this sentence keeps youth out of jail and gives them one last chance to serve their sentence in the community. However, if youth violate their supervision conditions, there are immediate consequences for their behaviour, as explained by YPO #8:

> "I like that there are more and more appropriate sentencing options. For instance, the DCSO. If we have a youth who is becoming criminalized but not fully entrenched yet, under the *YOA* he would be in jail, which often would make him even more entrenched. Now, with the DCSO, we can give him a jail sentence but he can serve it in the community. If at any point during this he messes it up, we can put him into custody. So it gives the youth one more chance with the jail sentence hanging over his head, looming large. So sometimes it works. It's what they need. They see 'This is my last chance now.' They do see the difference between a regular probation and the DSCO because we put them into custody. They know that."

Many of the YPOs also mentioned that they liked the *YCJA*'s emphasis on reintegration and the provision that each custody sentence has to be followed by supervision time in the community. This reintegration period, which not only requires supervision for young offenders but also provides them with help and support in the community, was not legally mandated under the *YOA* and probably led, to some extent, to the high recidivism rates during this time.

6.3.5.1 Intensive Rehabilitative Custody and Supervision Order

The Intensive Rehabilitative Custody and Supervision Order[27] (IRCS) was introduced as a special sentence under the *YCJA*, which was intended to be an alternative to adult sentences for young offenders. Therefore, it only targeted the most serious and violent young offenders. Research since the introduction of the *YCJA* has shown that this new sentencing option has rarely been used (Bala et al., 2009). In effect, there had only been 6 orders in BC and 50 IRCS orders across Canada from the introduction of the *YCJA* until the summer of 2009. The qualitative interviews with YPOs were intended to provide some insight into why there had been a lack of these orders as YPOs write sentencing recommendations in their PSR to judges and, therefore, are the juvenile justice officials who could first introduce the IRCS orders into the court process.

The Department of Justice Canada had set aside special funding for these orders to ensure that this sentencing option can be made available throughout the country and rehabilitative services can be provided (Markwart, no date). It was based on the assumption that the most serious offenders do not need punishment, which a lengthy adult sentence implies, but rather intensive treatment and rehabilitation. To be eligible for this order, the young person must be found guilty of a presumptive offence or a third serious violent offence (offence eligibility); the young person is suffering from a mental or psychological disorder or an emotional disturbance (clinical eligibility); an individualized treatment plan has been

[27] Section 42(1)(r)

developed for the young person; and an appropriate program is available and the young person is suitable for admission (Department of Justice, 2008; Bala, 2009). Policy consultant #2 explained in more detail why the IRCS orders were introduced:

> "You are right, the intent of the IRCS was as an alternative to an adult sentence. But the act still continues to provide the option for an adult sentence to be imposed, so it wasn't intended to replace the option of an adult sentence. The concern was under the *YOA* to look at what programs and services were available for the youth in the provincial youth system versus the federal adult system. The concern was not necessarily because of the length available for an adult sentence but because rehabilitative services were perceived to be much stronger in the Federal system, which is accustomed to dealing with offenders sentenced to longer periods of time. The purpose of the sentence [IRCS] and the additional funding were really to ensure that youth who were receiving an adult sentence, when really they needed programming and not a longer sentence. So the decision by the court now on whether to impose an adult or youth sentence is determined based on whether the length of the sentence available is adequate to hold the youth accountable. So in a case of manslaughter where the maximal sentence available is three years and the maximal adult sentence is life, if after looking to all the issues related to the youth, the circumstance of the offence, the court declares that the sentence that is required in this case is a seven year sentence and the IRCS order can't be a seven year sentence, or the services that the youth needs are only available in the federal system and not at a provincial youth institution, so the three year sentence will be an adult sentence and not a youth sentence to ensure that the resources are in place."

Interestingly, the policy consultant mentioned in her last sentence that judges might still be guided by welfare reasons when imposing an adult sentence if the required resources to address the treatment needs of a youth would only be available at an adult facility. This practice, however, neglects the detrimental effect adult prison can have on young offenders, such as potential victimization by older inmates.

When asked about their experience with IRCS orders, only one YPO reported that he had recommended this order before and another YPO had a colleague in his team who was involved in such an order. While all of the YPOs welcomed this new sentencing option and praised its underlying theory, everyone suggested that the

lack of orders was caused by the eligibility criteria, which were too restrictive. Therefore, they argued, the large majority of young offenders, even if they had committed serious offences, would not be eligible. In fact, Bala et al. (2009) report that only sixteen IRCS orders were recorded by Statistics Canada in the first four years of the *YCJA*.[28] As YPO #3 noted, "It's unfortunate that you get so restricted on these creative sentencing options that are available."

The provincial government recognized the statutory restrictions on the IRCS use, and expanded the IRCS policy in 2008 to a "secondary" or "non-IRCS" sentence for serious and violent offenders. This new policy loosens the strict criteria of the IRCS order and provides special funding for youth who "have been found guilty of and sentenced for a violent offence, during the commission of which he or she has caused or attempted to cause serious bodily harm, and for which an adult would be liable for imprisonment for a term of 14 years or more" (Ministry of Children and Family Development, Policy Manual, 2008, section O.16.02). The additional IRCS eligibility criteria, such as a mental or psychological disorder or an emotional disturbance and the development of an individualized treatment plan, still apply. Examples of potentially eligible offences are aggravated assaults, break and enters, and robberies. Consequently, it is likely that YPOs now have larger numbers of offenders that are eligible to receive this treatment-focused sentence rather than an adult sentence.

In fact, many YPOs never had any serious violent offenders that were eligible for the original IRCS order on their caseload and, thus, never had to apply this order. A few YPOs also recognized their tendency to do things the way they had always done them and that the new IRCS order would not necessarily be on their mind when writing their sentencing recommendations. The novelty and rarity of the IRCS order have likely contributed to YPOs' initial unfamiliarity with these orders, as YPO #6 explained:

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[28] Although the data are unavailable for some provinces (Bala et al., 2009).

> "I don't know why it is not used. I am not really familiar with it because I never had to use it. I would almost have to read up on it, for when to use it. I don't have murder or manslaughter on my caseload. You kind of fall into your old order."

Both policy consultants supported this notion, saying:

> "There are not very many cases available and those that are, might not be appropriate. So it's just not something that our staff deals with on a day-to-day basis. Even under the *YOA*, you had staff that went through their entire career and they never had a youth receiving an adult sentence. The same thing happens here. They might not deal with an IRCS order." (Policy consultant #2)

> "IRCS is reserved for the most serious crimes so I assume we don't get as many of them. At first it was a little complex and people didn't know about it, but now we start to use it more appropriate. I think the YPOs are getting it and are doing the right thing now." (Policy consultant #1)

Unfortunately, the initial unfamiliarity with these orders was still evident in the interviews as many participants were confused about the exact eligibility criteria and the process of the IRCS orders. In addition to their own confusion, YPOs commented on the court personnel's lack of familiarity with this order, as indicated in the following statement by policy consultant #2:

> "I think initially, and it still is, a lack of awareness of the sentence. It depends on the reality of how serious offences are dealt with. Serious offences go to the Supreme Court even if a youth is being dealt with. The Supreme Court is a designated youth justice court for the purpose of dealing with this youth justice trial. The reality is that the Supreme Court normally deals with few youth cases. The Supreme Court judges don't deal with the *YCJA* on a daily basis. And in some locations, even the defence lawyer and Crown that deal with these serious cases also don't do much youth court work. So you have all these people that are normally not familiar with that [IRCS] option. So we have to make sure that they are aware of that option. Certainly, in the early days, some cases fell through the cracks."

In addition to YPOs' unfamiliarity and judges' lack of awareness, YPOs suggested some other potential barriers to IRCS orders. For instance, YPOs stated that youth would not always consent to an IRCS order, which is one of the

requirements. Further, one YPO reported that the age of youth was a decisive factor, i.e., sixteen or seventeen year old youth were more likely to receive an adult sentence rather than an IRCS order:

> "So if Forensics does the assessment and they say that there is the need for treatment, then they would consider the IRCS. But I think if the youth is 16 and over and they commit a serious offence, than the onus is on them to explain why they should stay in the youth system. And if they don't really have this mental health component [which is one of the IRCS criteria], I think the judges are more inclined to sentence them as an adult. It is an alternative to an adult sentence but you kind of need to take the circumstances of the offences into consideration, the age, and the mental health status." (YPO #2)

YPO #7 believed that public interest was another barrier for IRCS orders:

> "We don't get very many of those charges and the court also has to look at raising the charges to adult sentencing. And that has been more prevalent. We had five adult sentencing reports in this office. This seems to be the type of route taken with this type of offences. For the offences that we had, I had one case that had a very high media profile, very, very high. And if an IRCS sentence was used in that, the whole judicial systems would have been disputed and I think Crown and judges have to look at that as well. When you have horrendous damage being done, irrespective of whether IRCS being available, they have to be cognizant of what the public interest is as well."

Many YPOs stated during the interviews that their sentencing recommendations would not be influenced by external factors such as the media or the public's interest. However, YPO #8 wondered whether the public's opinion might be a contributing factor in judges' decision to impose adult sentences:

> "I am wondering if there has been any backlash publicly. Because the public doesn't understand youth offending, what's behind it and why we treat young offenders differently. Right now the public opinion is 'Hang them high' and 'You need to come down harder on these youth.' So trying to promote to the public the IRCS thing, they see it more as 'social worky'. But they want to see *adult*. They want to hear the word *adult*. It's political rhetoric. It sounds good, 'Youth raised to adult court.' The public loves that. 'Youth gets IRCS order,' the public instantly thinks 'great' [ironic undertone].

YPO #4 commented on her hesitation to recommend an IRCS order because she felt that she would be held accountable if the youth re-offended on an IRCS order and that, therefore, the adult sentence would be the safer alternative:

> "Never done an IRCS. I recently did a SVO [Serious Violent Offender] funding application, though. I have always known about IRCS and I never had a youth where I tried to use it. However, after doing the particular SVO application that I just finished, it gave me that much more a look into a fact that we could use it more. I am not totally sold on it until I see it happening and a kid doing well on it. My concern is that someone is going to get killed. I have this kid who does not have three serious violent offender designations yet, but he is getting his third, and once he does then he is a serious violent offender forever. But what happens then is, when I am looking at the funding, then you are left to make sure that you cover your ass. So even, so if you try to make the last day check, to make it work and try to get the extra support in, to see this kid being successful in the community is, if he fucks up and somebody gets killed, you ask yourself, shit, have you done the right thing? And this one particular kid, he already has killed somebody in the past, or the person did die from an offence that he did. He never got manslaughter, he ended up getting assault causing death, now he got the other one where the other guy could have died and it is the miracle that he didn't, and so you know that the chances are really high that this kid, everything being equal, is going to end up re-offending, you hope to God they don't... And because it is new territory, and I think this is something with the IRCS too, is people being left with, do you apply for it, do you go for it? Can we do something? Will we see rehabilitation? Will we see reintegration? And you are left thinking, oh my goodness, that [IRCS], it is a big responsibility. You are going out on a limb, and make a plan. And there are not a lot of them and your name is attached to it. It's an ownership thing, right? Or maybe we can use the money better for other programs of prevention. An adult sentence is easy when you look at workload and everything else that's going on. It's not that you don't want to be emotionally involved in what you are doing but there is an ownership regardless. So do you risk it or do you take the easy way and let them go to the adult system?"

This last response also implies another barrier to IRCS orders. In fact, many YPOs mentioned that they were concerned with the large amount of work that is required for an IRCS order, in addition to their day-to-day work, as articulated by YPO #4:

> "There is so much work for doing these applications. And we are busy as it is. The other thing with the act is that we are just doing the high-risk stuff, we are not seeing a lot of low-end stuff like we used to. It is mostly the assault stuff. Violent major crimes. And there is a lot of work anyways...We have more supervision for each of those people and then again you are making sure that things are done because it is so high risk. And it just becomes labour intensive. So to take on these things, you are working hard as it is, and then all this extra paperwork. The paperwork becomes the problem. It is not just that you want to cover your ass, because you want the best for the client regardless, but it is a lot of work."

The last comment also implies the perceived need of YPOs to extensively document and justify their decisions and sentencing recommendations. Some mentioned that the documentation that was required increased substantially under the *YCJA*. While YPOs did not explicitly mention that the required paperwork for an IRCS would be a reason not to recommend an IRCS order, their responses clearly indicated that the increased workload was on their mind when discussing IRCS orders.

In conclusion, YPOs welcomed the wide range of sentencing options available under the *YCJA* and particularly praised the new DSCO as it offered an alternative to custody with immediate consequences to youth's behaviour. They also spoke highly about the intention of the new IRCS order. Yet at the same time, YPOs criticized that only a minority of youth would be eligible and that the preparation of these orders would be very time consuming. The large majority of YPOs had never recommended or completed an IRCS order and some of them were still somewhat unsure about the eligibility criteria and the process of an IRCS application. Some YPOs also indicated that they had the tendency to recommend sentences that they had already used under the YOA and that it took them some time and effort to get used to and apply new concepts. In addition, YPOs mentioned that many judges were unaware of this order as well. This mutual unfamiliarity is of concern as it further limits the already small number of youth receiving IRCS orders. Since all YPOs mentioned that judges usually follow their sentencing recommendations, YPOs might be in the position to increase the number of IRCS orders by including these orders in their sentencing

recommendation. The same applies for the newly introduced "secondary IRCS" order that provides sufficient funding and intensive treatment for a wider range of serious and violent offenders. It remains to be seen, however, how YPOs respond to this new policy.

6.3.5.2 Deterrence as a Youth Sentencing Principle

During the last election platform, the Conservative government proposed several amendments to the *YCJA* including, among other crime control policies, the introduction of deterrence and denunciation as youth sentencing principles (Department of Justice, 2010). Interestingly, the government proposed these amendments despite a Supreme Court decision in which the court explicitly declared that deterrence, which is not explicitly mentioned in the *YCJA*, is not a youth sentencing principle. It was argued that an incorporation of this adult sentencing principle into the youth law would blur the historical distinction of the criminal justice system between young and adult offenders and, therefore, neglect the reduced maturity of youth.[29] Therefore, participants were asked in the study whether they supported the incorporation of deterrence into the *YCJA*. While all of the YPOs emphasised that rehabilitation was their main consideration, several YPOs reported that they also considered specific deterrence, though to a lesser degree, when writing sentencing recommendations:

> "Rehabilitation is the number one consideration that we look at when we are trying to put a plan together for the kids. Deterrence, I think there is a piece to that and I think it should be included in the *YCJA*, even though it is not mentioned in the *YCJA*. Is it the main consideration? No, absolutely not. But regardless of whether or not it is included it comes into play. I am speaking more of specific deterrence. What kind of sentence can we come up with for this specific youth, so that they get the message and think twice? And put the services and resources into place so they will stay out of the system." (YPO #2)

[29] *R.* v. D.B., [2008], SCC 25, para 78.

> "Even if this is not in the *YCJA*, Crown, judges, police and POs still have that in the back of their head. Even if they can't use it as a sentencing principle, they are still discussing it when coming up with a sentence when they have a youth that has done five to six armed robberies. And the sentence might be a bit harsher than you would think, so obviously they considered public safety." (YPO #7)

YPO #5 reported that she did not consciously consider deterrence but that it was a by-product of her work:

> "Sometimes, I do consider it [deterrence]. In my sentence recommendations, deterrence would be a by-product. I am focusing on what the kids need to support them and what else is needed so that they don't re-offend. A good by-product of good work."

YPOs recognized, however, that deterrence would not work with all types of offenders as many of them are very compulsive and do not think about the consequences of their crimes. In particular, youth with cognitive deficits would not be deterred by the prospect of harsher sentences. YPO #8 explained that deterrence would be more important for low-end or first-time offenders, who are not characterized by the typical risk factors of youth on YPOs' caseload:

> "Deterrence is important but it is the least important thing because of the type of kids we are dealing with. They are so impulsive, brain injured, FASD [Fetal Alcohol Spectrum Disorder], and they might not think about 'I am going to jail.' We definitely need that piece but it is long-term. Immediately we are looking at the rehabilitative piece, the environment factors, dealing with FASD, the drug addiction. General deterrence is going to work with sweetheart Sally that goes to school, has a stable home, and has no biological problems. It's working for her but not with the population that we are dealing with."

Although all of the YPOs mentioned that they, to some extent, considered deterrence in their sentencing recommendation, their responses did not reflect the government's proposed crime control approach and the assumption that harsher sentences deter youth crime. Rather, YPOs emphasized that rehabilitation and addressing the underlying causes of crime would be most important to prevent crime and ensure public safety. Further, they appeared to be more concerned with immediate than with harsher consequences to youth's behaviour. Considering YPOs'

perspective on deterrence, it is unlikely that their sentencing recommendations would change substantially if deterrence were introduced as a youth sentencing principle under the *YCJA*.

6.3.6 Aboriginal Youth Justice Policy

The *YCJA* was intended to address the over-representation of Aboriginal young offenders in the juvenile justice system by addressing their culturally specific needs and emphasize alternatives to custody. Research since the implementation has shown that absolute numbers of Aboriginal young offenders in court and custody have decreased. Yet, diversion has not worked for them as well as for their non-Aboriginal counterparts and they are still over-represented at all stages in the justice system (Latimer, 2004). To gain some insight into Aboriginal young offenders' situation in the justice system, participants of the study were asked about the implementation of the Aboriginal youth justice policy under the *YCJA*.

The interviews revealed that none of the YPOs in the sample were never ordered by a judge to write culturally specific sentencing reports for Aboriginal young offenders (Gladue reports) and that these, generally, had not been ordered frequently in BC. In fact, one policy consultant reported that only 8 Gladue reports had been ordered in comparison to 13 Adult Sentencing Hearing Reports and 4,003 PSR from 2006/07 to 2009/10.

YPOs and policy consultants expressed, however, that they did not think that Gladue reports were necessary as Aboriginal issues were sufficiently included in regular PSRs:

> "I have never written them. What we do, and it is a practice that most POs do, if we have a First Nation youth and a PSR is ordered, we tend to incorporate most of the stuff that they want in the Gladue report anyway. We talk about their background, if they are connected with the band, what services are offered. I include in my PSR who the youth is. I think that satisfying the needs from the courts is how we have always been writing PSR and this is why Gladue reports are not ordered." (YPO #2)

> "We do include that piece of information in every PSR if the youth identifies. We include historical information on bands, tribe information, and advise the band and see if they have any input. We try to get all the database information from the different bands that the youth might belong to, we do include. And if they are being serviced by a social worker from the Aboriginal office and Metis services, they are able to provide culturally appropriate services that way as well. The judge sometimes orders it [Gladue report], but if a youth is identified as Aboriginal, we will include that information." (YPO #7)

> "If there is any interest in their culture or the need to develop it, then we refer them to those type of agencies and programs and support services first. Our PSRs are more than adequate in this regard, we are addressing all the issues that we need to address. We are just not doing, ridiculously detailed, the descriptions of the band's history or the cultural history of the area." (YPO #3)

YPO #4 stated that the introduction of Gladue reports was only to highlight the special needs and situation of Aboriginal offenders in the justice system and that the incorporation of Aboriginal issues into the PSR had been a common practice even before the *YCJA* was enacted:

> "Again, it is a work intensive and cumbersome project. The amount of work is incredible. For a PSR we touch on things and dive into their culture but we don't spend the time and talk to the band. And then it becomes a labour intensive report. I am not saying that this information isn't beneficial, but this is information that should be looked at anyways. I think the idea of the Gladue report was to heighten awareness and help to focus more so the system would look at Aboriginal needs. Be able to effectively present what are the aboriginal needs. But again, those of us who have been there long enough have done that business in our work anyway."[30]

This response also entailed some other valuable information, i.e., how time and labour intensive Gladue reports are. Gladue reports should include the general PSR information and, in addition, a description of the youth's heritage; the systemic

[30] In fact, BC's policy manual for YPOs directs them include similar information, to but a lesser extent, in regular PSRs (Ministry of Children and Family Development, Province of British Columbia 2003).

or background factors which may have contributed to the particular youth's offending; the youth's community, including any issue within that community that may have contributed to the youth's offending; the nature of the relationship between the youth and his/her community and the youth's heritage; the understanding of criminal sanctions; community reports; and any Aboriginal sentencing options that are available to the youth (Appendix A). Collecting and writing down all this information is extremely time consuming unless a Gladue report is ordered more than once for the same band (but different youth) and the collected information on the band's community and cultural history for the first report could also be used in subsequent Gladue reports. Yet this information also needs to be updated and all other information related to the youth would have to be collected for each youth individually. Hence, the policy guidelines allow YPOs more time to write a Gladue report than a PSR.

Considering the amount of time and work it takes to write Gladue reports, the questions evolves whether it is even possible to include all the relevant information for Aboriginal youth in a regular PSR within a shorter time frame to submit the report to court. Another concern is that there are specific guidelines on what information about Aboriginal young offenders and their bands needs to be included in Gladue reports. Regular PSRs lack these specific guidelines, which means that YPOs can choose how little or much information they include. This discretion makes inconsistencies more likely, which discriminates against those Aboriginal youth whose YPOs do not have the time to write detailed PSRs containing Gladue information or do not recognize the importance thereof.

In fact, some inconsistencies already became apparent in this small sample of YPOs. While all YPOs stated that regular PSRs would cover information that was required in Gladue reports, their responses illustrated that the amount of information included in the PSR varied among the different YPOs. For instance, some YPOs would only write two or three lines and include the information that the youth was Aboriginal and how he or she was connected to her his or band. In contrast, other YPOs would also include the availability of culturally specific services

and treatment options, information on the band's history and cultural heritage, and the band's input on how to proceed with the youth. Their varying responses showed that the culturally specific policy under the *YCJA* has not been successfully implemented.

Another barrier to the successful implementation of the Aboriginal youth policy under the *YCJA* was similar to the discussion about judges' unawareness of the IRCS order: YPOs felt that they sometimes had to remind judges of Gladue reports in court, particularly if the judge did not process many youth cases:

> "I wonder sometimes if the judges forget about it [Gladue reports]. It's absent from their mind when sentencing. This is why YPOs play such a big role, because they can influence the court a lot. And sometimes it is just a reminder. Especially when the judge is in a circuit and usually doesn't do youth court. For example, the judge in Bella Coola usually is in at Main Street [adult court]. So he is not dealing with youth and the *YCJA* a lot." (YPO #6)

YPO #10 reported that judges in his region rarely explicitly discussed the youth's Aboriginal status and its impact on sentencing decisions despite the *YCJA*'s legal mandate to do so:

> "I always put a little bit of information about their culture, two or three lines, unless there is more to talk about. If they are actively involved, then the information is a little bit more. That information rarely gets reflected on at a sentencing hearing. The defence counsel is maybe bringing up that it is an Aboriginal offender. But when the judge is giving a sentence, I very rarely hear a judge state that 'This is an Aboriginal offender in front of me.' They may in their mind take that into consideration, but we never know. And given the fact that this is an important fact, considering their over-representation, it doesn't seem that it is addressed well. Or at least the court is not verbally acknowledging it that this is an issue. We might have mentioned their cultural background or that they may or may not have interest in exploring their culture but it isn't specifically a practice at court. I am not saying it never happens. There are certainly times but not as much as there should be."

Youth's unwillingness to get in touch with this part of their identity was cited as another factor affecting YPOs' decision to exclude culturally specific information in their PSR.

> "For me it would be more on how the youth identifies himself. Do they deeply identify as Aboriginals? Then it is more important to look at this angle. Many youth, though, don't even identify. Or they will but it is not important to them. They don't want us to look at them this way because they see it as a negative. The pride factor is often not there. I ask them if they want to go to sweat lodges etc. but if they don't want to, I don't go this route." (YPO #8)

One Aboriginal YPO, however, mentioned that it was important to examine why youth did not want identify with their heritage and encourage them to explore this part of their identity and assist in producing a more positive self-image. Sometimes, for instance, youth had problems with the counsellor of the band and therefore wanted to receive counselling off the reserve. Others lived off reserve and were not tied into their community. Or they were bullied at school for being Aboriginal. Therefore, the YPO stated, it might be worth the effort to familiarize Aboriginal youth with their culture and encourage them to explore the cultural services on offer (off or on reserve) even if youth initially state that they are not interested in this part of their identity or do not want to receive services on the reserve.

YPO #4 commented on the appropriateness of Aboriginal programs or services and the individual needs of Aboriginal young offenders:

> "You always try to match the kid with the program. You don't just send them there because it is a program and you want them in a program because it's ordered. It was so neat to see that kid identify with his culture. To grab hold. It depends. You always have to look at the resources. I don't just put them into a program because it is Aboriginal. It depends on the kid and if the kid is going to benefit from that program or is ready for it, want to look at the spiritual and cultural void that they have."

As important as the work with the youth is the YPOs' working relationship with Aboriginal communities and their service providers:

> "When I deal with Aboriginal youth it is really important to engage their communities. The band they belong to. The services that they have. And really focus on how this band can help its own people. This is really what they want to do. To understand where the kid comes from. Sometimes it is not appropriate because the kid is not really tied to their community very much at all. I make an effort to go out there and meet with them and the workers and get to know about the services that they have and keep in contact with them. It's a great working relationship." (YPO #6)

YPO #6 also mentioned that the work with the community was sometimes difficult because of cultural barriers:

> "Being Caucasian and from the formal justice system can be a hurdle sometimes. Once you engage with them and which direction you take and what you are looking for, I really want, this, this youth belongs to your community, what do you want to be done, then you put your guards down. But it takes time for sure. In Bella Coola [circuit court] it can be tougher because it is a close-knit community. Lots of times I don't even meet my kids there when I say I am from the MFCD [Ministry of Children and Family Development] because the family don't even come close to the [court] building, it's tainted for them."

In regard to cultural barriers, YPOs stated that they received intensive training on Aboriginal history and culture and, therefore, understand where Aboriginal youth are coming from and what their culturally specific needs are. However, the interviews showed that Gladue reports are rarely ordered and there is a lot of variation in the amount of information on Aboriginal youth in regular PSRs. YPOs also reported that youth Aboriginal status is sometimes only briefly mentioned in court but not explicitly discussed in the sentencing decision despite the *YCJA*'s legal mandate to so. The consideration of the culturally specific needs in the sentencing process does not mean an automatic sentencing discount for Aboriginal offenders. As Manson (2001) puts it,

> "This view misunderstands the importance of the [Gladue] decision. The Supreme Court emphasised the role of individualization as it applies to all offenders but... redefined it with respect to Aboriginal offenders expressively to include questions which, in the non-aboriginal context, are usually present although implicit or

> subliminal: how did the background contribute to the offence? What is the community's view of the appropriate sanction?" (p. 75).

This view allows consideration of the specific circumstances of Aboriginal offenders and ensures that the colonial history and systemic discrimination of Aboriginal offenders are considered in the process of finding an (culturally) appropriate sanction.

Although the well-intentioned sentencing reforms of the 2003 *YCJA* promised a reduction of Aboriginal young offenders at all stages of the juvenile justice system, statistics show that, while the overall numbers of court and custody have generally been decreasing, the emphasis on diversion and alternatives to custody has been more successful for non-Aboriginal offenders and to, some extent, deteriorated the situation of Aboriginal young offenders. Policy consultant #2 added another dimension to the discussion of the Aboriginal youth policy under the *YCJA*:

> "Basically it is still a struggle that we have been more successful in finding alternatives for custody for non-Aboriginal youth than we have for Aboriginal youth. Having said that, there are a number of factors at play and one of the realities is that Aboriginal youth present higher levels of risk factors that increase the risk of getting in contact with the criminal justice system in terms of poverty, substance abuse, other community and family related factors. We know based on the history in this country, those risk factors are higher among Aboriginal youth and those risk factors lead to greater involvement in the youth justice system. It is not an excuse. It is just a reality we have to deal with. I think the justice system clearly has a role in ensuring that Aboriginal youth are not only dealt with unfairly by the system but also, given the historic and tragic over-representation, we try even harder to address those issues. But at the same time the underlying issues that bring them into contact with the justice system in the first place are factors that need to be dealt with early on. The economic and social development initiatives that help Aboriginal youth to have a better life early on. By the time the youth ends up in the justice system, the justice system is not the primary area for prevention of crime. Once they are in the system we would like to prevent criminal behaviour and try to mitigate that. But the reality is that the justice system doesn't deal with true prevention and social development that needs to happen on a broader basis, so it is a very complex situation. I think the provisions of the act are good, but they by themselves will not address the issues."

This statement acknowledges the restricted role of the justice system to a reactive rather than preventive approach. It also implies that the solution to Aboriginal offending and their over-representation in the criminal justice system lies outside the formal justice system, given the accumulation of various inter-related risk factors of Aboriginal young offenders. A similar notion is reflected by the following quote:

> "Changing the sentencing regime for Aboriginal people cannot occur simply by legislative fiat or by way of a decision of the Supreme Court of Canada. The institutional pressures to move an already overburdened criminal justice system along means that there must be some real changes in the way information is gathered and presented regarding Aboriginal people for change to truly occur. Doing things the way they have always been done but with passing reference to the circumstances of Aboriginal people will change nothing." (Rudin, 2007, p. 51)

Successful policies have to identify and address the causes and circumstances of Aboriginal offending and reduce the numbers of aboriginal youth entering the system in the first place. Yet, despite the *YCJA*'s limited role in addressing the symptoms rather than the causes of Aboriginal offending, previous research and the results of the qualitative interviews indicate that the Aboriginal youth policy has not been as successfully implemented as it should and could be. Gladue reports and the emphasis of alternatives to custody for Aboriginal young offenders are critical steps at the sentencing stage to address their inter-related risk factors and culturally specific needs for young offenders.

6.3.7 Conferencing

The study further explored the practice of RJ conferencing under the *YCJA*. Many of the experiences reported by the conferencing specialists and YPOs dealt with the understanding they have gained since the introduction of the *YCJA* and legally prescribed conferencing and barriers to conferencing.

RJ conferences can be employed at several stages of the juvenile justice system, for instance, as Extrajudicial Measures applied by the police and community

partner agencies that conduct victim-offender mediations. For YPOs and conferencing specialists, RJ conferences become relevant at three different stages of the justice system: pre-charge in form of EJS (applied by Crown in cooperation with YPOs), pre sentencing (but post plea), and post sentencing. Referrals can come from YPOs, Crown counsel, defence lawyers, and judges. Variances in the practice of conferencing depended to a large extent on the local court culture and the ability to communicate and create relationships with other key referring players (YPOs, judges, Crown etc.). Interestingly, each of the three conferencing facilitators declared a different stage for the conferences as most common. For instance, while one conferencing specialist described mostly having conferences in the form of EJS, the other two specialists had pre-sentencing and, most commonly, post disposition conferences. In general, RJ conferences involved the youth, support members, family, victim, and victim support members.

All three conferencing specialists interviewed had been working in their job since the *YCJA* was enacted and had received the initial two weeks training for conferencing specialists. They also reported having done their own research on victimology and RJ to improve their understanding of the process. One of them mentioned, however, that newer conferencing facilitators would only receive a five-day victim offender mediation training. All YPOs had clients participating in RJ conferences, but only one YPO participated in a conference herself.

6.3.7.1 General Feedback on RJ Conferences

Interestingly, there was a range of YPO appreciation in this small sample for the prospects of conferencing from cautious reluctance to enthusiastic promotion. Conferencing specialists, however, were generally very optimistic and enthusiastic about their job and RJ conferencing under the *YCJA.* Moreover, most YPOs commented on the great benefit of RJ conferencing and the increased usage of conferences as compared to the *YOA.*

> "We have already supported RJ conferences before they became official as a part under the *YJCA*. Under the *YOA* we had the

> odd one. It's an excellent tool. It always, for the most part, has a greater impact than going through the judicial process only. For the victim and the offender. We have a person in particular as a specialist. We will approach her and say 'This youth may be appropriate' and she writes a report to the court and gives her recommendation after talking to the victim and the offender, RJ will or will not work. So the initiative comes from us and then the court and Crown will support our recommendation. We consider it every time. It always has potential. Unless it has a corporate victim, like Sears. But if there is a community victim, we always consider it." (YPO #8)

YPOs welcomed that the focus of the juvenile justice system shifted, to some extent, from the offender to the victim and his or her needs in the process. The focus on victims started with the introduction of victim impact statements under the *YOA* in 1995 (Bala, 2009). However, there is clearly a difference between reading a victim impact statement in court and having a face-to-face dialogue with the offender, where victims can ask unanswered questions and, more importantly, where victims might overcome fears:

> "It is just, how much does the offence affect the victim? And what we find is that a lot of people who get their car broken into are living in fear after the fact. The only way they can overcome their fear, if they are willing, and we can help them, is to come together with the offender and talk this through and see that the offender is not a monster that they have to worry about every day in their lives. I think this is the best part of the service. The people need to understand that if kids are willing and are there for the right reasons they can help a lot of people overcoming their fears" (Conferencing specialist #3)

Other benefits from RJ conferences and the inclusion of victims in the process were seen in holding youth directly accountable for their actions, helping them understand the victim's perspective, and repairing the harm they caused, as explained by two participants:

> "Before, they [youth] would write this kind of standard apology letter, which is kind of meaningless and they don't really have much remorse if they are forced to say something. It's different to meet face to face with somebody, whether they want or not. It really forces them to see the impact that this had on somebody, that their actions are real, the impact that this has on the victim: emotional, financial, and physical. And I think this has more of an impact on the youth. And the

> youth has more of an understanding 'my actions really did hurt somebody. I didn't just do something and move on, there is no victim' whether it is an assault, a break and enter or something else. So if they experience that, there is a better chance that they internalize that and there is more of chance that they actually do something to avoid a similar situation because they have seen the impact of their behaviour." (YPO #8)

> "So what I am selling to the youth is that you have created this and you are the only one that can fix it. You are going to get sentenced regardless but you are the one who can help these people to, from this day forward, to move on with their lives. It can assist the kid as well to have a better understanding of the hurt they have caused as well and they can have that in court. When I look back when I was a PO, it was tough to deal with when the judge would ask the youth to write a letter of apology because the youth could never make the link to the victim. These youth just sit in front of the judge and all they want is being consequenced and get out of the courtroom. And most aren't really paying attention. It is another consequence sitting across from your victim and having to listen to all the hurt that you have caused and what can you do to make their lives better." (Conferencing specialist #3)

All participants emphasised the importance of the youth's responsibility to face the consequences of their actions and make amendments directly to the victim, an element that is lacking in the traditional adversarial system, where youth "only" have to passively accept the judge's verdict. Several YPOs used the term "eye opener" for these conferences, as they would make youth understand not only how their victims but also their families and support people were affected by their crimes. Moreover, some YPOs even believed that RJ conferences would be more successful in reducing re-offending than regular probation. One YPO shared the following experience:

> "It's huge. And that's one of the things I noticed during the first year doing this work is I paid attention to the kids after they were placed on probation, that quite a few of them were not re-offending. Let's just say they are making commitments to the victims like community service, personal service or restitution, the rates of those being completed is way higher than if the judge ordered it. And that's why I think there is so much benefit having this part of the *Youth Criminal Justice Act*." (Conferencing specialist #3)

However, this optimism concerning the positive impact of RJ conferences was restricted to non-serious and first-time offenders, who did not have complex risk profiles and did not require intensive treatment and services.

6.3.7.2 Barriers to RJ Conferences

Despite the general satisfaction with the introduction of RJ conferences at several stages of the justice system, YPOs highlighted some major barriers to conferencing. Some of these barriers were the reason for YPOs' cautious reluctance regarding an extended usage of these conferences.

Time Frame and Resources

While one of the anticipated forms of RJ conferencing under the *YCJA* was at the pre-sentencing stage after youth had been found guilty, most conferences appear to be held pre-charge (EJS) or post-sentencing. In response to the question of why pre-sentencing conferences were less common, YPO #7 explained that some of the reasons might be the conflict between the time frame of the court and the potential conferencing participants as well as legal issues:

> "I think it is a time issue. But more also regarding the legality, no one wants to admit to an offence before they have been adjudicated. They are not going to speak about their offence before they have their due process. Some lawyers do tell their clients to write an apology letter. But again, to set up a conference it takes a lot of time. It just wouldn't be feasible. And again, most lawyers don't want their clients to give the details before proven guilty or innocent."

The preparation for a conference can be very time and work intensive because sometimes several initial meetings with the victim and the offender to introduce the process and determine their eligibility and consent to participate are necessary. Particularly for more serious crimes this process can take up to a year for serious matters. Geographical distance among participants and the inconvenience posed to the conferencing specialist to travel larger distances to meetings with the victim and offender exacerbate the situation. Yet all conferencing specialists emphasized the importance of having as many meetings as necessary to gain

participants' trust and make them feel comfortable and prepared to hold a conference. This important preparation time can sometimes conflict with the court process, as indicated by conferencing specialist #2:

> "In our policy it says that we have 8 weeks if the conference is pre-sentence. And often, 8 weeks sounds like a lot, but it is not. It's a court time frame, not a people time frame. Sometimes victims can take a long time to be ready. One time I was really being pressured by the court. They were like 'When is it coming?' I went back again and wrote them a letter, saying that they are not ready yet to do it. And I was meeting with the kid, and part of the reason was, that the offender was a little iffy in terms of why was he doing this, what was the purpose for him. And I had a strong sense it was, the lawyer told him to do it because it was good for court. And I wasn't comfortable with it when I was meeting with him. But I was getting so much pressure so that I eventually went ahead... It wasn't ideal. When I look back I thought I wouldn't have done that if I wasn't pressured by the court to get it done. I felt I could do it but I would have needed to take more time to prepare."

Another conferencing specialist noted in this regard, however, that the time frame had never been a problem and that the court usually grants more time to prepare a conference because it sees the benefit of this process. The different experiences indicate that the success of RJ conferences depends, to a large extent, on the local court culture and the working relationship between the different juvenile justice system officials.

Time was also mentioned as to barrier for post-sentencing conferences when potential participants had moved on with their lives after the offence and did not want to participate in a conference. Conferencing specialists mentioned that common comments from victims were "You know, it is a year later, I just want to forget and put this behind me. The youth has already been sentenced. Let's forget it." This experience was shared by YPO #4:

> "It is difficult getting both parties together to participate, and even meeting with the parties. There is lots of preparation that is involved in these conferences, obviously for safety reasons and schedules and that alike. And oftentimes it can take months for one to occur, and a lot of times it would fall apart. The facilitator meets with the parties and sometimes after 3 or 4 months or even longer, one

> says 'it has been too long' and it falls apart. It has happened quite a bit. I know there have been successful conferences but it is…I would like to use it more often but…as being a YPO supervising a client it could be an effective tool for rehabilitation and also very good for the victims. I just find that the process is very lengthy. I am not saying that the preparation shouldn't take place, but it is a lengthy process and I think there is definitely a chance to lose the attention of everybody. Especially the victim. They might be open for it at the onset. But a couple of months later when they have moved on with their lives, they may not be as interested anymore as they were."

Local Court Culture

When asked for their perspective on other possible reasons for low referral rates, participants, again, emphasized how important the local court culture was for the number of referrals and the success of RJ conferencing under the *YCJA,* as expressed by policy consultant #1:

> "It [RJ conferencing] has been a significant benefit to our program area. We started off slowly I suppose, where it wasn't embraced by everyone the first two years. But it's more embraced now. We have certainly areas where conferences are going full time and we still have significant areas where it doesn't go like that. So I think a lot has to do with the effort of the staff and also the attitude of those in the justice system. Some people have bought into it as a good option and some haven't."

YPOs gave similar comments on the importance of local court culture. While some reported that some court officials (Crown Counsel, judges, and defence lawyers) were fully supportive of RJ conferencing, others expressed their frustration with the court's resistance to these conferences. YPO #3 felt that some court personnel were inclined to resist change from the traditional adversarial system to a new system that was based on RJ principles.

> "RJ hasn't really taken off like the way it should have. With all the trouble making it a formal process or formally recognized under the *YCJA*, I don't really see the judges have bought into it. This plays a role in sentencing. It is often used as a post-sentencing disposition initiative, as victim-offender reconciliation/ mediation and those kinds of things. But it is rarely used at the front end to come up with a good sentencing plan. So that's more about judges giving up control

and understanding the benefits and use of it. So, I don't think the intended role is there in practice."

Conferencing specialist #3 attributed another barrier to referrals less to conscious resistance to conferencing and more to a lack of familiarity with and knowledge about the process and outcome:

> "And it is the ones [YPOs] that have actually attended a conference and participated, they are sold. I think if there is any negativity out there, it is from those people that haven't had those experiences. I know they are busy and doing the front line work as a YPO is tough to move beyond with, but if they honestly took the time and sit in a conference and see how much success comes out of it, they would be supportive and I can guarantee it. Because every YPO in my region supports this and that's mainly because almost all of them have sat in a conference. If that is the kid you are supervising, you should be there at the conference to not only support your kid but also answer any questions the victim might have. It is amazing the discussions that take place between a victim and a probation officer because the victim wants information about the kids that have hurt them and then the probation officer can speak to how the kid is doing in the community. And it helps the victim as well. Hearing that the kid is having success in school or just reporting about D&A. Or if the kid is not doing so well, they are kept accountable. That's why I like having POs in there."

The interviewees also stated, however, that despite the reluctance of some YPOs and court officials, there had been an increase in conferences within the last couple of years. In particular, conferencing specialists reported that they only had a few cases during the first year of the *YCJA*'s introduction but that they are now very busy with the number of referrals that they receive.

Eligibility and Consent

Scepticism about the appropriate nature of a referral was another barrier to RJ conferences. Some YPOs were reluctant to refer more serious cases and cases where the youth was characterized by different risk factors such as substance addictions, or mental health issues. YPO #10 suggested that in these cases, YPOs

were more concerned with the immediate needs and treatment issues, which cannot be addressed in RJ conferences.

> "I don't think I am wary about referring but I can certainly appreciate that if there is an offender who has so many other issues going on, like major addiction issues, housing issues, those are the priorities because those are bringing them to the court and create a safety issue. He could do a violent offender mediation program. Could not be a priority at the outset. It could be buried perhaps in the priorities and needs of the youth."

Generally, conferencing specialists were more optimistic than YPOs about the potential and the eligibility of certain offences for RJ conferences, except for sexual offences and family matters. They relayed that in family matters participants tend to bring up past issues that are not related to the offence, which makes it more difficult to resolve their issues in one conference. Sexual offences were reported to be very difficult to deal with because of the traumatic experiences, potential re-victimization, and the offender's power over the victim. Moreover, conferencing specialists emphasized that without prior intensive treatment of the offender and lengthy counselling of the victim conferences could not be safely conducted. Yet, except for these cases, one conferencing specialist commented that he even expected to receive referrals for more serious cases as many of the non-serious offenders are diverted out of the formal justice system through extrajudicial measures and only more serious offenders reach the sentencing stage. Conferencing specialist #3 mentioned that any case might be eligible if both parties participate for the right reason:

> "No matter how serious the offence is, if the participants are willing and are in for the right reasons, and they want to put an end to their fears, want to make amendments to the people that you hurt, then for me it is the best way of dealing with those kind of situations."

The same conferencing specialist believed that RJ conferences dealing with serious cases had an even greater and more positive impact on the participants than lower-end offences:

> "There is greater impact or benefit for more serious cases. I think especially for victims, when something serious happens, it is such a huge impact on them. It not like, okay, someone broke my car windows. Or I lost some money. As opposed to my home was broken into. Or my child was assaulted. I find there is a much larger emotional impact that lasts for a longer time. And a lot of things can't be resolved by just letting time pass. I mean eventually, over time, those things will heal. Maybe. But I find that those people that are really affected by it, like they have a lesser extent of safety, and are scarred, afraid that they will come back or their child will be assaulted again in the community. I mean it is so obvious when you meet with both the victim and the offender. If you just brought two people together so they can understand. Everyone just feels, okay, it's fine now."

In articulating the practice of RJ conferencing, YPOs and conferencing specialists recognized that both the victim and the offender have to voluntarily participate and have the right reasons to participate. The victim's safety and needs were paramount:

> "Some young offenders initially do not take responsibility for their actions, claiming that they had been drunk or under the influence of drugs at the time of the offence and that they could not remember what happened. A conference cannot be held if the youth keeps this attitude, as it would only re-victimize the victim." (Conferencing specialist #2)

All conferencing specialists mentioned that even if youth initially decline to take responsibility, they try to meet with them further and help them to connect with what they did as youth are often anxious and afraid to meet the victim. Conferencing specialist #3 stated that his clients were even more nervous to participate in a conference than to deal with a police officer or judge because "they know that they are going to be held truly accountable for their actions and have to face the people that they hurt." Interestingly, he went on noticing that that the youth and victim often share the same feeling towards conferencing:

> "I can only assume that they [victim] don't want to be identified. If there is a fear factor there that if they meet the youth that broke into their house and he gets to know who they are, he'll come back another time to hurt them. But the ones that go forward and make that other step and meet the kid understand that they don't

> have to have that fear. And it is only the kid that can give them that. And I think for the youth their biggest fear is so much anger in the people that they have hurt, that they want to hurt them. It is almost on the same level."

6.3.7.3 Suggestions for Improvement and Future of RJ

The interviews disclosed that YPOs and court officials sometimes reached a conclusion too early about the offender's or victim's initial resistance to participate or their eligibility in more serious cases. This scepticism reflects lack of knowledge and information about conferences and their potential. While all three conferencing specialists agreed that conferencing had become more popular and is conducted more frequently since the introduction of the *YCJA*, conferencing specialists emphasized the potential of conferencing and the need to have conferences for more serious crimes to repair the harm that was done. One YPO commented on the potential of RJ conferencing, saying:

> "It has come up a couple of times where at the pre-sentence conference that there was so much resolved between the victim and the offender. That usually occurs where it is a first time offence for the offender and the judge and Crown can see that the offender learns enough from that experience that they don't need that further consequence. And the charge was stayed...It's just something that can't be overlooked by a judge and Crown counsel. And the judges are very curious even though there is a report to submit what the victim thinks of the whole conference piece." (Conferencing specialist #3)

Conferencing specialists also promote expansion of the use of conferences at all stages and for all types of offences, especially at the pre-sentencing stage, except for family matters and sexual assault cases. However, YPOs were more hesitant in regard to the potential of RJ, particularly as an alternative to the traditional court, but argued that a combination of both for serious violent offences would enhance the current juvenile justice system. Court personnel were reported to have the same reluctance to change the traditional adversarial system to a system based on restorative justice principles and processes. Nevertheless, more judges are in

support of conferencing and usually put a conference on a probation order if suggested by a YPO.

In terms of referral rates, the Interior appeared to be most successful region with their "presumption in favour" policy, where YPOs are obligated to suggest to the court that every matter should be considered for a RJ conference if there is an identified victim. Therefore, every PSR that is written includes a conference recommendation and it is then the conferencing specialist's responsibility to hold initial meetings with the potential participants and decide about the eligibility of the case. While not all referrals end in a conference, for instance, because the victim only wants an apology, most of the cases do end up in a conference in the Interior. Moreover, YPOs from this region not only talked more positively about the impact and potential of RJ conferences, they also reported having had more clients go through these conferences than YPOs from other regions in BC. Policy consultant #1 explained that this policy was not specific to youth justice but reflected a collaborative decision-making approach in this region:

> "That [presumption of favour policy] comes from a policy that is not specific to youth justice in the Interior region. They have adopted a policy of assumption of collaborative decision-making in youth justice and child welfare. They are all required to follow a certain provincial region procedures. But then regions also have some latitude beyond that in terms of their own policies. And the Interior region has pushed the collaborative decision making policy a little bit further than other regions. That said, it has contributed about a discussion about that in our provincial policy table on whether there should be something in our general policy that emphasizes this. There are other issues that come into place like the availability of resources and access to it. Not everybody has the appropriate training. It is an area where we will see a gradual change."

These comments suggest that better education of juvenile justice professionals and communities and similar policies across BC and other provinces might assist in addressing resistance and low referral rates in some regions. Similar to the policy in the Interior region, the *YCJA's* overall policy of diversion and custody restraint shows that a successful implementation of certain principles can be very

successful, if decision-makers are legally mandated to do so (Doob and Sprott, 2005). Therefore, YPOs and judges should not only be encouraged to hold RJ conferences but instead should be legally obliged and specifically directed to consider an RJ based approach if victim and offenders voluntarily agree to such a process. As well, if RJ processes are conducted and victims and offenders mutually agree to a resolution of the crime, decision-makers such as judges should be bound by the suggested outcome.

Sharing stories of successful conferences might also contribute to a more positive attitude toward the potential of RJ conferences and consequently, increased referral rates. One conferencing specialist suggested training sessions for all YPOs in victimology and victim offender mediation, at least at the lower end, to promote the potential of RJ conferences.

It is critical for a successful implementation of RJ conferencing that juvenile justice officials and community agencies, who employ restorative justice based interventions, know what constitutes a RJ approach. To have a restorative and satisfying outcome, it is critical how people affected by the crime are invited and guided through the process. As Walgrave (2005) states, "A taste of mediation, a bit of conferencing or a pinch of community service, without questioning and knowing the fundamental processes of RJ could lead to "fast food" restorative justice practices even if they are well-intentioned" (p. 20). These "fast food" RJ practices would limit the full potential of RJ and can be harmful and re-victimize the victim if there is a lack of appropriate preparation, guidance, and knowledge of RJ (Johnstone & Van Ness, 2007).

Instead of a "full blown conference", YPO #8 mentioned that sometimes "mock conferences" were conducted, where the victim did not want to participate but the YPO presented the victim perspective and tried to help the youth understand what it would have been to sit through a meeting with the victim:

> "Sometimes the facilitator only does a RJ piece with only the offender. She helps them to prepare an apology letter and tries to

> enlighten the youth about what happens to the victim. So we can do partial RJ."

The outcome of such a process might still be partially restorative even if obligations or sanctions are imposed as long as they focus on reparation and restoration as well as putting an end to a conflict. Although the restorative impact is reduced, restitution, compensation, or an apology to the victim, for instance, are still more restorative than a complete lack of the victim's consideration and an infliction of pain on the offender (Walgrave, 2005; Charbonneau, 2005; Johnstone & Van Ness, 2007). Even community service can be somewhat restorative if the victim has input in the selection of the site or type of work (Corrado, Cohen & Odgers, 2003).

Most important for the success of RJ, however, is an individualized approach. For instance, as mentioned previously, some cases require more time to prepare both victim and offender for the conference. However, conferencing specialists also mentioned that victim and/or offender are sometimes not interested in having a conference as too much time has already passed and they have already moved on with their lives. Consequently, it is not possible to have a policy with a standardized time frame. Instead, an individualized approach emphasizing the participants' needs and concerns is essential.

Moreover, it is important to combine RJ conferences with necessary treatment and services. In particular, serious and violent young offenders are characterized by an accumulation of interconnected individual and environmental risk and need factors. RJ conferencing, which mainly focuses on the victim and repairing the harm, is unable to address the underlying causes of the offending behaviour and prevent future crimes. These types of offenders require multi-level interventions and services, which cannot be provided by a community-based conference without compromising public safety (Corrado et al., 2003). Yet, if combined with treatment and social services, RJ conferences can be more successful and satisfying for all participants than the traditional adversarial court system (Walgrave, 2005).

6.3.8 Programs and Resources

Consistent with previous research, the qualitative interviews disclosed that YPOs from rural and isolated regions were lacking community programming and resources. They frequently commented that the *YCJA* sounded great in theory but that it was difficult to successfully implement the act in communities, which did not have sufficient resources. Policy consultant #2 shared her experience from the northern region:

> "There was a vacant position as a psychologist. They were unable to recruit somebody who wanted to work in Prince Rupert. There is the reality that we have a very small caseload, so it is possible that particular services needed by a particular youth at a particular time are not always available…The reality is that a YPO in a larger community has more access to resources than someone in an outlying community. And that is not specific to youth justice but education, health care, or any other resource in the province. It's not always about the money. Sometimes you have the resources and the money but you need people that have the skills and education and want to be in that location to provide these services."

YPO #7 from a well-resourced region stated the following about YPOs in isolated areas:

> "That is one of the challenges in isolated areas. They have a lack of resources, a lack of programs. It makes the job of PO in these regions more challenging. They have to be a person with many roles. Need to be a therapist, a D&A counselor, do some follow-up sex offender maintenance. We have sufficient programming in our regions..., just not enough resources in terms of waiting lists."

Long waiting lists, particularly for residential treatment programs, were mentioned in most of the interviews with YPOs. Conferencing specialist #1 from the Island region the following experience:

> "You have a kid and they are willing to go but you can't send them. All programs [treatment] are full. We have really great programs in the community, but we also have many kids in need."

In addition, YPOs across the regions criticized the general lack of housing and transitional or aftercare programs for young offenders:

> "It doesn't matter which program it is, it is hard to find the aftercare. And it is hard because every time you send a kid to a program, you send them to a fish bowl situation and then you smash the fish bowl and let them flow into the stream back home. It gets to be a tough job to put in the right resources when they are back home. You do the best you can with what you got. And not every community is resource rich. So there needs to be a lot of creativity to make it work." (YPO #4)

> "You sent them off to treatment. They do really well. And then they are going back to the same environment. And then there might be a parent struggling with addictions or whatever. How do you transition them, maybe a little bit more slowly back into the community?" (YPO #1)

The lack of aftercare programs is concerning as this time is critical for the successful reintegration of young offenders. Their reintegration is sometimes already more difficult as the geographic distance between the program site and their community impedes successful transition to local community.

Consistent with the results of the quantitative survey, YPOs reported that there was a lack of female-only and Aboriginal programs. YPOs from the North in particular complained that there were no specific programs for girls. Similar to the residential programs, long waitlists were a problem:

> "That's what we are lacking and there need to be separate services for males and females. What we have is good, but it takes forever to get kids into it. If we are lucky it takes 3 months, if not 6-8 months. It is extremely difficult because as you know youth are always changing and when they say they want to do treatment I want to send them there right away but that never happens." (YPO #2)

Even more concerning than the lack of programs and long waiting lists was that some YPOs were not aware of or did not see the need for specific female-only programs other than the Intensive Support and Supervision Program (ISSP) with a female one-on-one worker. Policy consultant #2 explained that YPOs' unawareness

might be due to the fact that research on the gender-specific needs of female young offenders was only slowly emerging:

> "There is a reality that a lot of the literature focused on female young offenders is fairly recent. There was precious little literature on female offenders, let alone female young offenders, two decades ago. It's an emerging area...On the community side, we do have residential programs specifically for female youth. Gender-specific programs in rural communities, once again, the numbers become a challenge. The number of female youth on probation and custody are very small. We don't have a lot of girls at one location at any given time. That said, philosophically we are working on it and integrating literature that says that they are benefitting from gender-specific programming and we are trying to move in that direction. We are in the early stages and one thing we were able to do last year with federal funding was a national forum with female youth in the justice system."

While young male and female offenders share many risk factors, many young female offenders have to deal with abuse issues more frequently than boys do. Research done in BC prisons reported that ninety-six percent (96%) of the girls have experienced physical and/or sexual abuse. Thirty-six percent (36%) reported specifically that they have experienced sexual abuse (Dean, 2005).[31] Moreover, girls' profile also includes emotional stress, negative body image, disordered eating, suicide, and pregnancy and motherhood issues (Chesney-Lind and Shelden, 2004). These additional gender-specific needs and risk factors require special treatment and services such as sexual abuse counselling to deal with their trauma and single parent support in the community. Consequently, an increase in female-only programs across the province is needed. Equally important, YPOs must receive more training on gender-specific needs and effective programming for girls. The same applies for the needs of Aboriginal young offenders. While YPOs received sufficient training on the colonial history of Aboriginal people, it is also important to teach them about the culturally specific risk factors, how they related to their offending, and how effective programming can address them:

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[31] These numbers can even be higher as some girls either do not identify their experienced abuse as such or do not want to share the information (Dean, 2005).

> "What is always lacking in the training on Aboriginal issues is that part. We get a lot of history, context, residential schools, cycles of abuse, generational problems, and that is all extremely relevant. But we now need to move, we are all very familiar with that, training and workshops, but we need to move forward and talk about the models and styles and approaches, what's effective, what's working, what isn't, those kinds of policies and best practices." (YPO #3)

Overall, sufficient resources are critical because of the changed caseload of YPOs from the *YOA* to the *YCJA*. As YPOs reported, their clients have a more serious profile:

> "So the kids that we have are much more challenging. So we don't have resources to deal with teenagers, so we have most of our kids living on youth agreements, living on their own. Living on the street, living with friends. I have only one kid that lives with their family out of ten." (YPO #11)

The *YCJA* has shifted its focus to diversion and alternatives to custody. To successfully implement this objective, however, a re-allocation of resources is required. Young offenders cannot be dealt with safely and effectively in the community if there is a lack of community resources. Moreover, YPOs suggested that more individualised and integrated programs would be more successful in addressing the underlying causes of crime:

> "Residential treatment, more available, and better too. I am not fully convinced that residential programs are top notch. I just never had a lot of success. It might not be the program. Maybe we don't deal with their home factors as good. Because 9 out of 10 times they go to treatment, do well, and then come out and within weeks they are back to square one. It is a shared blame. Sometimes they are so sheltered in these programs. We need to do better in how residential treatment works. The families should be involved more. They should be part of the program. A more integrated approach. In simple terms, we need more accessible residential treatment, coupled with more integrated services and the inclusion of families." (YPO #8)

YPO #3 also emphasized how important mentoring was for young offenders on their way to rehabilitation and reintegration:

> "Community based program that is focused on needs, balance of educational, counseling, recreational, so that it addresses all those pro social health needs, and it's supportive, it provides adult support in a strong role model type. Basically, it is a combination of accountability and structure, combined with strong adult mentoring."

Another frequent criticism was that some programs had too restrictive admission criteria, for instance, some treatment programs required that youth had to have a certain amount of "clean time," i.e., a time period where they had been off drugs. Considering the youth risk profile and the fact that substance abuse might have brought them into trouble with the law in the first place, this criterion is probably difficult to meet for most of the youth in court. Moreover, YPOs suggested that the ISSP program, which was praised as one of the most effective programs by YPOs, would only be imposed on more serious offenders, i.e., the ones that did not get diverted and ended up in court. Lower-end offenders who could nevertheless benefit from ISSP are not eligible for this program, which could help them to stay out of the system in the first place. Other suggestions in terms of successful programming were more job placement and vocational programs with follow-ups, as retaining work is as difficult for these youth as obtaining work.

On a different dimension, YPO #3 commented on the lack of program evaluation:

> "As a PO, if they give us a program, we evaluate it based on our experiences. So if we send someone to a program and the staff and the kid tell us that it is worthwhile and they got a lot out of it, then we consider it a good program and make more referrals in the future. But if we have an awful experience where we find the staff not very accountable or professional or knowledgeable in terms of how to work with those kids, then we lose confidence in these programs and stop referring. We treat them all the same way. It is based on our own individual experiences."

Policy consultant #1 supported this notion that standard program evaluations are necessary and explained that youth justice was moving in this direction:

> "The problem with our programs is that they are still old fashioned programs, we don't measure the outcomes of our programs well, we don't specify directly what we want to achieve, there are a lot of gaps in our programs and the philosophy of them. But more so in the reporting back, the measuring of them. Are these programs effective or not? And that's an area we working on trying to address. That's when we came up with a new substance abuse program for kids and we are building it so that we have the appropriate expertise and we are building in an evaluative component where we will be measuring things right from the start and with specific objectives in mind to see whether we meet those objectives. For most of our programs we don't have that."

6.4 Suggestions to Improve YPOs' Work

One comment summarized most of the suggestions YPOs came up with when asked what would make their job easier and more successful: "Less paperwork, sharp shock opportunity, more resources, and better working relationship with Forensics." (YPO # 11). When criticizing the increased amount of paperwork under the *YCJA*, YPOs mostly regretted that the time they spent in front of the computer reduced the time they were able to spend with the youth on their caseloads. A few YPOs mentioned that they would like to be given a budget, similar to social workers, to buy youth clothes or food if necessary or to go for ice cream to ease youth into talking to them.

Other suggestions were to introduce a better system to supervise and support YPOs in integrated offices as they are mostly supervised by non-youth justice personnel. While YPOs generally praised the effective exchange of information among the different professions as well as faster processing and referral times in integrated offices, they might not always receive specific assistance, guidance and mentoring necessary as provided in "tight-knit" YPO offices. Policy consultant #1 suggested the following:

> "I think that our political structure is difficult with regional authorities, resulting in different offices doing different things. A lack of youth justice supervision is across the board. I think we need a stronger central governing office that would be able to assist with

> these sorts of things. It is difficult the way we have it right now. YPOs are being left out on their own and we are not a big united team, like the corrections branch would be."

As mentioned previously, overall, YPOs appeared to very enthusiastic about their work and were eager to assist youth in their rehabilitation and reintegration while ensuring public safety. In conclusion, the largest concerns of YPOs related to the complexity of the *YCJA*, the inappropriate use of diversion, bail, and custody restraint for certain offences, the police's and court's unfamiliarity with the act in some cases, insufficient resources, particularly residential treatment and more integrated programs, and a better and more timely exchange of information with Forensics.

Chapter 7: Discussion

It was hypothesized that YPOs, overall, would not have large difficulties with the *YCJA* document and that their understanding and application would have become easier over time. The results of the study only partially support these hypotheses. Overall, *YPO*s praised the overall youth policy, the variety of youth sentencing options, and, particularly, the emphasis on diversion and custody restraint. This outcome is consistent with previous research that indicated that the *YCJA* had, for the most part, been successfully implemented (Bala et al., 2009; Doob and Sprott, 2005). Yet, YPOs also felt that the *YCJA* was not necessary in BC since their province did not have the problems that other provinces and territories had under the *YOA,* including high court and custody rates. Moreover, YPOs cautioned that diversion in form of EJS and custody restraint were sometimes used in inappropriate cases, where youth posed a risk to public safety. Overall, however, YPOs were generally positive about the new *YCJA*. Most sections of the *YCJA* are very directive, and, despite the *YCJA*'s length, complexity, and potentially conflicting objectives, YPOs appeared, except for some complex sections, to be provided with clear, detailed sets of guidelines for applying the *YCJA* and its different sections. However, in contrast to the initial hypothesis, only one section was reported to be significantly easier in 2004 than in 2007, and two sections became even more difficult. As well, YPOs mentioned that police and judges, particularly those ones working in circuit courts and mostly dealing with adult offenders, were not always very familiar with the youth legislation, and YPOs sometimes felt that they had to explain them certain provisions and processes.

Furthermore, as hypothesized, the majority of YPOs reported certain complex sections being at least somewhat difficult, i.e., *Adult Sentencing Process* and sections that required cooperation with other professionals, including *Exempt from*

Viewing and Receiving Forensic Psychiatric Assessments, Referral to a Child Welfare Agency, Non-Disclosure of Youth Records, and *Information Sharing with Other Professionals*. These sections remained at least somewhat difficult for some YPOs and were not reported to have become easier over time. In particular, the perceived level of difficulty for two sections *Non-Disclosure of Youth Records* and *Information Sharing with Other Professionals* was reported to be more difficult several years after the *YCJA* was introduced. The successful implementation of sections related to interagency work at the sentencing stage is particularly important considering the profile of youth on YPOs' caseload. The legally mandated diversion of non-serious offenders and the restriction of court and custody to more serious offenders have led to more complex caseloads for YPOs. The demands associated with YPOs' cases have thus increased because of youths' drug and mental health issues, and more complex risk profiles for serious and violent offending. Research has consistently shown that a substantial numbers of these youth are characterized by an accumulation of individual and environmental risk factors, which require multi-level and inter-ministerial intervention and services (Corrado et al., 2003). While the *YCJA* strongly encourages an integrated multi-ministerial approach to youth crime, it is not legally mandated under the act. For instance, the provincial policy in BC allows Youth Forensics to provide YPOs with summary assessment reports. Yet, these reports go directly to court and there is no legal mechanism for YPOs to automatically receive court ordered Forensic assessment prior to the sentencing to the court. As well, the results of the survey and of the in-depth interviews indicated that ICM conferences do not happen as frequently due to the courts' imposed timelines.

Moreover, the different schedules, mandates, resources, values, and bureaucratic boundaries of the different youth justice officials can prevent successful cooperation in the justice system. While YPOs reported that some information is exchanged informally over the phone, YPOs would like to have a better communication and information sharing with Forensics in terms of sentencing recommendations and case managing youth as well as receive more

feedback from different services providers and program staff about the youths' attendance, behaviour, and successful completion of the program. This dynamic appeared to be is less of a problem for YPOs working in multi-disciplinary offices, who highly praised the cooperation and mutual understanding among the different professionals at their office, or their equivalent applying the *YCJA* in the province of Quebec where a corporatist based model has been in effect since the 1979 *Youth Protection Act*. This act formally integrated the YPO role with all the key related youth service roles to maximize the use of either outright diversion for cases involving minor offences and no serious risk factors, diversion to multi-resources for minor and moderate offences, or case planning for young offenders sentenced by the youth court (Trepanier, 2004).

Similarly, England legally united formerly separate agencies in Youth Offending Teams (YOT). This approach reduces the duplication of effort and delays in response time, and enhances pooled skills, services and resources, thus providing a more efficient and effective approach to youth crime and its prevention. Although the different professions in England, including probation, social work and mental health, might still have different mandates and perspectives on how to respond to young offenders, they are legally mandated to cooperate and overcome bureaucratic boundaries and inevitable delays between agencies. In effect, the overall experience of practitioners was that YOTs led to the "reciprocal exchange of knowledge, direct or quicker access to other services and expertise [and] improved referral processes" (Burnett and Appleton, 2004, p. 15). Career and mental health workers on the team were deemed highly valuable because their stake in the team reduced long waiting times and provided fast referrals to the appropriate agencies (Burnett and Appleton, 2004). The original intention and framework of the *YCJA* encourages and provides the opportunity to apply such an inter-ministerial approach to youth crime. Yet as the results indicate, cooperation, mutual understanding, and information sharing between YPOs and professionals from other ministries, especially mental health resources, still present a challenge for some YPOs when applying the above complex sections related to serious and violent offenders.

The results of the study also provided some explanations as to why the newly introduced IRCS order had been rarely used for serious and violent young offenders. While all YPOs reported that the eligibility criteria were too restrictive and most of them never had a youth on caseload that would have been eligible for this order, there was also some uncertainty among the YPOs about the exact eligibility criteria and the process of an IRCS application as well as the tendency to recommend sentences that they were more familiar with and had already used on a daily basis under the *YOA*. Moreover, YPOs reported that some judges were unaware of this order as well. Both judges' and YPOs' unawareness and unfamiliarity with the IRCS order most likely reduce the already small number of youth that would be eligible. Other potential reasons provided by YPOs for the small number of IRCS orders related to extensive paperwork, accountability issues, and public pressure. In fact, some YPOs admitted that they were concerned about recommending an IRCS order in case a violent offender would re-offend during the supervision time of an IRCS order. Therefore, some argued, they would feel more comfortable recommending a lengthy adult sentence. Moreover, they suggested that judges might prefer adult sentences, as those would please the public more than youth sentences such as an IRCS order, which mainly focus on rehabilitation and thus might appear as a "soft" response to serious youth crime.

Besides the discussion about barriers to IRCS orders, the interviews also disclosed how the number of IRCS orders could be increased under the *YCJA*: the large majority of YPOs mentioned that they had a good working relationship with judges and that judges usually followed their sentencing recommendations. Consequently, YPOs could increase the number of IRCS orders by recommending them more often in the PSRs and thus making judges more aware of this sentencing option. The same applies for the newly introduced "secondary IRCS" order, which provides sufficient funding and intensive treatment for a wider range of serious and violent offenders in custody and subsequent community supervision.

More initiative from YPOs is also critical for an increased usage of RJ conferencing in form of victim-offender mediation. While there had been

significantly more conferences since the introduction of the *YCJA* and most participants in the study praised the potential of RJ conferencing and the positive impact on both the victim and the offender, the study also revealed large variances in the practice of conferencing, depending on the local court and YPO culture and practice. Generally, the benefits of RJ conferencing were seen in the inclusion of the victim in the process, holding youth directly accountable for their actions, helping them understand the victim's perspective, and actively repairing the harm they caused. Particularly, the latter benefit, making amendments directly to the victim, was reported to be lacking in the traditional adversarial system, where youth "only" had to passively accept the judge's verdict without necessarily facing the victim. Common barriers to successful conferencing were the judge's and YPOs' reluctant attitude to integrate RJ into the traditional, adversarial justice system, and their lack of knowledge of the process and benefits of RJ. As well, preparation time, and the ineligibility of participants (i.e., family or sexual assault cases), and missing consent of the involved parties were reported as common barriers to RJ conferencing. In addition, conferencing specialists criticized that YPOs would sometimes reach premature conclusions about the offender's or victim's initial resistance to participate or their eligibility in more serious cases. In fact, conferencing specialists suggested an expansion of the use of conferences at all stages of the criminal justice system and for all types of offences, especially at the pre-sentencing stage, except for family matters and sexual assault cases. YPOs were more hesitant in regard to the potential of RJ, particularly as an alternative to the traditional court system. They suggested, however, that a combination of both for serious violent offences at the post-disposition stage would enhance the current juvenile justice system.

The Interior region was reported to be most successful in facilitating RJ conferences. In this region, youth policy directs YPOs to consider every case in court as being appropriate for a RJ conference if there is an identified victim. Hence, YPOs include a conference recommendation in all their PSRs. If the judge agrees, which typically happens, the conferencing specialist holds initial meetings with the potential participants and decides about the appropriateness of the case for a RJ

conference. While not all referrals end in a conference, for instance, because the victim refuses to participate, the Interior region appeared to have the highest rates of referrals and successful conferences. These results suggest that, similar to diversion and custody restraint under the *YCJA*, how successful certain policies can be if decisions-makers, in this case YPOs, are not only encouraged but also legally mandated to implement certain practices in their daily work. A similar approach is applied in New Zealand's with its 1989 *Children Young Persons and Their Families Act,* which introduced family conferences as a major legislative element of the juvenile justice system (Youth Justice New Zealand, 2009). New Zealand's family group conferences are based on RJ principles, and the central idea that families and children have a fundamental right, responsibility, and capability to participate in decisions that affect them (Morris & Maxwell, 1993). These conferences are utilized as both pre-charge mechanism, (to examine whether or not a charge can be avoided) and a post-charge mechanism (to determine how to deal with the offender and repair the harm done). All offenders that have been arrested or charged and whom the police want to take to court must be referred to a family conference first.[32] A successful outcome ends the justice process. In addition, once offenders have been charged, judges cannot sentence them before a conference has been conducted. Judges will refer to the outcome of the conference and prefer solutions that respond to victims and keep young persons in the community as long as there is no risk for public safety (Youth Justice New Zealand, 2009).

Besides the lack of a legal mandate to conduct RJ conferences with all young offenders under the *YCJA*, the difference between Canada's and New Zealand's systems is that the conferences under the *YCJA* are no decision-making bodies; the results of the conference are submitted to court, which has the discretion of accepting the outcome of the conference. Yet, youth courts also have to base their decision on other *YCJA* principles such as proportionate accountability. In contrast, family group conferences in New Zealand are an integrated part of the formal justice

[32] Even if a police officer does not want to charge the young offender he or she can take no action, warn the young person, or refer him or her to a family conference (Youth Justice New Zealand, 2009).

system, and the outcomes of these conferences are binding to all justice system officials (Maxwell & Morris, 2006).

Therefore, approaches similar to New Zealand's family group conferencing or the policy in the Interior region as well as better education of juvenile justice professionals and communities about the advantages and impact of RJ conferencing might assist in increasing the number of RJ conferences under the *YCJA*. Equally important for successful RJ conferencing is that that juvenile justice officials and community agencies, which employ restorative justice based interventions, know what constitutes RJ conferences, as not all conferences are inevitably restorative. Just bringing together the offender and the victim can be harmful if there is a lack of appropriate preparation, guidance, and knowledge of RJ. To have a restorative and satisfying outcome, people affected by the crime need to be invited and guided through the progress by trained and knowledgeable facilitators (Johnstone and Van Ness, 2007). As Walgrave (2005) states, "A taste of mediation, a bit of conferencing or a pinch of community service, without questioning and knowing the fundamental processes of RJ could lead to 'fast food' restorative justice practices even if they are well-intentioned" (p. 20). These "fast food" RJ practices would limit the full potential that RJ has for young offenders as an addition or alternative to the traditional court system, especially if implemented in conjunction with treatment and social services for young offenders and their families.

However, RJ conferences for more serious and violent offenders alone will not solve youth crime and the often complex underlying causes thereof. Moreover, there is still too much confusion as to what constitutes RJ, its role, the extent of its applicability within the criminal justice system, and the effectiveness of RJ interventions (Gavrielides, 2008). Yet, RJ conferencing offers a new vision of justice and conflict resolution. Both the rehabilitative (treatment) and a more punitive (harsh sentences and supervision) approach not only place offenders in a passive role and take away the ability to make amends but also take the conflict and harm on an abstract level, away from the real problems of victim, offenders, and communities (Bazemore & Umbreit, 1995). In contrast, the implementation of more

RJ conferences at all stages can enhance the juvenile justice system by providing a more holistic and community-based resolution to crime, which holds young offenders accountable, avoids stigmatization, promotes their reintegration, elevates the role of victims and communities, and attempts to repair the harm caused (Zehr, 1990; Johnstone and Van Ness, 2007).

Other results of the study disclosed YPOs' challenge to implement the Aboriginal youth policy under the *YCJA*. The situation of Aboriginal young offenders is similar to African-Americans and Hispanics in juvenile justice in the US and minority groups in Europe, where eight million Roma reflect the largest ethnic minority group and large proportions of the prison population (Muncie, 2008; Slowikowski, 2009). The legislated Aboriginal policy embedded in the *YCJA* is similar to legislative and policy efforts in the US, where addressing disproportionate minority contact with the juvenile justice system is a core requirement of the *Juvenile Justice and Delinquency Prevention Act* (Slowikowski, 2009). However, the results indicated that the special constitutional status of Aboriginal young offenders under the *YCJA* and its emphasis on their special (sentencing) needs was not successfully implemented, which might be a contributing factor to Aboriginals' rising proportions in remand and custody (Kuehn et al., 2010). YPOs reported that the section *Gladue reports* was perceicved to be one of the most difficult ones to implement. Besides the work and resources that are required to write these reports, it is possible that YPOs reported Gladue reports to be difficult to write because of cultural barriers; nearly the entire YPO sample was Caucasian and only 2 YPOs were Aboriginal. Equally concerning, Gladue reports had been rarely ordered and many YPOs felt that these reports, which are very lengthy and time intensive, would not be necessary. Instead, they suggested that all the required information could be covered in regular PSRs. Gladue reports, however, are critical to provide detailed information about the youth's culturally distinctive risk factors and his or her community in order to assist youth justice decision-makers in reaching culturally appropriate sentences and, especially, imposing alternatives to custody.

The lack of court ordered Gladue reports could also be due to previous BC Court of Appeal's decisions and its ambivalence towards sentencing decisions based on Gladue reports. In fact, recent research disclosed that there are significant variations in the application of *Gladue.* While the Ontario Court of Appeal emphasized that there are no cases involving Aboriginal offenders in which Gladue does not apply, the BC Court of Appeal appeared more reluctant to entertain Gladue reports to mitigate sentences for more serious Aboriginal young offenders. Moreover, the BC Court of Appeal seemed very receptive to allow Crown appeals to increase sentences that had been mitigated through *Gladue* (Roach, 2009). It is possible that the Appeal court's ambivalence towards sentencing decisions based on Gladue reports has affected youth court judges and YPOs in BC and their decisions to order and write Gladue reports.

Of equal concern was the limited access to Aboriginal community programs. YPOs reported these programs to be among the least accessible programs. Yet, Aboriginal young offenders are disproportionately characterized by an accumulation of inter-related individual and environmental risk factors including: a high level of poverty, lower levels of income and education, substance abuse problems, and higher levels of mental health problems such as anger management problems, depression, schizophrenia and antisocial personality disorders. In addition, many Aboriginal youth in custody were suspected or confirmed to have Fetal Alcohol Spectrum Disorder and Attention Deficit Disorder. These risk factors must also be seen in an inter-generational context considering the colonial history and Aboriginals' traumatic experience in residential schools and, therefore, require culturally specific programming (Corrado and Cohen, 2002; Corrado, Cohen, and Watkinson, 2008; Latimer and Foss, 2004).

Noteworthy, however, is the reactive role of the youth justice system and, therefore, the question evolves as to how successful the current Aboriginal youth policy can be as it is only able to address the symptoms and not the causes of Aboriginal offending. The accumulation of inter-generational and inter-related risk factors requires early prevention and intervention services of Aboriginal youth in

general. Yet, while the underlying causes of Aboriginal's offending might not be addressed, the results disclosed that the implementation of the policy is inadequate and, consequently, has failed in improving the situation of Aboriginal youth in the justice system. Without culturally specific sentencing based on *Gladue Report*s, justice professionals' knowledge of Aboriginal youth's needs, and the provision of sufficient Aboriginal programs in community, the implementation of the Aboriginal policy under the *YCJA* can not even reach some of its potential for reducing Aboriginal's over-representation in the justice system, especially in remand and custody, and finding alternative sentencing options in the community.

Regional variation in the access to programs and the lack of programming in some regions also applied to female only programs. While female and male young offenders in corrections share many risk factors, girls are more likely to have to deal with abuse, trauma, pregnancy, and motherhood issues. These additional gender-specific needs and risk factors require special treatment and programming and cannot be addressed in co-ed programming (Chesney-Lind and Shelden, 2004). The lack of gender-specific programs is also of particular concern considering YPOs' comments on the continued use of detention for welfare reasons, as seen under the *YOA*, where girls were incarcerated for their own protection. While this practice is explicitly not permitted under the *YCJA*, lacking community programming and services, which could address girls' gender-specific needs, make it more likely that judges continue to detain girls for their own protection although their offences do not warrant remand or custody.

The successful implementation of a complex youth justice model such as the *YCJA* depends largely on program resource availability. The reported regional variation in the availability of community programs and resources and the limited access to some programs in BC are obviously detrimental to the successful implementation of the complex *YCJA*. Equally important is the implementation of community programs, i.e., whether programs are successful and meet their objectives. In fact, a large number of YPOs, except for YPOs working in the Vancouver region, believed that services and programs have failed to address the

special needs of young offenders. They suggested that more individualized and specialized programs such as ISSP for lower-end offenders, and integrated programs, including family, housing, mentoring, and intensive support during the transition time from custody and residential programs into the community, were necessary for the successful rehabilitation and reintegration of young persons. Moreover, some YPOs suggested that more evaluation research to measure the objective success was necessary to increase the effectiveness of community programs and services.

Chapter 8: Policy Implications and Further Research

It was not evident that YPOs interpreted the mixed model based *YCJA* in a manner that reflected the above described punitive trends identified in the US anf other western youth justice systems. Despite Canada's proximity to the US, the reverse has occurred in Canada generally, and in BC specifically, since youth court and custody rates and absolute numbers of youth going through the formal justice system have dropped dramatically beginning in 1996. This downward trend accelerated after the implementation of the *YCJA* (Doob and Sprott, 2005). Overall, the new Canadian youth justice policy has achieved what it intended to accomplish: focusing on reducing the over-reliance on the formal youth justice system by diverting non-serious offenders without an increase in reported youth crime, and restricting the use of custody to serious and violent young offenders (Bala et al., 2009). Although crime control elements such as lengthy adult sentences for young offenders are possible under the *YCJA*, these sentences have been reserved for the most serious and violent young offenders and are rarely used in Canada. It can be inferred from the YPOs' responses in this study that the *YCJA*, in combination with the BC training and policy manual for YPOs, provides juvenile justice personnel such as YPOs in BC generally with more guidance than the *YOA* despite its complexity and multi-model approach to young offenders. More specifically, it is likely that the *YCJA*'s legally mandated diversion for first time and non-serious offenders, explicit guidelines to utilize community sentencing options and restricted custody only for the most serious and violent young offenders, have been important in avoiding a punitive crime control trend without increasing youth crime rates. In effect, the other and even more central decision-makers such as Crown prosecutors, judges and defence councils have arguably also been able to interpret and apply the *YCJA* similarly to YPOs in BC. However, the results of the study also indicated that YPOs in BC would benefit from continued training on some of the *YCJA's* sections. Moreover,

the results revealed that the use of diversion, bail, and custody restraint have been used too extensively in some cases in BC, e.g., in cases of sexual assaults or dangerous offences where no harm was caused or intended but public safety was at risk. While these results might suggest legal amendments to the *YCJA*, it needs to be considered that the results only reflect YPOs' experience in BC. Consequently, more research in other provinces and territories is necessary to confirm those results and initiate potential changes to the act. It might be useful, however, to further educate justice system officials about the appropriateness of diversion and the eligibility of custody sentences.

The results of this study also indicated the need in BC for sufficient and effective community resources and services targeted for Aboriginal youth and girls as well as continued educational training targeting culturally and gender specific risk factors, the complex sections of the *YCJA*, and new sentences and processes for YPOs, judges, and related co-workers from other ministries in BC. Without improved inter-ministerial collaboration and information sharing on a case-by-case basis, it is difficult to design and implement the sentences for the above two vulnerable types of youth and for serious and violent offenders, especially for the legally mandated supervision period in the community after release from custody. In addition, regularily ordered Gladue reports for more serious Aboriginal youth at the sentencing stage would not only assist YPOs in balancing their time and resources but also provide culturally appropriate sentencing options and alternatives to custody for Aborginal youth in BC. As only a minority of YPOs reported to be Aboriginal, more Aboriginal YPOs with an increased (personal) knowledge of the challenges of Aboriginal youth and possible solutions to their situation might enhance the effectiveness of the youth justice system.

YPOs also expressed that they would like to have more time to work directly with youth. While YPOs should actually have more time to do this because the number of youth on their caseloads has decreased, the youth's risk and need profiles have become more complex and require more intensive work and resources. In addition, YPOs reported that the amount of paperwork has increased since the

introduction of the *YCJA*. This time in front of the computer takes away from the time YPOs can spend one-on-one with their clients. YPOs have always had a central role in the youth justice system and the rapport between them and their clients is essential for the youth's pathway to successful rehabilitation and reintegration. YPOs' role and time with the youth become even more important in rural or isolated areas, which are characterized by a lack of resources and services, and where YPOs have to take on many more roles, for instance being a counsellor and social worker.

Another suggestion that evolved from the interviews related to YPOs' supervision. Commonly in BC, non-YPO personnel supervise YPOs working in multi-disciplinary offices, and, therefore, YPOs might not have the support from other YPOs working with them. Consequently, additional assistance and guidance by trained YPO supervisors might support YPOs to more effectively supervise multi-problem youth and apply the complex *YCJA*.

In terms of further research, it is important to conduct more research with YPOs and other youth justice personnel across Canada since the results and policy implications of this study are limited to YPOs in BC and provinces with a similar approach to youth justice. The *YCJA* is a federal law but its implementation is provincial and territorial responsibility and, therefore, can vary accordingly. Equally important are comparative studies, which examine best practices for juvenile justice in other countries. For instance, England's YOT or New Zealand's legally mandated family conferences might be valuable additions to the Canadian youth justice system to effectively address their needs, truly hold youth accountable for their actions, and actively include victims in the justice process. As well, evaluation research on the effectiveness of programs and services for young offenders is necessary to determine whether the intented outcomes are achieved and funding is well invested.

In conclusion, corresponding with the fifth anniversary of the *YCJA* in 2008, and the 100th anniversary of the youth criminal justice system in Canada, the minority Conservative Party government introduced amendments to the YCJA to their election platform, which promised to "thoughen up" the YCJA. Recently, Bill C 4

with highly controversial proposals was introduced to Parliament including the following: make protection of society a primary goal of the *YCJA;* simplify pre-trial detention rules to help ensure that, when necessary, violent and repeat young offenders are kept off the streets while awaiting trial; reduce barriers to custody where appropriate for violent and repeat young offenders, for instance, add specific deterrence and denunciation to the principles of youth sentencing; require the courts to consider adult sentences for youth convicted of the most serious crimes; and legally mandate courts to consider lifting the publication ban on the names of young offenders convicted of violent offences (Department of Justice Canada, 2010). In other words, the global punitive trends Muncie (2009) observed are evident in the political rhetoric and proposed amendments of the *YCJA* by the current minority government despite the above encouraging youth crime trends, and generally positive assessment of the *YCJA* by youth justice personnel such as YPOs as well as respected researchers. It remains to be seen to what extent youth justice in Canada can continue its research-based pathway in addressing the underlying causes of youth offending behaviour and avoiding popular global crime control trends.

Appendices

Appendix A: Sections of the *YCJA* Related to YPOs' Work

General Philosophy	Preamble	The Preamble is not legally enforceable but contains significant statements about the values of the juvenile justice system, on which the *YCJA* is based.
	Declaration of Principle	Section 3. It describes the overall objectives and underlying principles of the juvenile justice system.
Daily Functions	Extrajudicial Sanctions (EJS)	Section 10-12. Extrajudicial Sanctions are diversionary measures applied by Crown, often in cooperation with YPO. Their purpose is to hold young people accountable through just sanctions that ensure meaningful consequences for them, and promote their rehabilitation and reintegration into society.
	Enforcement of Community Orders	Section 102 (see also Suspensions of Conditional Community Supervision)
	Pre-Sentence Report (PSR)	Section 40: The PSR report is a document that provides the court with background information on a youth who is facing sentencing and should include, among other information, the results of an interview with the young person, the parents of the young person, and the victim (if applicable and reasonably possible, as well as any information that is applicable to the case, including the age, maturity, character, behaviour and attitude of the young person and his or her willingness to make amends and participate in treatment and services, the history of previous findings of delinquency, etc. (Province of British Columbia, Ministry of Children and Family Development, Youth Justice Policy and Program Support, Section: F)

Daily Functions	Gladue Report	These reports are culturally specific PSRs. They were introduced to address the over-representation of Aboriginal offenders in the justice system by recognizing their special needs and providing culturally specific sentencing. They should include a description of the youth's heritage (e.g. cultural background, customs and tradition of community); a description of the systemic or background factors which may have contributed to the particular youth's offending; a description of the youth's community, including any issue within that community that may have contributed to the youth's offending (e.g. poverty, substance abuse, unemployment, community fragmentation or breakdown); the nature of the relationship between the youth and his/ her community and the youth's heritage; a description of the understanding of criminal sanctions; a description of community reports (Aboriginal and non-Aboriginal available to the youth, including alternatives to custody); and a description of any Aboriginal sentencing options that are available to the youth (e.g., Aboriginal sentencing circle) (Province of British Columbia, Ministry of Children and Family Development, Youth Justice Policy and Program Support, Section: F)
	Suspensions of Supervision in the Community & Conditional Supervision	Section 102 refers to the suspension of supervision in the community and section 106 describes the suspension of conditional supervision. The difference between the two sections lies in the required level of risk to public safety to suspend the supervision process. More specifically, the stipulated requirement of a suspension of supervision in the community is a serious breach that increases the risk to public safety. In contrast, a suspension of conditional supervision only requires 'reasonable grounds to believe that a young person has breached or is about to breach a condition' and is thus considered to be a less onerous test to suspend the community supervision.

Sentencing and Custody	Sentence Calculation Formula	Youth Sentences are calculated according to different sets of rules, which can be found in the *YCJA,* the *Criminal Code*, and the *Corrections and Conditional Release Act* and *Prisons and Reformatories Act*. Two documents, the '*Sentence Calculation'* and *'YCJA: Sentence Calculation Rules'* provide the general overview and description of sentence calculation, its administration, and range of situations that may arise. They were created to assist administrators and calculators to consistently calculate the sentences received and help other justice system officials to understand the effect of the sentence calculation in individual cases. YPOs use the *YCJA* calculation formula in their daily case management duties when for example writing a PSR on a youth who may already be in custody and is about to receive another custodial sentence – merging the two sentences together can result in an earlier release date.
	Committal to Custody Rules	Section 39
	Detention Before Sentencing (Bail)	Sections 28-31
	Youth Sentences	Section 42
	Adult Sentencing Process	Sections 61-81
	Sentencing Purpose and Principles	Section 38

Interagency Work	Exempt from Viewing Forensic Psychiatric Assessments	Section 34
	Court Ordered Conference	Section 19. Conferences are possible at several stages of the juvenile justice system. These conferences, convened by different professionals, youth, victims, and their families, are supposed to give advice on conditions for judicial interim release, and sentences, including the review of sentences, and reintegration plans.
	Information Sharing with Others	Sections 125-129
	Non-Disclosure of Youth Records	Sections 110-124: These provisions relate to the disclosure of a young person's identity.
	Referral to a Child Welfare Agency	Section 35

Appendix B: YPOs' Perception of the Juvenile Justice System

Youth Justice Policy	The *YCJA* is a complex act to understand.
	The *YCJA* does not offer enough guidance.
	The *YCJA* is a difficult act to implement.
	The justice system fails to provide appropriate options to deal with young offenders.
	The *YCJA* provides a lot of discretion on how to deal with young offenders.
Aboriginal Policy	I received sufficient training to understand and address the needs of Aboriginal young offenders.
	The *YCJA*'s emphasis to address the need of Aboriginal young offenders is successfully implemented.
Resources	The number of youth with mental health issues is increasing.
	There are not enough resources in the community.
	Budget restraints limit the ability to experiment with new programs.
	Services and programs fail to address the special needs of young offenders.
Interagency Work	Social workers understand my job as a YPO.
	Mental health workers understand my job as a YPO.
	I have a good working relationship with the judge in my community.
	Mental health workers do not always want to share information that is important.
	Police in my community have a good understanding of the *YCJA.*
	Judges in my community have a good understanding of the *YCJA.*

Appendix C: Qualitative Interview Protocol

1. Introduction

- Introduction of the Study and Project Overview/ Consent
- Introduction of participant (years of work experience; position)

2. General Perception of the *YCJA*

- What do you think generally about the *YCJA*, now, five years after its introduction?
- Has your caseload changed since the act was introduced? If yes, how so?
- The *YCJA* is a very complex and lengthy act. Do you find that it provides decision-makers with sufficient guidance on how to deal with young offenders?
- What are the strengths and weaknesses under the *YCJA*?
- What causes the largest difficulty or challenge for YPOs?
- Do you find that the juvenile justice system addresses the underlying causes of youth's offending behaviour?

3. Information Sharing and Interagency work

- How satisfied are you with information sharing and interagency work with other professionals under the *YCJA*? Why?
- How would you describe your working relationships with forensics, judges, and the police?

4. Conferencing and Restorative Justice

- Do you ever recommend community conferences in your PSR or have you participated in conferences?
- Are you satisfied with the way conferences are implemented under the *YCJA*?

4. Aboriginal Youth Justice Policy

- How successful do you think is the Aboriginal youth justice policy implemented in your region?
- Have you or one of the YPOs in your office ever written a Gladue Report?

5. Community Programs and Resources

- Do you feel that there are sufficient community resources in your community?

6. Suggestions for Change

- In your opinion, what needs to be changed under the *YCJA* to address YPOs' challenges with the *YCJA*?
- What would assist in implementing the youth justice policy more successfully and prevent youth crime?

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