

Youth Justice and the 'New Street Urchins' in Canada

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Abstract

Over the last ten years, the number of street youth in Canadian cities has increased significantly. Concerns have been raised about how best to manage this group, many of whom are homeless, drug-addicted, HIV-infected, and/or involved in the sex trade. It has fallen to provincial governments to respond with new legislation and policy to regulate these “new street urchins,” and the provincial statutes are similar, in many respects, to legislation linked with child-saving reforms at the beginning of the 20th Century (notably, elements of the *Juvenile Delinquents Act*). Ironically, this old legislation was introduced to deal with a comparable group of troublesome, urban, “street urchins.” The work of Cohen (1985) and especially his notions of patterns of social control are used to explain the unintended consequences of reforms that began in the 1960s, and that have resulted in the new provincial youth control legislation.

Dedication

To Hannah, the greatest evidence that children and youth should not be defined as problems. And for Geoffrey, I am so blessed to share my challenges and successes with you.

Acknowledgments

I would to thank my family and Geoffrey. Your unconditional love and support remains the driving force of my success. To all the great folks at the McCreary Centre Society -- at last you will no longer have to hear about my thesis! Special thanks to Angela Ahn for your fantastic technical skill! And, last, but not least, Faye, the voice of reason and logic. I wonder if I would be as cool as I am if you weren't my friend.

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Chapter One

Introduction

A man is walking by the riverside when he notices a body floating down stream. A fisherman leaps into the river, pulls the body ashore, gives mouth to mouth resuscitation, saving the man's life. A few minutes later the same thing happens, then again and again. Eventually yet another body floats by. This time the fisherman completely ignores the drowning man and starts running upstream along the bank. The observer asks the fisherman what on earth is he doing? Why is he not trying to rescue this drowning body? 'This time,' replies the fisherman, 'I'm going upstream to find out who the hell is pushing these poor folks into the water.' (Saul Alinsky, as cited by Stanley Cohen, 1985, p. 236)

For the past 100 years, Canadian society has struggled to deal effectively with deviant youth. While the proportions and types of youthful misbehaviour remain relatively constant over time, the changes that are perceived to be necessary to deal with the problem are influenced by the belief that each generation has a new, even more disturbing youth problem (Tanner, 1996). Consequently, "...the crime-free 'golden age' is reckoned to be twenty years prior to the present, and therefore remains a perpetually elusive utopia" (Tanner, 1996, p. 3).

Much of the recent social concern surrounding deviant youthful behaviour is heightened by media depictions of an increasing amount of youth violence. Additionally, the increasing visibility of street youth in major Canadian urban centres reinforces concerns that many children and youth are engaging in high-risk behaviours. While the fear of increasing youth violence is largely unfounded (see for example, Doob & Cesaroni, 2004), substantial evidence exists that deteriorating social and economic conditions, and provincial and federal government cutbacks, are having a devastating effect on a relatively small group of troublesome and high-risk children and youth.

The contemporary response to *troublesome* children and youth has been to develop legislation that attempts to address specific problems. Each legislative measure identifies and isolates the problem behaviour, holds someone responsible for the behaviour (in most cases, the youth or their guardian), and imposes accountability, most often through restrictive and/or punitive measures. In this regard, the contemporary Canadian youth justice system is experiencing dramatic legislative changes. While the federal government has recently passed new young offender legislation - the *Youth Criminal Justice Act*¹ - which replaces the *Young Offenders Act*², significant legislative changes designed to increase the regulation of youth are also occurring at the provincial level, and to a lesser degree, at the municipal level.

Although much attention has been given to historical accounts of the early 20th century “child-saving movement” and each consequent era of change, there have been no attempts to *connect* the past with the present (Smandych, 2001). A failure to speak to the intended and unintended consequences of legislative changes has resulted in “a long-discredited system, [which has] deflected criticism and justified ‘more of the same’” (Cohen, 1985, p. 20). Bernard (1992) eloquently articulates the necessity of bridging the past with the present in the context of the juvenile justice system:

Ideas of juvenile delinquency and juvenile justice drive the cycle of juvenile justice. These ideas emerge at certain points in *history*, and reflect the historical conditions in existence at the time. The ideas are elaborated into *philosophies*, in the sense of rational, coherent, and organized ways of understanding and interpreting the world. The philosophies then form the basis for *laws* that define juvenile delinquency, establish the juvenile justice system, and determine juvenile justice policies. Thus, juvenile delinquency and juvenile justice can only be understood by studying ideas in the context of history, philosophy, and law. (p. 10, emphasis in original)

¹ S.C. 2002 c.1

² R.S. 1985, C. Y-1

By the late 19th and early 20th centuries, industrial developments had spurred dramatic social changes and created social problems, such as poverty and homelessness, which a developing Canadian society was ill-prepared to deal with. In the wake of these changes, definitions of appropriate and youthful behaviours shifted and society was faced with the problem of how to deal with children and youth who did not conform to these newly created definitions of appropriate middle-class behaviours (see for example, Chunn, 1992). What followed is the emergence of what scholars have dubbed the “child-saving movement” (Platt, 1977). Legislation was created to solve the individual “problems” faced by children and youth even though their plight was a product of the changing social and economic landscape of Canada. With each passing decade, problems were often redefined and legislation would be set aside, amended and/or created to deal with the new problem. At the beginning of the 21st century, the question remains whether the copious amounts of legislation and policy generated over the last 100 years have successfully addressed *any* of the issues that created the problem of deviant children and youth.

Without a clear understanding of the consequences of the policy and legislative measures of the past, contemporary attempts to regulate youth run the risk of repeating past failures. As the provinces create supplementary legislation that purports to deal with the problems experienced by children and youth, it is critical to step back and determine if these attempts are any different from earlier initiatives. While doing so, it is imperative to remain mindful that the legislation of the past was replaced at certain points because it was believed that the existing measures were not successful in solving the problems they

had been created to address. The purpose of this thesis is to contextualize past legislative attempts and link this historical experience to the present day.

Theoretical framework

The approach taken in this thesis is built around the theoretical framework found in Stanley Cohen's (1985) text *Visions of Social Control: Crime, Punishment and Classification*. Cohen's demarcation of the *master patterns* of social control in western societies is useful as a succinct examination of the wide array of issues, and the subsequent discourses and responses, affecting youth social control systems in Canada.

Cohen (1985) defines social control as "the organized way in which society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome or undesirable in some way or another" (p. 1). The historical and present day systems of control in the USA, Britain and Canada are remarkably similar: all have been shaped by commitments to social welfare and ideologies about treatment. Cohen (1985) identifies two significant transformations that have occurred in Western systems of social control. The initial transformation took place at the beginning of the 19th century and subsequently provided the fundamental elements of the deviancy control systems that would follow. This transformation reflected four key changes:

1. The increasing involvement of the state in the business of deviancy control – the eventual development of a centralized, rationalized and bureaucratic apparatus for the control and punishment of crime and delinquency and the care or cure of other types of deviants.
2. The increasing differentiation and classification of deviant and dependent groups into separate types and categories, each with its own body and 'scientific' knowledge and its own recognized and accredited experts – professionals who eventually acquire specialized monopolies.

3. The increased segregation of deviants into ‘asylums’ – penitentiaries, prisons, mental hospitals, reformatories and other closed, purpose-built institutions. The prison emerges as the dominant instrument for changing undesirable behaviour and as the favoured form of punishment.
4. The decline of punishment involving the public infliction of physical pain. The mind replaced the body as the object of penal repression and positivist theories emerge to justify concentrating on the individual offender and the general offence. (Cohen, 1985 p. 13-14)

The second transformation was “thought by some to represent a questioning, even a radical reversal of that earlier transformation, [and] by others to merely signify a continuation and intensification of its patterns” (p. 13). Cohen’s (1985) analysis focuses on the second transformation, which began to emerge in the late 1960s. During this time, dramatic shifts in social control took place with, amongst other events, a mass exodus from and closure of institutions and a decline in the reliance upon professionals (or so the thinking was). Legislation, policies and programs were changed that would allow for diversion from the formal criminal justice system and, rather than a focus on individualized treatment, the second transformation called for rehabilitation through reintegration into the community.

Central to Cohen’s work is his notion of the master patterns of social control. The five models that shape these master patterns – (1) progress, where the destructuring ideology was offered as a genuine method to radically transform the traditional systems; (2) organizational convenience, in which reforms were confronted with managerial, administrative and organizational imperatives and in turn, were implemented diametrically opposite to how they were intended; (3) ideological contradiction, contradictions, distortions, paradoxes, anomalies and impurities internal to the ideology;

(4) professional interest, the emergence of specialists, experts and professionals, each designed to deal with, and ultimately, control a specific category of deviance; and (5) political economy, where institutions such as prison became a financial burden and efforts to cut spending resulted in systems of welfare payments in the community - provide the theoretical framework for an understanding of the changes that occurred from the 1960s through to the 1980s.

Twenty years later, however, while all five models assist in making sense of the present youth social control system, two models - progress and ideological contradiction - are most instructive in explaining the current mechanisms of social control (both formal and informal). In particular, this thesis will reveal the particular power of “ideological contradiction” (deposits of ideas extracted from social, political and economic arrangements) in shaping the Canadian youth social control systems.

Cohen (1985) recognizes that the present can only be understood by connecting it with the past. Specifically, Cohen argues that “[t]he use of the past to illuminate the present makes more than dialectical sense: all these revisionist histories contain a hidden and sometimes not-so-hidden political agenda for the present” (p. 15). In attempting to make sense of the “second transformation” Cohen (1985) argues that the changes that occurred contradicted “the ideological justifications from which they are supposed to be derived” (p. 14). This thesis supports Cohen’s (1985) contention that the destructuring/deinstitutionalizing movement of the 1960s has failed, and that state systems of social control have not only become stronger, but that their strength and reach continues to increase.

This thesis demonstrates that despite attempts between the 1960s and the 1980s to drastically change youth social control systems, the systems in many respects have not only returned to the use of mechanisms of social control derived from the ideas of the child-saving movement in the late 19th and early 20th centuries, but have also expanded. As demonstrated throughout Cohen's thesis, the "second transformation" was not a *radical reversal* of the first transformation. As the system became more professionalized it expanded (and continues to expand), and with each expansion, and the creation of new forms of intervention, the social control net widens. This has the effect of *catching* more of the population; many of whom would not have been caught if it were not for these increasing social control mechanisms. Moreover, Cohen (1985) questions the benevolent intentions of reformers and examines the negative consequences of professionalized systems.

Method

The sources for this thesis were primarily retrieved through the Simon Fraser University library and its subsidiary University lending partners. Literature searches were conducted through the Humanities & Social Sciences Index, Ebsco and CBCA Fulltext References databases. The historical literature was retrieved through searching the following areas: "child-saving movement", "street urchins" and "juvenile delinquency". The literature in Chapter Three was gathered by a search in the areas of "young offenders act", "youth offenders" and "youth crime". The contemporary discussion in Chapter Four was created through the use of a literature search of "street youth", "sexual exploitation", "youth and HIV", "at-risk youth", and "youth violence". In addition, the Internet was used to locate current municipal, provincial and federal

policy and legislative discussions and reforms. The activities of provincial ministries responsible for the care and control of children and youth were tracked through provincial government web sites. A similar tracking procedure was used for municipalities who are currently actively addressing particular youth issues. Much of the British Columbia based data relies heavily upon community-based research conducted by the McCreary Centre Society. Since 1977, the Society has been conducting research and supporting community-based projects focusing on youth issues. Their research provides significant insights into the state of health of youth in British Columbia. This thesis draws upon several original studies conducted by the Society, including for example, their 1994 study "*Youth & AIDS in British Columbia*". Public opinion and media perspective were sought from a variety of sources, including the internet, community newspapers and the *Vancouver Sun*. The *Vancouver Sun* was chosen for its relatively extensive coverage of local youth issues. Inclusion of media reports is significant to this thesis because, in many respects, the media has been responsible for an unfounded, unprecedented fear of out-of-control youth violence.

Chapter Overview

Chapter Two provides an overview of the history of the child-saving movement that emerged during what Cohen (1985) has identified as the first transformation in social control systems. The chapter examines government policies and the social and industrial shifts that influenced the dramatic changes Canadian cities experienced at the end of the 19th century. The chapter also introduces the key players in the "child-saving" movement and demonstrates the legislative outcomes of their vigorous campaigns to "save children". Over-arching federal legislation, the *Juvenile Delinquents Act*, was introduced

in 1908 and its professed intent was to manage and rehabilitate children and youth who were found to be in a state of “delinquency”. Status offences were created that allowed authorities to treat children and youth engaging in behaviour such as drinking, and sexual activity, which, while considered appropriate for adults, were considered inappropriate for children and youth.

Chapter Three is a brief account of the federal legislation that replaced the *Juvenile Delinquents Act* in the early 1980s: the *Young Offenders Act*. The transformation from a social welfare model of youth justice to a modified justice model signaled a significant period of change in Canadian youth justice legislation. During this period, efforts were made to deinstitutionalize the youth justice system. As a result of difficulties in attempting to create a system that could hold juveniles accountable for their criminal behaviour through punishment and/or treatment, while at the same time respecting their civil liberties, the systems of social control expanded and intensified. More youth were processed through the youth justice system and the number of professionals and institutions necessary to provide the appropriate care and control of these “troubled” youth increased.

Chapter Four focuses on the contemporary situation: the current transformation affecting youth justice systems. By compiling and analyzing secondary research data, this chapter brings to light many of the social problems that are affecting Canadian children and youth. Certain social problems are having a devastating impact on groups of high-risk children and youth. Diseases such as HIV and Hepatitis C are increasingly prevalent amongst youth engaging in intravenous drug use and risky sexual behaviour, including those who are sexually exploited. This chapter also examines what is

considered an unfounded, unprecedented fear, primarily driven by the media, of an increase in out-of-control youth and youth violence. These fears are further perpetuated by the increase in the numbers of homeless youth living on the streets of Canadian cities. Finally, the legislative responses to these “problems” by both the federal and the provincial levels of government are identified and discussed.

The present-day fear of an increase in out-of-control violent youth as the cause of an increasing number of homeless and street involved youth is rejected in Chapter Five. Rather, it focuses on the incongruent and contradictory notions of the modified justice model – welfare vs. rights/justice - as the impetus behind contemporary legislative and policy failures. It draws from Cohen’s (1985) models of progress and ideological contradiction to explain the unexpected and unintended consequences of the second transformation, specifically as it has affected the youth social control system.

It also argued that, contrary to Cohen’s contention that the outcomes are ‘more of the same’, it may be that society is experiencing a transformation that is even more expansive and more punitive than Cohen predicted, as evidenced by the increasing implementation of provincial legislation to deal with troublesome children and youth. Finally, the role that distorted notions of community and community mobilization have had on the failures of the deinstitutionalization movement, and its consequent expanding net of social control over the youth criminal justice system, are considered.

The implications of the increasing amount of legislation that is being created to deal with the problem of deviant youth is examined in Chapter Six. Not only do many aspects of existing legislation restrict the rights of children and youth (and at times their parents) but also, as has been the case over time, the legislation does little to address the

social problems that are most often the cause of the problem behaviours. The final conclusions explore some recommendations for future research in this area.

Chapter Two

Early 20th century Youth Justice in Context

There have been two transformations – one transparent, the other opaque, one real, the other eventually illusory – in the master patterns and strategies of controlling deviance in Western industrial societies. The first...laid the foundations of all subsequent deviancy control systems. (Cohen, 1985, p. 13)

Setting the stage

To better understand how contemporary criminal justice officials view children and youth, it is necessary to explore how the meaning of childhood has changed over time. Throughout history, the ways in which society defines childhood translates directly into perceptions of appropriate forms of work, education, and punishment (Peikoff & Brickey, 1991). This chapter demonstrates how the new meaning of childhood and its consequent entrenchment transformed childhood from a relatively latent time for young individuals to a “natural” period of dependency and an increasingly lengthy stage in the life cycle (Chunn, 1990). More importantly, these significant shifts led to a change in the political economy and in state mechanisms of social control. These monumental shifts provided the foundation for the deviancy control systems that would follow (Cohen, 1985).

Before the 17th century, childhood was not considered a distinct stage in European life (Peikoff & Brickey, 1991), and youth “were rarely a subject of public concern”(Tanner, 1996, p. 19). Children essentially filled the same role as adults and shared all aspects of life with adults (Aries, 1962). Furthermore, there was little economic stratification and the support of neighbours and family supplemented poverty-

stricken families (West, 1986). Early 19th century Canada was predominately composed of lower-class, agrarian settler families and the social and economic climate permitted children and youth to experience a great deal of freedom and indulgence (Carrigan, 1991; Peikoff & Brickey, 1991). Children's labour was a significant part of family income and thus they were granted special, "adult-like" status in the community (Peikoff & Brickey, 1991). Economic production was domestically-centred and labour-intensive and, rather than formal school, learning took the form of apprenticeship (West, 1986).

Industrialization and increasing immigration dramatically changed the social, cultural and economic situation in Canada. Matthews (1987) argues that such changes created an unstable environment. The established order was threatened as rapid commercial expansion, a precarious international economy, the creation of large scale work projects and the dramatic influx of poor immigrants increased social stratification. As a result, reforms that would return Canada to the "ideal" community began to emerge (Cohen, 1985).

Along with the many immigrants who left impoverished homelands, such as Ireland, in search of a better life (Matthews, 1987), many orphaned, pauper and delinquent children from Britain and France were transported to Canada during the 1800s. Some have argued that the purpose of bringing these destitute children to Canada was to provide them with a better life (Carrigan, 1991), but this lofty intention is questionable considering that these children were used as indentured servants (West, 1984). Once in Canada, child immigration agencies rarely followed the progress of these children after their initial placement (Carrigan, 1991). Some children did find good

homes, but many were exploited; a consequence that today casts further doubt on the sincerity of the professed humanitarian motivations.

The arrival of over 75,000 British *waifs* and *street urchins*, many of whom became homeless, during a 30 year period (1873-1903) raised concerns regarding the proper nature of childhood and the proper social institutions for the young (West, 1984). As a result, a preoccupation with childhood arose (Aries, 1962) and the belief that the welfare of children was significantly linked to the future of Canadian society quickly became a prominent concern.

Economic interests far surpassed benevolent intentions. Specifically, “the roots of the child-saving movement are to be found in the complex transformation of the political economy” (Platt, 1977, p. xxix; see also, Chunn, 1992). The debate over the proper role of children was stimulated in part by the simultaneous partial exclusion of children from the labour market, which created a surplus labour population by the end of the 19th century (West, 1984).³ As a result, children who had spent most of their time working were now idle and for the most part, unsupervised. Additionally, increasing ‘foreign’ immigration and the fear of impending social disruption “focused attention on the working-class [youth]”(p. 26).

The concern over the moral character of these children was a great concern for some elite circles as many of these orphans were considered Britain’s “worst stock” (West, 1984). The backgrounds of many immigrant children increased suspicions of delinquency and it was this potential delinquency that was used by labour leaders to gain support for the exclusion of children in the labour force. They argued that these children

³ This issue is specific to Toronto, as much of the West, at this time, “had only recently emerged from the frontier era” (Houston, 1972, p. 254).

“gave unfair competition and took jobs from native Canadians”(Carrigan, 1991, p.208). According to Rutman (1987), “[t]he Toronto Trades and Labour Congress felt that juvenile immigrants would flood the Canadian labour market and thereby drive down wages” (p. 74). This dramatic influx of immigrant children placed an economic burden on Canadian society, while the poverty of this new visible group cut deeply into the moralism of the Victorian social conscience (Houston, 1972).

Their anxiety about that change is well revealed by the energy and dismay with which many reformers responded to the spectacle of an unprecedented number of other people’s children surviving – and thriving – unrestrained in society at large. Not surprisingly, the solution they devised was the creation of surrogate institutions for the lower classes appropriately analogous to middle-class family life. (p. 254)

With increasing social stratification brought about by industrialization, middle-class values and reforms began to significantly influence social and structural changes in society. For example, children in middle-class families took on a more prominent and integrated role within the family (Houston, 1972). It has been argued that it was the “rampant immorality” of the time was of more concern to reformers than poverty itself (Matthews, 1987). Immorality and poverty were not necessarily considered two distinct social problems, and lower-class migrant and immigrant families were accused of perpetuating immoral behaviours (Platt, 1977).

The “lamentable effects” of widespread drunkenness were in many other towns and cities. In Toronto, for example, “low dram shops” multiplied as rapidly as they did in Kingston, providing ready access to alcohol and refuge for the undesirable elements of the city’s population. According to a petition drafted by the Temperance Reformation Society in 1842, much of the “crime and wretchedness” existing in Toronto stemmed from “the facilities furnished for indulgence in all kinds of intoxicating drinks”. In the estimation of the petitioners, “the character of a great majority of the Houses bearing Tavern Licenses is no less to be deplored than their numbers. Indeed, the vast majority of these establishments “were mere places of resort for idlers and tipplers, where vicious concerns are formed,

and habits of indolence and drunken take root...In them our youth are often initiated into all the mysteries of iniquity, and imbibe the principles of the most ruinous licentiousness. It is at these places that the poor captives of strange drink find a ready supply – for it is seldom denied to any that can pay for it. *Here many spend their hard wages, while their families, are suffering for want of the necessaries of life.*” (emphasis added; Matthews, 1987, p. 389)

The homeless population in Canada at the turn of the 20th century did not consist solely of orphaned children. Significant portions of the homeless were adults, however due to newly defined notions of childhood and the subsequent preoccupation with their welfare, the plight of children changed a significant portion of the reform movement into a child-saving movement.⁴ Consequently, “[n]ew norms and expectations developed as childhood became a special phase in the life cycle” (Empey, 1982, as cited in Smandych, 2001, p. 7). Behaviours that were once acceptable for youth were now deemed inappropriate, and the social construction of “juvenile delinquency” became a significant concern (Bernard, 1992; Tanner, 1996). Furthermore, as the child-saving movement progressed, new definitions and categories of inappropriate and delinquent youthful behaviour were invented (Platt, 1977). The inventions of youth misbehaviour assisted in the growth of a moral panic and, as will be discussed later in this chapter, introduced key moral entrepreneurs to the movement. Communities could best contribute to a moral and productive society through the adoption and perpetrating of middle-class ideas and beliefs.

The idealization of community was part of a deep strain of nineteenth-century conservative thought. Individualism, secularization, and rationalism had released ordinary people from restraint and obedience,

⁴ Recent scholarly work has focused much attention on the oppressive role of the state in controlling the behaviours of groups whose lifestyle and behaviours did not suite the notions of a moral, middle-class Canadian society (See for example, McLaren, Menzies & Chunn’s (2002) edited text, *Regulating lives: Historical essays on the state, society, the individual and the law.*

from the traditional bonds of community. The result was not “freedom” but unrest, loneliness, anomie. The most vulnerable social groups would break down; they had to be restrained for their own good. The most labile social groups would rebel; they had to be restrained for the wider social good. In the new institutions they would all be able to learn the meaning of order, discipline and authority – the good community. (Cohen, 1985, p. 119)

Prior to the influx of visible, wayward youth on Canadian streets, orphans and needy children were *protected* by legislation such as *An Act to Provide the Education and Support of Orphan Children* (Leon, 1977). As a result, they were often placed in quasi-public houses of industry or dealt with by local municipal authorities through apprenticeship directives (Houston, 1972; Leon, 1977). During the early part of the 19th century, “the apprenticeship system was the primary means of dealing with orphans and abandoned children”(Rutman, 1987, p. 69). When orphaned and abandoned children were not apprenticed out, they were placed in almshouses, poorhouses, houses of industry, penitentiaries and asylums with adults (Peikoff & Brickey, 1991). An historical account of such a system provides further support for the claim that economic interests, rather than the interests of the child, have traditionally guided legislation and policy initiatives dealing with children.

By the mid-1800s the problem shifted; not only were there many more children in need, they were no longer so clearly orphaned (Houston, 1972). According to Houston (1972), the anxiety over social mores and costs expressed by the larger society was influenced more by the behaviours of this new class of visible youth than their destitute situation as there was little doubt that immorality and crime was a direct result of poverty and destitution. This is best demonstrated in Leon’s (1977) account of Dr. Charles Duncombe, a prison reform advocate. Duncombe was particularly distressed by “the

number of Toronto children in 1836 with a ragged and uncleanly appearance, using vile language, and displaying idle and miserable habits” (p. 76).

Neglected children were eligible for the same state intervention as delinquent children. The intimate relationship between the moral crusades and capitalist interests blurred “the distinction between *neglected* and *criminal* [which] in effect translated as *potentially* vs. *actually* criminal” (emphasis in original; Houston, 1972, p. 263). Consequently, as social controls expanded to deal with these children and youth, the distinction between neglected and delinquent youth became increasingly blurred (Chunn, 1990).

This distinction most likely occurred because, although there was no increase in delinquent children, the authorities were overwhelmed with the increasing number of unsupervised children living in unsanitary conditions, malnourished and neglected, with inadequate or no medical care (Carrigan, 1991). Initially, neglected children were placed in detention because in many communities the jails and the courts were also the welfare agencies. As Leon (1977) argues, a distinction between the two classes of children was not necessary because the purpose of controlling troublesome behaviour was to protect children from themselves and others, regardless of the reason for their behaviour. The purpose was to provide them with treatment so as to correct the behaviour, not the situation that was most likely responsible for their behaviour.

As a result, the net of social control was extended to the families of these neglected children. After all, according to middle-class reformers, many of these children and youth found themselves in destitute circumstances because their parents were not adhering to appropriate childrearing practices (Chunn, 1990). Reforms

intensified and institutions for this new category of dependent children were established (Rutman, 1987). These institutions were analogous to middle-class family life (Houston, 1972) and allowed child-savers to endorse their ideal values (Platt, 1977). Because such reforms imposed the moral standards of the middle-class, lower-class youth were increasingly measured against a hegemonic view of childhood (Houston, 1972; West, 1984). The imposition of such hegemonic views became the impetus for the regulation of class-related styles of behaviour; that is, the domination of working-class children by the *elite* child-savers, through legal sanctions (Platt, 1977). The imposition of moral standards surpassed any initial concerns reformers had regarding the health and welfare of these destitute children (West, 1984).

Any detrimental consequences could be easily overlooked as clearly such actions were said to be in “the best interests of the child”. This rhetoric served to eliminate the need for the protection of children’s rights and, as will be demonstrated, it would be over 80 years before such rights and those of youth would be legislated.

Not only did the child-savers maintain that middle-class families would best instill the proper ideals, it was also argued that if children did not attend school they would acquire an education of the wrong kind (Leon, 1977). One of the first steps the state took to control crime and delinquency was compulsory education (West, 1984). Ironically, compulsory education created a new form of delinquency for those not attending school – truancy (Houston, 1972). Given that many children were still required to work in order to help support the family (Peikoff & Brickey, 1991), this new definition of delinquency increased and solidified society’s concern that there was an increase in the numbers of wayward and delinquent youth (see for example, Houston, 1972).

Prior to the 1850s, children and youth who committed crimes were imprisoned with adults (Bell, 2002). As society's definition and perception of childhood changed, reformers began to appreciate the injustice and inefficiency of placing children in adult prisons. It became evident to reformers that "such institutions were little better than schools of crime" (Sutherland, 1976 as cited in Tanner, 1996, p. 22). It was strongly believed that children should not be punished for their behaviour but, rather, that they required treatment and the opportunity to reform. At this point, the distinction between humanitarian concerns and moral crusades became blurred. Reformers became increasingly concerned with the inhumane treatment that followed the processing of children through the adult courts and the prison system, but they also believed that treating these children like hardened criminals eliminated any possibility of reform and redemption (Tanner, 1996). As a result, the *Act for Establishing Prisons for Young Offenders* was introduced in 1857 and reformatory prisons were soon constructed in Upper and Lower Canada (Leon, 1977). The goals of reformatories were to 'treat' individual children. These goals were seen to be in the best interest of both the child and society and, as a result, indeterminate and lengthy sentences were often imposed regardless of the relative insignificance of a crime (Leon, 1977). The intent of this, as demonstrated below, was premised on the notion that poverty, immorality and crime were intricately linked:

For it is only by careful enquiry and examination into the circumstances connected with the commission of crime by juvenile offenders, the knowledge of the temptations to which they are exposed, the influence of their homes, and character of their parents and associates, that an intelligent conclusion can be arrived at, or a just sentence passed upon them. The condonation of some petty misdemeanor particularly in the case of the very young offender, may prove to be fatal, where the lad is allowed to go back to vicious haunts and depraved company, undeterred

from further crime by experience of its punishment. (*Ontario, S.P.* 1875, as cited in Houston, 1972, p. 273)

The advent of reformatories did not reduce the number of visible lower-class and homeless children on Canadian streets. As mentioned earlier, the number of actual delinquent children was relatively small, but the increasing street presence of orphaned, abandoned, neglected and poor children became the focus of middle-class anxieties. Therefore, although compulsory education assisted reformers in forcing working-class children to attend school, and reformatories provided a *solution* for delinquent youth, the increasingly visible problem of destitute and vagrant children remained (Peikoff & Brickey, 1991). Thus, in 1874, legislation was created to deal specifically with neglected children. The *Industrial Schools Act* was created to fill the void between the public school and the reformatory (Peikoff & Brickey, 1991). Industrial schools would house any child:

1. Who is found begging or receiving alms, or being in any street or public place for the purpose of begging or receiving alms;
2. Who is found wandering, and not having any home or settled place of abode or proper guardianship, or not having any lawful occupation or business, or visible means of subsistence;
3. Who is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment;
4. Whose parent, step-parent or guardian represents to the police magistrate that he is unable to control the child and that he desires the child to be sent to an industrial school under this Act;
5. Who, by reason of the neglect, drunkenness or other vices of parents, is suffered to be growing up without salutary parental control and education, or in circumstances exposing him to lead an idle and dissolute life. (as cited in Leon, 1977, p. 80)

The legislation was intended to distinguish between neglected and delinquent children and provide *protection* for neglected children (Houston, 1972). Despite this, a clear distinction between delinquent and neglected children never materialized. Given that neglected children were still considered potentially criminal, it should not be surprising that in 1884 another category of children eligible for industrial schools was created. This category allowed authorities to place ‘petty’ criminals in the less restrictive institutional setting of the industrial school, as opposed to the reformatory, and was defined as any child “who has been found guilty of petty crime, and who, in the opinion of the Judge or Magistrate before whom he has been convicted, should be sent to an Industrial School instead of a gaol or reformatory” (Leon, 1977, p. 80). Such measures provided tremendous discretionary power for authorities. Increasing legal control over different forms of behaviour continued and in 1891 “any child between eight and fourteen years of age, who has been expelled from school for vicious and immoral conduct” was added to the above section (Leon, 1977).

J.J. Kelso and W.L. Scott: Canada’s Child-savers

Up to this point, this chapter has alluded to the influence of key figures in engineering fundamental reforms. In the context of the child-savers, two key individuals, J.J. Kelso and W.L. Scott were prominent men whose influences can largely be attributed to their identification of, and efforts to fix, the problem of wayward and delinquent youth. They were men who fitted Cohen’s (1980) description of the moral entrepreneur: men “who, with an absolute ethic, [set] out to eradicate the evil which [disturbed them]” (p.

With the creation of the CAS, reformers were able to press for changes in a more organized and professional manner. The formation of the Society made it more difficult for the government to ignore the weight of the changes for which reformers were pressing. In 1888, Kelso drafted the *Children's Protection Act* (Bullen, 1990; Leon, 1977; Rutman, 1987). Not only did this legislation recognize that it was necessary to process juveniles through the criminal justice system separately, it also echoed Kelso's position on child neglect and how it should be dealt with (Rutman, 1987). The *Act* criminalized child neglect and exploitation; it provided the Children's Aid Society with the power to apprehend and care for neglected children and set out the fiscal responsibilities of the municipalities governing the *Act*.

Despite some positive changes, such as the introduction of trained professionals, the overwhelming dominance of middle-class ideals remained constant (Bullen, 1990). Advocating for the placement of children in foster homes rather than institutions, Kelso and his supporters believed that "a loving, Christian family environment was important for dealing with neglected children" (Rutman, 1987, p. 72). Furthermore, despite claims that their reforms were making significant advances, policies created by child-savers conformed to the dominant social and political views of the times (Bullen, 1990). Regardless of the relative benefits foster placement had compared to residential/closed institutions for both society and the individual child, Kelso was faced with significant political and economic challenges.

Municipalities were unwilling to assume responsibility for neglected children, and would often refuse to provide the money required in the legislation to maintain the homes (Rutman, 1987). Like indentured servants, children were often accepted into foster

families as a means of free or cheap labour (Bullen, 1990). Furthermore, an emphasis on deinstitutionalization through foster placements threatened the survival of the existing institutions (Bullen, 1990), as did Kelso's advocacy for a completely separate juvenile justice system. He successfully argued for a probation system, whereby juveniles would be supervised in the community (Rutman, 1987) and, in 1894, *An Act respecting Arrest, Trial and Imprisonment of Youthful Offenders* was passed. Under the *Act*, children under 16 years were to be tried separately and were protected from any publicity. In addition, children under 14 years who were convicted could be sent to a home for destitute and neglected children, an approved Children's Aid Society or a industrial school, rather than traditional prison (Leon, 1977).

The new legislation led to many perceived alternatives to imprisonment and Kelso's intended goal of closing reformatories was realized. Nonetheless, a more serious unintended consequence soon followed. With the closure of reformatories the only place to house serious offenders was in industrial schools. Acknowledging the negative consequences of co-housing serious offenders with minor offenders and neglected children, Kelso changed his position. The reformatories were re-opened and in 1907 Kelso argued the following:

Children go astray at present owing to the absence of continuous supervision. They are allowed to drift along under harmful conditions until they have actually committed a crime, then they are arrested and discharged with a caution because of their first offence and their youthfulness and they drift along unaided and uncounselled with the almost inevitable result that they are back again before long. The remedy then is to commit them to Reformatories, at large expense, to try and undo the harm caused by years of neglect. (as cited in Rutman, 1987, p. 107)

Before the introduction of the *Juvenile Delinquents Act* in 1908, children's aid societies were actively involved in the daily lives of many juvenile offenders (Leon,

that demonstrated by probation officers. For Scott (1907), first and foremost, the role of the probation officer was to recognize that the child was the product of his or her environment and, therefore, the first thing the probation officer had to do was to uncover the cause of the behaviour. In doing so, *she* was to judge the home, its surroundings and conditions, and the disposition of the parents in order to provide the Judge with the necessary information. Scott (1907) also argued that women were best suited for the role of probation officer. His reasoning provides unwavering support for the proximate relationship between moral and economic motivations embedded in the child-saving movement.

The question of sex of the Probation Officer is an open one. The feminine gender is here used because experience has shown hitherto that women, intended by nature for motherhood, are better fitted for the work than men. Moreover, it is important that probation officers should be chosen from the *best class* – should represent the highest order of men and women – and a better class of women than of men can frequently be got for the money available. (emphasis added, p. 896)

The Juvenile Delinquents Act, 1908

Three main concerns became the impetus for the drafting of the federal legislation that would eventually be the *Juvenile Delinquents Act*. According to Leon (1977), the first concern was the issue of finances. Kelso and Scott argued that child-saving work should be a profession, as opposed to philanthropy, and for that to occur money was required to fund university programs specializing in social work. The second concern was based on restrictions that probation officers faced, as the ability to do their job was based on co-operation from police agencies. Consequently, it was argued that the duties and responsibilities of probation officers needed to be recognized and enforced in legislation. The third concern was framed around the structural location of the proposed

children's court. It was strongly felt that because children's court was an educational tribunal, unlike the adult police tribunal, the courts should be "conducted by specially selected persons, and held in different premises from the ordinary legal courts" (Leon, 1977, p. 93).

Three main groups emerged in response to the legislative proposals: (i) Kelso and Scott's supporters; (ii) those who advocated for the rights of children and families; and (iii) those who supported punitive measures (Leon, 1977). Kelso and Scott were part of "the ultimately successful group, which advocated protection and prevention through probation and a special court, [they] formed a powerful lobby that rallied considerable support among the public and politicians" (p. 94). Leon's (1977) account of the three main groups demonstrates the power of rhetoric premised on "the best interest of the child," and that despite one's political position, it is often very difficult, and at times, impossible to argue against such rhetoric. For example, although it is traditionally the duty of the Official Opposition to *oppose* motions brought to the House of Commons, the then Leader of the Opposition assured his support for the *principles* of the legislation. Opposition from the second group, which, was concerned primary with the rights of children and their families, was largely ineffectual since "they generally accepted the competence of those who advocated probation and a special court to act in the best interests of the child and society" (p.95).

The actions of the third group, which included members of the police force, who advocated more punitive legislation, demonstrate the extent of the belief in British middle-class superiority. In what was rebuked as an attempt to save existing jobs, police

officials attacked the proposed legislation as “child-saving propaganda”. Specifically, child-saving advocates

...work upon the sympathies of philanthropic men and women for the purpose of introducing a jelly-fish and abortive system of law enforcement, whereby the judge or magistrate is expected to come down to the level of the incorrigible street arab and assume an attitude absolutely repulsive to British Subjects. The idea seems to be that by profuse use of slang phraseology he should place himself in a position to kiss and coddle a class of perverts and delinquents who require the most rigid disciplinary and corrective methods to ensure the possibility of their reformation. I would go further to affirm from extensive and practical experience that this kidding and coddling, if indiscriminately applied even to the best class of children, would have a disastrous effect, both physically, mentally, morally and spiritually. (Archibald, 1907 as cited in Leon, 1997, p. 96)

Scott and Kelso did not argue against the image of the delinquent child described by the police inspector, Archibald, but rather, his intentions. For example, Scott and Kelso maintained that Archibald’s opposition to the new legislation was because he “had prepared all the legislation on the subject during the last forty years and ... is ... deeply offended that anyone else should have usurped this prerogative” (Scott, 1907 as cited in Leon, 1977, p. 97). It may be assumed that a failure to challenge Archibald’s description of delinquent children demonstrates the acceptance of such a description. The difference, however, would be that both Scott and Kelso believed that children were not responsible for their poverty and all the evils that went along with it and, therefore, they deserved a chance at reformation.

The child-saving movement was not concerned with the rights of the child because legislation and policy initiatives were premised “on the best interest of the child” and, to a lesser extent, on the best interests of society. Support for a welfare-based approach with considerable official discretion is most evident during the Parliamentary debate over the Bill proposing the new legislation. Concerns were raised about its

constitutional validity, who should take care of children, and how they should be taken care of (*Can.:Sen.Deb.*, 1907 as cited in Leon, 1977, p. 98). Despite this, acceptance of the Bill was largely based on the “opinion in the House as to the importance of the Bill and the humane and benevolent purpose, which it is proposed to serve” (*Can.:Sen.Deb.*, 1907 as cited in Leon, 1977, p. 98). It was only in 1984, that the concerns of Senator Wilson, expressed below, would be acknowledged and addressed:

We are all desirous of making every child as it grows up a useful member of society, but we may differ as to the means of accomplishing that. Here we pass an Act to permit a child being taken away from its parents and put in other charge, and who is as solicitous for the welfare of the child as the parent? We put young children in the hands of an officer and that officer has absolute power and control over them. He may do anything under the Act and he is protected. I say that is an unreasonable proposition to make, and I am fearful that instead of lessening the criminal juvenile class it will increase them. (1908 as cited in Leon, 1977, p. 98)

In 1908, the Bill proposing the new legislation was passed and the *Juvenile Delinquents Act* came into effect. The definition of the child under the *Act* viewed children as in need of guidance, protection, and control. This philosophy was articulated through the doctrine of *parens patriae*: the court was to act “in the best interest of the child as a stern but understanding parent...in an institution emphasizing treatment and minimizing accountability” (Fetherston, 2000, p. 96).

Early 20th century British Columbia

Although little has been published on child welfare and juvenile justice in early 20th century British Columbia, it is possible to synthesize the available literature to capture the chronology of the child-saving movement in the province. Striking similarities appear that parallel the child-saving movement in Ontario. Ontario was one of

Canada's first provinces and many of the later provinces copied early Ontario legislation (Singleton, 1950). By the late 1800s, British Columbia was experiencing rapid social and economic change with a very large portion of its growing population migrating from Ontario and Great Britain (Adamoski, 1995). The growing social conscience in the province was heavily influenced, in part, by groups of middle-class women (Singleton, 1950). As in Ontario, pressure from such influential groups compelled law makers to create legislation to address visible social problems.

Public agitation against the conditions and abuses of children increased and the matter was brought to the attention of the legislature by Mr. Justice A.C. McPhillips and Captain Tatlow. They requested that the government "frame the law in such a manner that the children of *drunken* and *immoral* parents should have protection by law so as to enable them to grow up to live a useful life and not by force of their surroundings become *untruthful, unclean* and *immoral* and add to the *pauper* and *criminal class* of the community." (Annual Report of the Children's Aid Society of Vancouver, 1902-03, p. 8 as cited in Singleton, 1950, p.3, emphasis added)

The B.C. *Children's Protection Act* became law in 1901 and the province's Children's Aid Society was transformed from a privately run volunteer organization to one funded by the provincial government (Adamoski, 1995; Singleton, 1950). Under the *Act*, later changed to the *Infants Act*, neglect was considered to exist in circumstances where the child:

1. was found begging in the street; or
2. sleeping at night in barns, open air or outhouses; or
3. associating with a thief, drunkard or vagrant; or
4. found in a disorderly house; or
5. orphaned or deserted by his parents or guardian; or

6. found guilty of petty crimes and likely to develop criminal tendencies if not removed from his surroundings; or
7. found wandering about at late hours without any home or settled place of abode or proper guardianship; or
8. found ill treated so as to be in peril of life, health or morality, by continued personal injury or by grave misconduct or habitual intemperance by his parents. (Callahan & Wharf, 1982)

Like the Ontario legislative reformers, legislators in British Columbia did not distinguish between neglected and delinquent children.

The provincial government's ambivalence towards any financial responsibility it may have had for the removal of children for health and welfare reasons is particularly telling. According to Singleton (1950), the government appeared to be quite oblivious to any financial responsibility for the care of these children, which the courts of justice all over the province were awarding to the Children's Aid Societies. Child protection legislation brought about a battle for funding between privately-funded orphanages and Children's Aid Societies. A detailed account of this political and economic struggle is beyond the scope of this thesis; however, as Adamoski's work (1995; 2002) demonstrates the notion of the *best interests of the child* doctrine was often lost in a bureaucratic battle for funding.

Due to British Columbia's relatively late urban development, the child-saving movement did not gain momentum until after the *Juvenile Delinquents Act* had come into force. According to Griffiths and Hatch (1991), although child-savers fought for many years to have a juvenile court as legislated in the *Act*, it was not until the creation of the

Vancouver Juvenile Court in 1910 that the “struggle between child-savers and court officials over how juvenile offenders were to be treated [began]” (p. 235).

Due to the onset of industrialization, in just over 50 years the definitions of childhood and appropriate youthful behaviour in Canada shifted and became clearly distinct from those of adulthood and adult behaviour. As a result of shifting ideologies, which were both influenced and exacerbated by increasing social and economic problems, Canadian society experienced a movement that would not only change the nature of childhood, but also the nature of society. Specifically, the child-saving movement:

...influenced a transformation in legal governance that turned the general responsible and rational individual, who was vulnerable to a system of punishments, into a manufactured child deviant who, through a thorough administrative investigation of the child’s life, could be cured of his or her maladaptation. [Consequently], [c]oinciding with this transformation, provincial, and later federal, lawmakers developed more and greater detailed rules for the legal ordering of deviant children as a specialized area of governance. (Hogeveen, 2001, p. 58)

Whether driven by a desire to provide a more humanitarian system that protected children from poverty and exploitation or by the objective to establish legal sanctions to control the lower classes, the result was an unequivocal marginalization of youth (West, 1984; Hogeveen, 2001; Alvi, 2000; Houston, 1972). Over the next 100 years, this marginalization of youth played a significant role in the different approaches used to deal with what was described as each passing decade’s new and disturbing youth crime problem (Tanner, 1996).

As mentioned in Chapter One, there were four key changes that occurred during this period. First, the social, economic and political climate of 19th century Canadian

society influenced the definitions of childhood and appropriate youthful behaviour and, subsequently, how these definitions and expectations were translated into legislative and policy initiatives. Along with the progression of industrialization, Canada witnessed a significant transformation from laissez-faire capitalism to a welfare state (Chunn, 1992). As a result, the care and control of *all* types of deviants was realized in a “centralized, rationalized and bureaucratic apparatus”(Cohen, 1985, p. 13). As described by Chunn (1992), the purpose of socialized justice was prevention and rehabilitation by way of individualized treatment through specific mechanisms of social control such as the juvenile justice system. Concurrently, these new systems established a heavy reliance on non-lawyer experts.

Second, the middle-class driven child-saving movement effectively created separate and distinct categories of deviant youth. As the movement progressed, efforts to appropriately respond to the distinguishable deviant behaviours resulted in individualized bodies of knowledge and accompanying expertise to deal with each problem. Third, the benevolent intention of separating juveniles from the adult penal system and the desire to respond appropriately to each identified problem resulted in the creation of institutions, such as penitentiaries, prison, mental hospitals, reformatories and other, closed, purpose-built institutions (Cohen, 1985). While they may have been built with very different modalities in mind, each involved a measure of punitive sanctions. Children who were neglected and therefore, often left to their own devices for survival, were placed into industrial schools alongside children found to be in a state of delinquency for generally minor, relatively harmless, status offences. Fourth, although predominant reformers, such as Kelso and Scott believed these children were not responsible for the conditions

and the consequent deviant behaviour identified as problematic, the focus of rehabilitation remained upon the individual. Treatment and rehabilitative efforts concentrated on changing the behaviours of the juvenile delinquent, rather than the social conditions that forced many of these children and youth into destitution.

The fact that it was not until the 1980s that youth justice legislation underwent massive changes demonstrates that earlier notions of childhood and appropriate youthful behaviour enjoyed significant support from the public, the government, and other stakeholders (Fetherston, 2000). Since the introduction of the *JDA* in 1908 there have been changes in youth justice legislation, both federally and provincially. In 1984, the *Young Offenders Act* replaced the *JDA* in an attempt to address some of the shortcomings of the latter legislation. The next chapter lays out the changes in the master patterns of social control in Canada, which were instrumental in the demise of the *JDA* and that led to the resulting misconception that new reforms would create a more efficient and less oppressive juvenile justice system.

Chapter Three

Destructuring and Deinstitutionalization: The Replacement of the Juvenile Delinquents Act

*...both the expansion of the new system (the soft end) and the integration between the two systems was made possible by the triumph of the child-saving rhetoric. As the new professionals became more powerful, so the vocabulary of social work was used to widen all the nets. If the root causes of delinquency lay in the failure of community control, than an institution to compensate for this lack of control was necessary. There was a **need** for 'structure', 'care and control', 'care and protection in a planned environment' – the same diagnosis and the same remedy used by reformers [100] years ago. So the feeder mechanisms worked even faster: social workers were not only inspired by the rhetoric of 'need' but found the old system a convenient way of disposing of **their** hard cases. This gave rationale to the notion of prevention (there must after all be something you are trying to prevent) and allowed them to get on with the business of attracting completely new clients into the soft end. (emphasis in original; Cohen, 1985, p.98)*

According to Cohen (1985), by the early 1960s a second transformation was affecting the social control systems of most western industrialized societies. Based, in part, on a quest to embrace an overly romantic notion of “community”, the transformation was driven by a massive social movement (more accurately a series of social movements) focused on a critique of traditional social institutions (Cohen, 1985). These institutions included the formal systems of social control, including the juvenile justice system, which were to be subjected to a massive “destructuring” effort.

Through deinstitutionalization, the creation of community alternatives and the use of diversion, the destructuring movement sought to decrease the size, scope and intensity of the formal social control system. An informal system was to replace much of the formal system. Treatment was no longer the dominant ideology, the scope of the

criminal law was to be limited, incarceration rates were to decrease dramatically, the power of the criminal justice system over its citizens would diminish, and by the use of less intrusive alternatives, the system of formal intervention would be minimized (Cohen, 1985).

In Canada, discontent with the juvenile justice system and the *Juvenile Delinquents Act (JDA)* was precipitated by a dramatic increase in juvenile crime and high recidivism rates that strongly suggested the juvenile justice system and its legislation were not successfully controlling and rehabilitating youth (Corrado, Odgers & Cohen, 2000; Tanner, 1996). The civil rights movement of the 1960s heightened concerns across Canada about the tremendous powers granted to the juvenile court. The status offence provisions in the *JDA*, made it illegal for a youth to engage in certain behaviours, such as drinking, that were legal for an adult to engage in (Tanner, 1996). Also, the diminished legal rights of children and youth under legislation such as the *JDA* became an increasing concern (Caputo, 1993). For example, under the *JDA*, a juvenile could be brought to court without violating the criminal law and, if found to be in a state of delinquency for truancy, for example, an indeterminate sentence could be imposed. While discussions surrounding changes to the juvenile justice system began in 1965, changes to juvenile justice legislation did not occur until 1982 with the enactment of the *Young Offenders Act*—a change that was influenced by the entrenchment of the *Canadian Charter of Rights and Freedoms* (Hudson, Hornick & Burrows, 1988).

According to Cohen (1985), the original transformations of the broader deconstructing movement were attacked by four interlocking ideas: “away from the state”; “away from the expert”; “away from the institution” and “away from the mind”. The

purpose of this chapter is to look at the legislative changes that occurred as a result of the implementation of the *Young Offenders' Act (YOA)* and to show how the original principles of the *Act* are reflected in the four sets of ideas embraced by the broader destructuring movement. In order to provide a clear picture of how the ideas were reflected in the *YOA*, each idea will be set out, as defined by Cohen (1985).

Away from the state: encompassing decentralization, deformalization, decriminalization, diversion, and non-intervention. A call to divest the state of certain control functions and create, instead, innovative agencies, which are community based, less bureaucratic and not state-sponsored.

Away from the expert: encompassing deprofessionalization, demedicalization, delegalization, and anti-psychiatry. A distrust of professionals and experts and a demystification of their monopolistic claims of competence in classifying and treating various forms of deviance.

Away from the institution: encompassing deinstitutionalization, decarceration, and community control. A lack of faith in traditional segregative and open measures, termed variously community control, community treatment, community corrections or community care.

Away from the mind: encompassing “back to justice”, neo-classicism, and behaviourism. An impatience with ideologies of individualized treatment or rehabilitation based on psychological inner-states models and a call to reverse the positivist victory and to focus instead on body rather than mind, an act, rather than actor.

The most dramatic shift that occurred with the replacement of the *JDA* with the *YOA* was the movement away from legislation based on a child welfare model to mechanisms that were unmistakably within the realm of criminal law (Hudson, Hornick & Burrows 1988). This dramatic shift away from treatment and rehabilitation (away from the mind) to responsibility and accountability required structural changes in key institutions such as the juvenile court, as well as changes in how professionals dealt with children and youth in trouble with the law. Troubled youth were no longer considered “juvenile delinquents” but rather, in tandem with the strong legal focus of the new legislation, were designated as “young offenders”. Section 3, of the *YOA*, the Declaration of Principle, set out the fundamental elements of how young offenders would be dealt with under this new legislation; that is, the legislation’s guiding policy.

The Declaration of Principle set out the priorities by which youth in trouble with the law were to be managed. With this in mind, the section below extracts each component of the Declaration of Principle and aligns it with the most closely associated “destructuring” idea. An analysis of the Declaration of Principle demonstrates a remarkable consistency with the four sets of ideas identified by Cohen. The analysis also illustrates how the fundamental tensions in the *YOA* between such competing ideals as due process and treatment (Hudson, Hornick & Burrows, 1988) were significant precursors to a widening of the net of social control.

Section 3. *Policy for Canada with respect to young offenders*⁵

(1) *It is hereby recognized and declared that*

(a) *while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults,*

⁵ Original Declaration of Principle extracted from Hudson, Hornick & Burrows, 1988.

young persons who commit offences should nonetheless bear responsibility for their contraventions

While youth in trouble with the law were not to be held fully accountable for their behaviour, the change in focus “**away from the mind**” that is reflected in this principle constitutes a dramatic ideological shift from how deviant or delinquent youth were viewed under the *JDA*. Under the *JDA*, children and youth who were found to be in a state of delinquency were considered not to be responsible for their behaviour, as they were not responsible for the negative, impoverished or corrupt environment that was believed to be the root cause of the troublesome behaviour. The purpose of the mechanisms implemented through the *JDA*, therefore, was to provide the appropriate individual treatment and rehabilitation that would save the delinquent youth from a further life of immorality and/or crime.

Section 3 (1)(b)

society must, although it has the responsibility to take reasonable measures to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour

The significance of this section is the focus on the protection of society. This punishment-oriented shift “**away from the mind**” is dramatically different from the original provisions and intentions of the *JDA*, in which the fundamental purpose of incarceration was the protection of the “juvenile delinquent”. It is interesting that paragraph (a) holds youth primarily responsible for their behaviour once the behaviour has been engaged in, but under paragraph (b) society is responsible for preventing that initial behaviour.

Section 3 (1)(c)

young persons who commit offences require supervision, discipline and control, but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance

This section reflects the primary purpose of the new legislation—to punish delinquent youth, while at the same time providing them with special guidance and assistance.

There is an inherent contradiction between the goal of punishing an individual and the goal of providing care, which has been recognized by Hudson and his colleagues (1988):

[I]n some situations the Act gives precedence to due process, while in others treatment is emphasized at the expense of due process. The underlying philosophical inconsistencies and tensions in the *YOA* reflect the very complex nature of youthful criminality. There is no single, simple philosophy and no single type of program that will “solve” the “problem.” (p. 15)

Attempts to move “**away from the expert**”, by removing the focus on rehabilitation and treatment in favour of a focus on discipline and control, were obstructed by the recognition that children and youth have special needs. As a result, youth were left in a state of dependency, but because of the shift away from professionals and experts, discipline and control took the form of punishment solely for the sake of punishment and there were few, if any, mechanisms outside the justice system that provided care for the special needs that youth were understood to have.

Section 3 (1)(d)

where it is not inconsistent with the protection of society, taking no measures or taking measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offences

Perhaps the most significant shift that occurred during the second transformation was the movement “**away from the institution**”. Under the *YOA*, provisions were created to provide alternative measures for punishment outside of the traditional institutions.

Herein lies the most remarkable contradiction: at the same time that the legislation was accommodating the calls for more severe measures of punishment, it was used to buttress the larger deinstitutionalization movement. Along with efforts to move away from the expert, the inconsistencies embedded in the legislative attempts to deinstitutionalize the juvenile justice system were primary catalysts to the expansion of the social control net. The community, rather than state institutions, became the agent of social control.

Section 3 (1)(e)

young persons have rights and freedoms in their own right, including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms

Under the *JDA*, the *best interests of the child* superseded the civil rights of children and youth. As a result, many of the provisions of the legislation violated the civil liberties of children and youth found to be in a “state of delinquency”. This was inconsequential, as the best interests of the child could be best served by the professionals: physicians, psychiatrists and legal personnel who knew what was best for these troubled youth. In conjunction with the disillusionment with the institution, the enactment of the *Canadian Charter of Rights and Freedoms* played a significant role in the movement “**away from the expert**”. Civil rights provisions in the *YOA*, were consistent with the then newly enacted rights guaranteed under the *Charter*.

Section 3 (1)(f)

in the application of this Act, the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society, having regard to the needs of young persons, and the interests of their families

(g) young persons have the right, in every instance where they have rights or freedoms that may be affected by this Act, to be informed as to what those rights and freedoms are;

(h) parents have responsibility for the care and supervision of their children, and for that reason, young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision are inappropriate

In addition to removing much of the powers experts were given over children and youth, the *Charter* also encouraged a significant movement “**away from the state**”. Under the *JDA*, that state and its agents had broad powers to place children in institutions indeterminately for relatively minor infractions. The *Charter* now required that children and youth be provided with the same rights as adults, thus status offences were removed. In fact, special rights were provided for children and youth. The state had to be accountable for the decisions it made on behalf of troubled children and youth and as responsibility shifted away from the state, the Declaration of Principle reflected an attempt to return the responsibility for young miscreants to their families.

Twenty years after the initial calls for change, the *Young Offenders’ Act (YOA)*, a statute built upon a “modified justice model” (a mix of the social welfare and justice model) was implemented in 1984 to replace the social welfare-oriented *JDA*.

The fundamental objective of the *YOA* under the modified justice model was to respect individual rights and to respond to the “special” needs of youth in conflict with the law by providing diversion for “soft” offenders and punishment (especially incarceration) for “hard” offenders (Corrado, Bala, Lender & LeBlanc, 1992). Thus, one goal of the new legislation was to keep as many youth as possible out of institutions

through appropriate interventions, while at the same time holding youth accountable for their actions and respecting their civil rights as guaranteed by the *Canadian Charter of Rights and Freedoms*. For example, diversion techniques were thought to be an appropriate balance between holding youth accountable and keeping them out of the punitive, formal, justice system.

The new model involved procedural fairness *in addition* to informality, as opposed to the social welfare model, which was characterized solely by informal processes. While the old model under the *JDA*, involved indeterminate sentencing, the new system was bifurcated: “soft” offenders were diverted and “hard” offenders were punished. This would have the effect of creating diversion programs and the expertise necessary for implementation and administration (Corrado, Bala, Lender & LeBlanc, 1992). Childcare experts were responsible for the administration of the *JDA*; however, the new legislation, which protected individual rights required greater involvement throughout the process by lawyers (see, for example, Corrado, Bala, Lender & LeBlanc, 1992). Although the *YOA* sought to provide appropriate interventions, such as mental health care, for those youth in need, the additional task of punishment resulted in the increased capacity and involvement of the criminal justice system and its personnel. In this attempt to weave together the goals of rehabilitation and punishment, young offenders often became involved in a matrix comprised of the delinquency, mental health, and welfare systems (Cohen, 1985).

Besides hybrid services such as intermediate treatment, the most significant development is a hidden correctional system...There is a network of agencies – in-patient psychiatric settings, residential treatment centres, out-patient clinics – they redefine delinquency in terms such as ‘disruptive behaviour’, ‘acting out’, ‘adjustment reaction’ or ‘runaway reaction by adolescents’...[C]hild welfare and social service workers use

psychiatric rather than juvenile courts labels to justify removal of the child from family...and child welfare, mental health and juvenile correctional systems are drawing on overlapping populations. (Cohen, 1985, p. 62)

Moreover, as a result of the expansion of newly-created services in the expanding apparatus of care and control, more youth were being processed through the system; youth who, prior to the emergence of the “destructuring” movement, would not have been involved in the system at all (see for example, Hudson, Hornick & Burrows, 1998). In addition, the intensity of interventions increased. New agencies and services did not replace the initial control mechanisms but, rather, expanded and supplemented them (Cohen, 1985). Incarceration rates did not decrease, in fact there was a steady increase in the use of custodial dispositions and community programs did not replace the traditional institutions; indeed, the new community programs served as supplements to the system (Cohen, 1985). Thus, the destructuring of the old institutions did not occur. What resulted was an intensification of the original structures, which became stronger and much more expansive. The numbers of professionals and experts increased dramatically as society became more dependent upon them. The legal system was not replaced by an informal system, and while forms of treatment may have changed, they did not disappear (Cohen, 1985).

Although the legislative change from the *JDA* to the *YOA* was slow, criticism of the new legislation appeared very quickly. Tanner (1996) provides a concise summary of the legislative outcomes of the *YOA*:

Many of the provisions of the *Young Offenders Act* attempt to redress the criticisms directed at its predecessor. Hence there is now a uniform maximum age limit for juvenile offenders of 17; legal protection—the right to a lawyer, more stringent rules about the gathering and presenting of evidence in court—for young offenders has been established as a principle; indeterminate custodial sentences have been replaced originally

perceive them to be true and we hold on to these beliefs as we attempt to create policy that will reduce youth crime (Bernard, 1992).

The implementation of the YOA and the fundamental ideological transformations that occurred between the 1960s and the 1980s with respect to ideas of appropriate treatment, rights and responsibilities and appropriate measures of control had the unintended consequence of catching and processing more youth in the expanding apparatus of care and control; many who previously would not have been identified as in need of care and/or control in the first place (Hudson, Hornick & Burrows, 1988). Previously, many first time minor offenders were let off with a warning; under the new legislation, however, youth were referred to diversion programs (Hudson, Hornick & Burrows, 1988). The chances of these youth becoming more involved in the formal system also increased, because non-compliance with many of the less formal diversion programs often resulted in punishment through a more formal custodial disposition (Hudson, Hornick & Burrows, 1988). It is, therefore, not surprising that by the mid-1990s administrative offences (e.g., breach of probation) were the most common offences that youth were being charged with (Winterdyk, 1996). The response to administrative offences was most often (and still is) custody (Winterdyk, 1996). Consequently, custody was still being used and in fact, many youth who would have historically never been in the system *at all* now faced custodial dispositions because they had breached the conditions of their original, less formal, diversion disposition.

Perhaps the most dramatic effect of the new legislation was a significant increase in youth custody dispositions for non-violent offences (Markwart, 1992). To date, Canada has the highest youth incarceration rate of *any* Western democratic nation, including the

United States (see, for example, Leonard & Morris, 2000). Thus, not only was the new system *catching* youth who would not entered the system, it was also processing youth in conflict with the law by using more punitive forms of social control. As mentioned earlier, there was also an increasing trend in the criminalization of behaviours that had previously been dealt with informally. For example, due to “zero tolerance” attitudes, youth involved in “school yard scuffles” faced assault charges (Leonard & Morris, 2000). Such incongruence is the result of diverse and often contradictory policies translated through inconsistent principles set out in the legislation. Despite attempts to reduce the numbers of youth serving custodial sentences, custody rates actually increased under the *YOA*—an increase that cannot be attributed to actual increases in youth crime. Much of the increase in custody rates was a result of youth committing minor offences being sentenced to custody, not for violent or major property crimes, as originally intended by the new legislation (Corrado, Bala, Lender & LeBlanc, 1992).

Disconnections between legislative intent and program/policy outcomes often occur because the original program/policy rationale was lost during the implementation stage (see, for example, Cohen, 1985). The outcomes become inconsistent with the intended purpose. As noted by Leonard and Morris (2000), the fundamental element of the Declaration of Principle was the suggestion that the *Act* had one goal, which was to provide justice under the due process of law and that there were other more appropriate systems in place to deal with the clinical and educational needs of children and youth. The functions and goals of the various institutions that deal with children and youth were, however, never clearly defined and/or divided.

There was also incoherence within the juvenile justice system with respect to matching appropriate institutions with appropriate dispositions. Under the *YOA*, custody was divided into secure and open institutions. Since its inception, however, there has been great variability in what constitutes an open custody facility which, according to Caputo and Bracken (1988), is dependent on whether the term ‘open’ or ‘custody’ is emphasized. Whether a youth was placed in an open custody facility that is designated on secure custody grounds or whether the open custody facility is a group home may be a result of nothing more than convenience, rather than suitability to the specific needs of the affected youth.

Although the new legislation called for the use of alternative measures where appropriate, such measures were not fully utilized and the outcome was, in fact, an over use of incarceration. As Leonard and Morris (2000) observe, major shifts in attitude are required before such substantive changes can occur and these changes do not simply happened through legislative tinkering. It has been argued that a great deal of the net widening over the last 20 years has been due to the unsuccessful attempts to create diversion programs (see for example, Pate & Peachy, 1988).

As the foregoing review indicates, there is evidence that, in practice, the *YOA* was not being used as it should have been; that is, as originally intended (Leonard & Morris, 2000). The competing ideals of due process and treatment in the *YOA* created a fundamental tension at the implementation stage (Bala, 1992) and almost immediately after the implementation of the *Act*, calls for changes to the legislation began to appear. Bell (2002, p. 57) summarizes the major concerns and criticisms of the *YOA*:

- Horrible crimes committed by youth were going unpunished;

- The *YOA* was incapable of controlling youth violence;
- Youth rights were protected at the expense of their victims
- The *YOA* was far too problematic to ever be “fixed”; and
- Youths’ legal rights were a major obstacle to the protection of society”

Although the then Liberal Minister of Justice Alan Rock admitted that the *YOA* was not responsible for youth crime, and that there was not an epidemic in youth violence, Bill C-37 *An Act to Amend the Young Offenders Act* was introduced in 1997 as part of an overhaul of the youth justice system (Leonard & Morris, 2000). Minister Rock’s release announcement in 1997 contradicted his previous claim that youth violence was not out of control.

With the introduction of the Bill, the Government is honouring its commitment to address the problems of violent youth crime by amending the *Young Offenders Act*. The amendments recognize the public’s concern about youth violence, and demonstrate the government’s determination that public protection must be our primary objective in dealing with violent young offenders. One of our goals must be to ensure that young people understand the consequences of their actions and take responsibility for them. (as cited in Leonard & Morris, 2000, p. 128)

The last 20 years have witnessed increasing criticism of the youth criminal justice system, and youth justice has once again become a political issue. Between 1997 and 1998, the House of Commons Standing Committee on Justice and Legal Affairs undertook a review of the youth justice system, youth crime, and the *Young Offenders Act* (Bell, 2002). In 1998, a Federal-Provincial-Territorial Task Force on youth criminal justice produced a report - *Renewing Youth Justice* - which provided 14 separate recommendations for changes to the youth justice system. These recommendations were to be the basis of new youth justice legislation. According to the federal government report, *Youth Justice Renewal Initiative*:

The youth justice system under the *Young Offenders Act* (YOA) is not working as well as it should for Canadians. Too many young people are charged and often incarcerated with questionable results. Procedural protections for young people are not adequate and too many youth end up serving custodial sentences with adults. The overarching principles are unclear and conflicting; disparities and unfairness in youth sentencing exist. Interventions are not appropriately targeted to the seriousness of offences. They are not adequately meaningful for individual offenders and victims, and do not adequately support rehabilitation and reintegration.⁶

On March 11, 1999 the *Youth Criminal Justice Act* was introduced in the House of Commons. It received its final reading in the fall of 2001 and replaced the *Young Offenders Act* on April 1st, 2003. Even before the implementation of the new *Act*, however, critics had expressed concern about whether the legislation would result in any real changes or whether, as MP Chuck Cadman argued, it would simply be a new name for the old young offender legislation (Hogeveen and Smandych, 2001).

As Leonard and Morris (2000) have noted, “the pressing problem facing the Canadian justice system today is the combined effect of an over reliance on incarceration as an answer to crime and the widespread acceptance of the lock-‘em-up/get-tough, philosophy on the part of the public” (p. 133). Consistent with Cohen’s (1985) observations, one outcome of the deconstructing movement has been a larger and more punitive youth social control system. As detailed throughout this chapter, despite attempts to provide alternative mechanisms of punishment, control and/or treatment through the *YOA*, more youths have been processed through the youth justice system, often for minor crimes, many of whom were placed in institutions, rather than systems of community corrections.

⁶ Retrieved October 26, 2002, from <http://canada.justice.gc.ca/en/ps/yj/legis/why.html>

According to the Correctional Service of Canada by the late 1990s there had been a consistent increase in secure custody dispositions for young offenders, while probation, fines, community service orders and absolute discharges had steadily decreased (Sinclair & Boe, 1998). In addition, in the early 1990s there was a steady increase in the numbers of youth processed through the youth court system (Sinclair & Boe, 1998). In 1987, 63 percent of youth found guilty of crime were placed on probation and although the numbers of youth placed on probation increased to 66 percent in 1996, by 1998 the rate had dropped to 48 percent (Winterdyk, 2000). From 1987 to 1998 the numbers of young offenders placed in open custody increased from eight percent to 18 percent, and the numbers of young offenders placed in secure custody increased from six percent to 16 percent (Winterdyk, 2000). Another unexpected outcome of the efforts of the destructuring movement has been an expanding system of social control; a development that will be explored in the next chapter.

...the new era of the *Young Offenders Act* fell far short of the expectations that it has aroused. Certain consequences seemed to many commentators to be directly contrary to the intended effect of the act: notably, a *decrease* in the use by police of informal action with alleged young offenders, and *increase* in the use of the custodial dispositions by the Youth Courts, and substantial disparities in the sentencing of young offenders. (Carrington & Schulenberg, 2004, p. 220)

Chapter Four

The New “Street Urchins”: The ‘Problem’ of Children and Youth at the End of the 20th century

[T]he most fundamental fact about what is going on in the new agencies is that it is much the same as what went on and is still going on in the old system. The new ‘service delivery’ modalities...are dominated by the same forms of individual or group treatment used in custodial institutions or traditional one-to-one encounters such as probation. Whether it is individual counseling, vocation guidance, encounter groups, role playing or behaviour contracting, it is one person doing something or another person or group of persons. And however normal, banal and everyday the activity might be...it is justified with the old (and supposedly discredited) rhetoric of treatment. (Cohen, 1985, p.75)

Over the last 10 years, the mechanisms of care and control that constitute the Canadian youth social control apparatus have undergone some important shifts. Driven, in part, by an increase in social problems affecting children and youth, the shifts have included the introduction of legislation which resembles, in many respects, the changes introduced in the late 19th and early 20th centuries. As we shall see, these shifts are due, in part, to the unexpected consequences of repealing the provisions of the *Juvenile Delinquents Act (JDA)* that allowed police and youth justice personnel to deal with “wayward” youth and “street urchins”.

This chapter describes the current social climate in Canada and the social problems that are negatively affecting a small group of children and youth, as well as the governments’ responses to the increasing problem of visible street youth (“street urchins”). Government cutbacks have eliminated, and continue to eliminate, many programs for troubled children and youth, many of which were a product of the destructuring movement. Despite a reduction in services, however, the apparatus in place to control troubled and troublesome youth continues to expand.

The New “Street Urchins”

When it's like cold and pouring rain, you're soaked, you know you're shivering and 'cuz of that you know you'll end up catching a cold or something. You'll be sick for a few months and because you aren't in a good enough situation to really take care of yourself you know like...when you're sick, you don't feel like going anywhere...[and] it's not like you have food in your squat to eat. You have to go out and walk sometimes, five, six kilometers just to go get a ...[free] meal. (excerpt from 18-year-old street youth; Dachner & Tarasuk, 2002, p. 1045)

Homelessness at the end of the 20th century was proclaimed a national disaster in Canada (Woodward, 2001). It has been estimated that there are between 130,000 and 260,000 homeless people in Canada (Dachner & Tarasuk, 2002). A report prepared for the Greater Vancouver Steering Committee on Homelessness stated that an accurate figure of the homeless population is not available (Woodward, Eberle, Kraus & Goldberg, 2001). The actual population of homeless people in Canada is most likely much larger. The authors note that the size of the homeless population is likely underestimated as data were gathered from community agencies that service homeless people; therefore, homeless people who do not access such services would not have been included in the statistics. Recent reports also state that as the homeless population increases, so does the diversity of the homeless population (Woodward, Eberle, Kraus & Goldberg, 2001). In 2000, the City of Toronto reported that between 1988 and 1998 total admissions to shelters increased by 75 percent.⁷ In 1993, 10,000 – 20,000 homeless youth were estimated to be living in Toronto (Dachner & Tarasuk, 2002), and between 1996 and 1998, there was a seven percent increase in youth admittance to Toronto

⁷ Retrieved October 20, 2002, from <http://www.city.toronto.on.ca/homelessness/changes.htm>

shelters.⁸ When families are added to the analysis, there appears to be a 120 percent increase in the numbers of children staying in shelters over the same time period.⁹

Available data identify children and youth as one of the fastest growing segments of the homeless population (Dachner & Tarasuk, 2002). Furthermore, while homelessness in general is considered a *national* disaster, the increase in street youth may be particularly acute in British Columbia. This increase may, in part, be due to the high percentage of street youth moving to British Columbia from other provinces. In 1994, the McCreary Centre Society conducted research on the health of street youth in British Columbia; of the 100 street youth surveyed, 38 percent had come to B.C. from other provinces (1994a).

Rail, originally from Quebec, is new to the English language. During his past three months in Vancouver, he has been sleeping on the streets of the Downtown South, making money by doing “squeegee” work. Now 18, he became street-involved at 14 after incidents in which he was both kicked out of and ran away from his family home. He says “...I don’t talk to my father any more...I would like a relation with him so I can call him, but I am not brave enough.” He spent nearly two years in “juvie” in Quebec. Although he was able to complete his high-school education while in the facility, Rail cautions about the bad influence of the custody environment: “Don’t put [street youth] in jail. It’s the way I learned many shit. Like steal stuff and shit. I learned it [there]. It’s the worst thing to do to help someone.” He recalls begging repeatedly expelled from schools and says, “I was like a black sheep. Me and my friends were like tagged. ‘They’re bad kids,’ they would say ‘don’t hang out with those guys’”. Still, education is important to Rail: “I want to go back to school. I want to do something with my life. [But] I’m not in a rush. I’ll take my time.” (McCreary Centre Society, 2002, pp. 4-5)

By 2001, the number of street youth who reported coming from other provinces had increased to 67 percent in Vancouver and 33 percent in Victoria.¹⁰ This is particularly unfortunate given the lack of support services provided for homeless youth in

⁸ Retrieved October 20, 2002, from <http://www.city.toronto.on.ca/homelessness/changes.htm>

⁹ Retrieved October 20, 2002 from <http://www.city.toronto.on.ca/homelessness/changes.htm>

Vancouver (Hagan & McCarthy, 1997). Additionally, a substantial number of male youth (25 percent) reported living on the streets for more than three years, signifying high levels of street entrenchment (McCreary Centre Society, 1994a). Hagan and McCarthy (1997) found that street youth in Vancouver and Toronto in 1995 were disproportionately male. Their research also found fairly high levels of street entrenchment in both cities. Over half of the respondents in their study had been living away from home for more than one year.

This resurgence of youth living on Canadian streets has become an acute problem over the last approximately 10 years. In fact, statistics gathered by a Vancouver drop-in centre in 2003 suggest that the number of youth on the street has almost doubled in less than a year.¹¹ According to service providers, such an increase is largely attributed to provincial government welfare cuts and the closure of several residential group and foster homes.¹²

Society's perceptions of street youth have also changed significantly over the last 30 years. A report by the Canadian Council of Social Development in 1971 indicates that street youth were defined very differently in the early 1970s than the way they are now. The purpose of the report was to provide recommendations for programs for 'transient youth'; a phenomenon, which, according to the report, was only an issue during the summer months. According to the report, although some transient youth had left dysfunctional situations the majority were, in fact, students looking for employment and

¹⁰ McCreary Centre Society Press Release, March 26, 2001.

¹¹ Carrigg, D. (2003, January 22). Things going from bad to worse for street kids. *The Vancouver Courier*, p. 9.

¹² Carrigg, D. (2003, January 22). Things going from bad to worse for street kids. *The Vancouver Courier*, p. 9.

were not considered a high-risk population. Consequently, many of the recommendations in the report concentrated on finding employment and temporary hostels for these youth.

While street-involved youth in suburban and rural areas are generally younger youth who are still connected to school and family, youth living in urban centres are likely to be older and have few connections to family, school, or community (McCreary Centre Society, 2002). The increased visibility of street youth has produced a range of negative responses. According to the popular press, 'street kids' are easily identified, they have "multiple body piercing, tattoos, torn jeans and steel-toed army boots".¹³ Not only is their appearance offensive to 'decent society', but according to at least one municipal politician¹⁴, "[they] are foul-mouthed and have no regard for elders or the cops".¹⁵ This perception contrasts markedly with the observations reported in the Canadian Council on Social Development's report on transient youth in 1971.

It is no longer possible to clearly delineate the stereotyped – transient group whose traditional costume – faded blue jeans, nondescript t-shirt, unkempt hair, and bulky haversack – all coated with dust from the Trans-Canada Highway – became synonymous with the counter-culture, laziness, rebellion against authority, shiftlessness, and promiscuity, among other attributes, in the eyes of many. (p. 3)

As demonstrated by the McCreary Centre Society's (2002) research on homeless youth, society's negative perceptions of street-involved youth are often disconnected from and unsympathetic to the realities of many of these youths' lives.

What is it like to be young and homeless in Vancouver? How do homeless youth survive on the street? For many homeless youth, the day and often the night is spent trying to secure shelter, food, and drugs. Relatively few homeless youth hold legal jobs. Street jobs range from

¹³ See for example, Hager, B. (1997, November) The young and the restless: A Victoria program motivates street kids to get a life. *Chateline*, 70(11), 24.

¹⁴ Saanich Councillor, Ray Williams.

¹⁵ The Amsterdam of North America: Victoria achieves notoriety as a haven for street kids. (1996, May 6). *British Columbia Report*, 7(36). 24-25.

relatively safe to extremely dangerous; youth panhandle, squeegee, deal or run drugs, and sell sex. Although many youth have left their family or care situation behind and are alone on the street, they cultivate their own social networks in which they provide help and support for other members of their “street family.” However, while some youth are trusting of their street peers, others are more wary and suspicious. Youth express various feelings and perspectives about their lives. They describe the loneliness, confusion and depression that sometimes threaten to engulf them. They also convey a range of perceptions about their street-involvement—outlooks that include the street as a necessary adaptation, as freedom and independence, as a place of shame and stigma, as a hostile place or, conversely, a place of belonging. (McCreary Centre Society, 2002, p. 19)

Contrary to the sympathetic image of ‘transient’ youth in the 1970s, present day reactions have resulted in punitive responses, at both the municipal and the provincial levels. For example, the City of Victoria has created a by-law aimed at street youth, which makes it illegal to panhandle, that is, to “sit, kneel, squat or lie down on downtown public sidewalks”.¹⁶ Other major cities across Canada, such as London, Oshawa, Ottawa, Halifax, Vancouver, North Vancouver and Winnipeg have passed similar anti-begging and anti-loitering by-laws (see for example, Hermer & Mosher, 2002). Unlike the City of Victoria’s by-law, Vancouver’s municipal *By-law to Regulate and Control Panhandling* enacts specific restrictions. For example, under the by-law “no person shall panhandle on a street within 10 meters of a) an entrance to a bank, credit union or trust company, b) an automated teller machine, c) a bus stop, d) a bus shelter, or e) the entrance to a liquor store. The City of Calgary is expected to pass legislation similar to Vancouver’s in the near future.¹⁷

Along with increases in the numbers of street youth, there has been an increase in

¹⁶ See for example, Acklerly, J. (1997, November). Taking it to the streets: Defending homeless youth in Victoria. *Briarpatch*, 26(9), 9.

¹⁷ No begging in the city (2003, November 13). *Vancouver Sun*, p. A8

the numbers of so-called ‘squeegee kids’. The negative public response to youth who wait at major intersections to clean the windshields of idling cars, has created debates about the ‘problem’ and its solution. Government responses have varied throughout the provinces. Toronto’s conservative municipal government proposed by-laws to ban both “squeegeeing” and panhandling (Dachner & Tarasuk, 2002). These by-laws purport to protect the civil rights of citizens, as well as to discourage the migration of the many street youth perceived to be moving to Toronto from other major Canadian cities, such as Montreal and Vancouver.¹⁸ In 1999, the Ontario provincial government passed legislation that criminalizes ‘squeegee kids’. The *Safe Streets Act*¹⁹ prohibits anyone from stepping onto a road or highway to approach a vehicle to ask for money or to offer a service. The *Act* also criminalizes panhandling and other street-based activities. In essence, the *Safe Streets Act* “represents the re-introduction of repealed vagrancy laws that have a disgraceful history of policing the social status of people” (Hermer & Mosher, 2002, p. 13).

Regardless, the *Act* has withstood a constitutional challenge launched on behalf of 13 youth charged with violations of its provisions. Judge Babe, of the Ontario Court of Justice found no constitutional basis for the statute to be struck down.²⁰ According to the unreported Ontario Court judgment, although the *Act* did violate the defendants’ rights to freedom of expression guaranteed under the *Charter*, the violation was justified under section 1 of the *Charter*, as the intention of the *Act* was to protect public safety.²¹ As

¹⁸ Ibbitson, J. (1999, May 20). PC vow a swipe at squeegee kids. *National Post*. Retrieved March 4, 2002, from <http://www.nationalpost.com/content/features/Ontario/052099ont1.html>.

¹⁹ S.O., 1999 c.8

²⁰ Kari, S. Safe Streets Act Unconstitutional say Canadian Civil Liberties Association (2001, July 7). *Ottawa Citizen*. Electronic Version <http://projects.isasu.edu/pipermail/hpn/2001/004287.html> (retrieved April 3, 2003).

²¹ Op cit

O'Grady and Bright (2002) have argued, although the *Act* may claim to be aimed at improving public safety, there appears to be little regard for the safety of the 'squeegee kids' under the provisions of the *Safe Streets Act*.

Since the implementation of the *Act* (January 31, 2000), "the activity [of squeegeeing] has all but disappeared from the streets of Toronto, and there are now only occasional sightings of squeegee cleaners" (Gaetz, 2004 p. 24). Thus, given its perceived 'success', it is expected that other provinces will follow Ontario's lead with similar legislation, particularly if the various municipal by-laws do not withstand constitutional scrutiny. At the time of writing this thesis two Private Members' Bills have been introduced in the B.C. legislature and will receive final reading in the Fall 2004. Both Bills implement much more restrictive measures than the Ontario's *Safe Streets Act*.

Bill M202 the *Safe Streets Act*²², not only prohibits "aggressive panhandling" and squeegeeing, but also the public disposal of used condoms, hypodermic needles or syringes and broken glass. Bill M203 the *Trespass to Property Act* is aimed at prohibiting "squatters" from residing in entranceways, alcoves and parkades of business and apartment buildings (see also, Hansard Debates, May 10, 2004 Vol 25, No. 6, pp. 10948 & 10953).

Although the Ontario *Safe Streets Act* is being heralded as an effective tool to rid the streets of squeegee kids, it has not dealt effectively with the issues many street entrenched youth face. While there are no longer youth on the street in Toronto offering to clean windshields in exchange for money, these youth are still homeless. Thus, the question remains as to where these youth are and how they are supporting themselves.

²² At the time of publication of this thesis, the *Safe Streets Act* (SBC 2004, c.75) has passed and was put into force on January 29, 2005

O'Grady and Roberts (2002), conclude that although the *Act* reduced the visibility of this perceived social problem, it will most likely make things much worse.

Since homeless youth are one of the most socially disadvantaged groups in society, and the government has not put into place alternative forms of employment or social problems, it is very unlikely that this group's income generating patterns have suddenly become more socially desirable, such as paid employment. In fact, given the backgrounds of these youth, as well as the hardships they face on a daily basis, it would not be unreasonable to believe that they will face pressure to earn money in even more precarious sectors of the street economy as long as squeegee cleaning remains unlawful. As squeegee cleaning cannot be done surreptitiously, making it unlawful could force some of these youth to engage in other unlawful activities, such as theft or dealing in drugs, which one can hope to engage in without getting caught. (p. 37-38)

This concern was reiterated by B.C. Official Opposition member, NDP MLA Jenny Kwan during the second reading of Bill M202, the *Safe Streets Act*.

I rise to speak against this bill, the Safe Streets Act. I want to be very clear from this side of the House that the NDP, the opposition, is not opposed to having safe streets. However, we are opposed to this legislation because this piece of legislation does not address the needs to be addressed, and this is the issue of poverty—addressing the issue of homelessness, addressing the issue of the people who are in great need of assistance to get out of the cycle of poverty in which they live. (Hansard Debates, May 10, 2004, Vol.25 No. 6, p. 10951)

Gaetz (2004) supports this contention, and argues further that social exclusion, an outcome of such legislation, contributes to the criminal victimization of homeless and street involved youth because it removes them from safer public spaces and relegates them to “to spaces that are potentially more dangerous and where they have less control over whom they interact with” (p. 429).

The New “Street Urchins”: Drugs and the AIDS Epidemic

The youth report differing degrees of feeling overwhelmed by their lives. Neptune says: “Usually early in the morning or late at night. I just can't take it anymore. It's cold and I just want to go to bed and I can't.” To counter these feelings, she says, “I just walk around and I feel sorry for

myself. Than I forget all about it and say I can go on and I go on. And drugs...help a lot." Jeana feels defeated "especially when it's raining." Rail says he feels overwhelmed daily. Louise is at a point in her life where it seems more difficult to get off the street than to stay on the street. Steve says that when he feels overwhelmed, "I always get drugged and then I feel better." ... In the interviews, youth also conveyed confusion, frustration, depression and loneliness. Nina is in tears throughout the interview. Jay-Loyd says, "All you have to rely on is yourself. It gets really lonely. It is really lonely." (McCreary Centre Society, 2002 p. 28-29)

Once on the street, youth face serious health risks and a significant number of street youth report higher levels of health problems than non-street youth (McCreary Centre Society, 1994a). Research indicates that increasing numbers of homeless youth are dying from overdoses, suicide, AIDS and street violence (O'Brien, 2000). In 2002, the federal government's report on *Health and Homelessness* paid particular attention to the poor health of street youth:

Youth can experience a range of physical, psychological and emotional health problems. These are related to unsanitary and precarious living conditions, inadequate nutrition, violence, alcohol and drug use, risky sexual behaviours, low self-esteem and ongoing societal rejection, and economic marginalization. (p. 2)²³

Increases in HIV and Hepatitis infection rates among youth have exacerbated the problem. Three separate studies using the same sample of over 400 street youth in Montreal, found the prevalence of Hepatitis A, B, and C infection to be 4.7 percent, 69.3 percent and 12.6 percent, respectively (Allard, Haley, Bedard, Roy, Leclerc & Cedras, 2002; Haley, Roy, Lemire, Boivin, Leclerc & Vincelle, 1999; Haley, Roy, Lemire, Boivin, Leclerc, Vincelle & Cedras, 2001). A Vancouver study found from a sample of 111 street youth, the prevalence of Hepatitis A infection was 6.3 percent (Dobson, Patrick, Ochino, Ho & Talling, 2001). According to the United Nations, global rates of

HIV infection rose 10 percent in 1998 and over half of the new cases were amongst young people under 24.²⁴ By 1992, AIDS was the fourth leading cause of death among the BC population aged 25 to 44 years (McCreary Centre Society, 1994b). The Canadian Aboriginal AIDS Network published findings reporting that 31 percent of the Aboriginal population infected with HIV is under the age of 30, suggesting that most of these individuals were infected when they were in their late teens or early twenties (Burke, 1999).²⁵ High incidence rates of HIV infection in non-Aboriginal youths have also been documented in American epidemiological studies (see for example DiClemente, 1992 & Diamond & Buskin, 2000). A study of 1013 street youth in Montreal between 1995 and 2000 found a mortality ratio of 11.4 (Roy, Haley, Leclerc, Sochanski, Boudreau & Boivin, 2004).

Although HIV infection among youth has increased significantly over the past 10 years (McCreary Centre Society, 1994a), street youth are exposed to a higher risk of HIV infection than non-street youth due to high-risk behaviour, such as drug use and risky sexual behaviour (Wanger & Cauce, 2001; Kidd & Kral, 2002). Research indicates that street youth under the age of 20 are one of the highest-risk groups for contracting the HIV virus (MacLaurin, 2000). Specifically, the incidence of HIV infection among non-street youth attending school is 1.5/1000, compared to 45/1000 of street youth (McCreary Centre Society, 1994b).

²³ Retrieved March 13, 2002, from <http://dsp-psd.pwgsc.gc.ca/Collection-R/...odules/prb99-1-homelessness/health-e.htm>

²⁴ See for example, (1998, November 25). *Vancouver Sun*, p. A18.

²⁵ This is due because of the "long latency period between infection and the onset of symptoms (about 8 to 12 years), many individuals who [are] diagnosed with AIDS while in their twenties...are likely to have been infected as teenagers" (McCreary Centre Society, 1994b).

High-risk behaviour is often a by-product of the reality of street life for many homeless youth. The McCreary Centre Society (1994a) found only two percent of the street youth surveyed in Vancouver report having never used marijuana, compared to 75 percent of non-street youth attending school in B.C. Eighty-five percent of the street youth sample reported using cocaine and 48 percent of the male and 32 percent of the female street youth reported injecting drugs. Smart and Adlaf (1991) found that Toronto street youth had rates of drug use ten times higher than that of Toronto high-school students: 41 percent of street youth in their study reported injecting a drug in their lifetime and 11 percent had shared needles within the last year. Drug use was found to be higher amongst youth involved in the sex trade, putting this group of youth at an even greater risk of HIV infection than street youth not involved in the sex trade (see for example, Schissel & Fedec, 2001).

Most disturbing is the legacy of drugs and family in Vancouver's Downtown Eastside. Youth who grow up on the Downtown Eastside with family members on the street often remain on those streets. Christy is a heroin addict whose parents were both drug addicts. She has been street-involved her whole life: "My mom was down here all the time. My dad O.D.'ed here. I wondered what was so great about it, so I came to see for myself." Maria also originates from the Downtown Eastside. "I grew up down here. I started doing dope early." (McCreary Centre Society, 2002, p. 38)

While street youth involved in the sex trade and/or drug use are at highest risk for HIV infection, the sexual behaviour of street youth not involved in the sex trade also places them more at risk than non-street youth. Research conducted by the McCreary Centre Society found street youth are approximately three times more likely to be sexually active than non-street youth attending school in B.C. (1994a; 2001). Furthermore, not only are street youth more sexually active than non-street youth, they

also report having more partners. More specifically, 37 percent of the street youth report having had 20 or more partners in their lifetime (McCreary, 1994a). The high-risk behaviour of multiple sex partners is aggravated by the overwhelming number of street youth reporting not using any method of contraception (McCreary, 1994a).

The New “Street Urchins”: Drugs & the Sex Trade

Nina is 15 years old, Aboriginal, and three months pregnant. She is a sex trade worker who has been street-involved since age 10, when she dropped out of school after Grade six. She recently stopped using heroin but continues to smoke crack. The interview process appeared difficult for Nina; although she remained either in tears or on the verge of crying throughout the interview, she wanted to continue. She grew up in the government care system and ran away from her foster family. Originally from Alberta, Nina came to Vancouver for drug treatment about a year ago. At the time of the interview she was staying at a safe house, but she usually sleeps on the streets in the Downtown Eastside. Nina found many of the interview questions painful to answer. She says if she had the chance to say something to other young people about the street she would tell them, “Don’t do drugs. Stay home. Stay away. It might be fun at first, but soon it gets pretty nasty.” (McCreary Centre Society, 2002, p. 7)

In 2001, the McCreary Centre Society published a follow-up study to their 1994 survey. The results indicate that street youth continue to engage in high levels of drug use. A comparison of the sample of youth attending school indicates that there are higher levels of youth attending school engaging in drug use than in 1994. Furthermore, although street youth overwhelmingly engage in high-risk behaviours at higher rates than non-street youth, there are groups of youth who, although not homeless, live in unstable conditions and also engage in high-risk behaviours. For example, Corrado and his colleagues (2000) found, from a sample of 67 incarcerated female youth in British Columbia, that 58.1 percent were either in government care or living on their own at the time they committed their offence. The same sample indicated extremely high levels of drug use. More specifically, 55 percent of the female youth report using crack cocaine,

49 percent report using heroin, and 65.7 percent use cocaine. Perhaps most disturbing is that the average age of onset of drug use for this group of female youth is 12 years old (Corrado, et al, 2000).

Most homeless youth share the experience of a general pattern of life instability prior to moving to the streets. They report a great deal of movement from one living situation to another. Movement occurs with and without family, both inside and outside the government care system, and before and after becoming street involved. This mobility is indicated by Louise's statement, "...like all my life I've moved across Canada. I've lived in so many places. Like I've lived in many different places in Saskatchewan, many different places in Vancouver. I've always been moving all around." For others, instability comes not from physical transience but from a high level of unpredictability in their lives. Living with a family member who abuses drugs or alcohol, for example, often translates into compromised reliability and unmet expectations. Such instability helps to breed the disconnection experienced by many homeless youth. (McCreary Centre Society, 2002, p.31)

There is a crucial connection between children and youth placed in government care and their increased risk of multiple social and psychological problems. Not only do researchers indicate a relationship between government care placement and increased chances of criminal behaviour (Corrado, Odgers & Cohen, 2000) but a significant portion of street youth have either run to the streets directly from a government care placement (Kufeldt & Nimmo, 1987) or been in government care at some point.²⁶ In 1987, researchers estimated that 45 percent of street youth in Calgary had been in government care placements (Kufeldt & Nimmo). By 2000, the number of youth leaving government care placements and ending up on the streets increased substantially. Research conducted on a sample of Calgary street youth reveals that 68 percent had most recently run away from government care placement (MacLaurin, 2000). In McCarthy's (1995) research, only 10 percent of the research sample of street youth in Vancouver had spent their entire

childhood in one family situation. This is particularly meaningful when compared with a group of Vancouver school youth surveyed by McCarthy (1995), in which 73 percent lived with both parents.

Table 1, which sets out data from a study of 40 street youth in Calgary in the early 1990s (MacLaurin, 1991), provides additional insight as to where many of the street youth in the Calgary sample ‘ran’ from, as well as the incidence rates of such behaviour. According to MacLaurin (1991), it is clear that although the majority of youth who leave home the first time do so from their natural families, those who leave their homes and remain on the street are predominantly from government care placements (MacLaurin, 2000).

Table 1

Where Young People Ran From (First and Last Episode)

Where Child Ran From	First Run	Final/Last Run
Home	76%	24%
Foster home	8%	52%
Group home/treatment centre	12%	16%
Other site	4%	8%

Source: Extracted from MacLaurin, B. (2000). Youth on the street in Canada. J.A. Winterdyk (Ed.), Issues and perspectives on young offenders in Canada (2nd ed.) Toronto, Ontario: Harcourt Canada

Research by the McCreary Centre (2001) reveals that once on the street, youth who have been in government care are more likely to engage in the sex trade as a method of survival than street youth who have never been placed in care.

Street life is a violent environment for anyone; however, it is even more violent for homeless young people (MacLaurin, 2001; McCreary Centre Society, 2001). This is evidenced in Hagan and McCarthy’s (1997) research conducted in Toronto, where male and female youth reported being attacked and beaten since leaving home and several of

²⁶ McCreary Centre Society Press Release, March 26, 2001. See also the federal government’s 1999 report on Homelessness (PRB 99-1E).

the youth reported being sexually assaulted. These findings are reiterated in Gaetz's (2004) research of 208 homeless youth in Toronto in the fall of 2001, of which 81.9 percent reported having been the victims of a crime in the past year, with 79.4 percent reporting two or more incidents. The severity of the victimization also tends to be higher for homeless and street involved youth. For example, 31.9 percent of the homeless youth sampled in Gaetz's (2004) study reported being sexually assaulted in the past year.

Not only are street youth at greater risk of becoming victims of violence but, also, the visibility of these youth increases the risk of conflict with criminal justice agents (Hagan & McCarthy, 1997). Moreover, the harsh reality of street life for homeless youth forces many to engage in the sex trade and criminal behaviour²⁷ such as theft, drug dealing and violence in order to survive (Hagan & McCarthy, 1997). In addition to the sex trade, panhandling and dealing drugs are relatively common sources of income for both male and female street youth (McCreary Centre Society, 1994a). As a result, over one-half of a recent sample of street youth surveyed report having had contact with the criminal justice system (McCreary Centre Society, 2001). According to Hagan and McCarthy (2001), street youth are involved in a substantial and disproportionate share of crime relative to the proportion of homeless youth. Moreover, research conducted by Hagan and McCarthy (1997) suggests that not only is criminal behaviour more prevalent amongst street youth but, also, it is more frequent and more serious than the criminal behaviour of non-street youth. The findings of their research indicate that 46 percent of the street youth interviewed in Toronto sold drugs, 49 percent reported shoplifting, and 27 percent broke into homes or businesses.

²⁷ Government of Canada. (1999). Composition of the Homeless Population Retrieved March 13, 2002 from <http://dsp-psd.pwgsc.gc.ca/Collection-R/...s/prb99-1-homelessness/composition-e.htm>.

While there is adequate data reporting the criminal and deviant behaviour of homeless youth, there is a dearth of information that speaks to the experiences of homeless youth victimization. The evidence that does exist, however, suggests that whether or not a homeless youth is victimized *is not* contingent upon their involvement in criminal behaviour (Gaetz, 2004). A predominant focus on homeless youth as perpetrators rather than victims is, in part, arguably responsible for the increasingly punitive responses used to deal with this group of youth (see, for example, Gaetz, 2004).

Researchers estimate that the percentage of street youth involved in the sex trade ranges from 16 to 46 percent (MacLaurin, 2000; Kidd & Kral, 2002). Of 523 youth surveyed by the McCreary Centre Society (2001), 24 percent reported engaging in sexual activities in exchange for money or goods. It is well established that early childhood sexual abuse is a common precursor for youth involved in the sex trade (Schissel & Fedec, 2001; Kidd & Kral, 2002). The devastating irony for many children who leave abusive homes on their own and end up on the streets is that they often find themselves in destitute situations where the only perceived viable means of survival is the sex trade. Moreover, street youth who have been sexually victimized in the past are more vulnerable to the lure of the sex trade than those youth who have not experienced sexual abuse. Due to the fact that abusive families normalize abuse, these youth "...often hold a distorted image of their own bodies, which may lead them to expect that their worth will only be acknowledged when they permit sexual access" (Boyer and James, 1982, as cited in Schissel & Fedec, 2001, p. 184).

Given that research suggests youth who have been in government care are more likely to become involved in the sex trade once they are on the street, it may be assumed

that this is related to the issue of sexual abuse as well. A child is often removed from their family home and placed in foster care because of sexual abuse. When the foster placement breaks down, the child leaves the home and often ends up on the streets. McCarthy's (1995) research suggests that a large proportion of youth on the streets have been sexually abused at home. The sexual abuse that many of these youth experienced at home often coincides with physical abuse.

"My step-dad...tried to kiss me, like french kiss me, and I got fucking pissed off and I gave him a shot in the head...and he started choking me."
(extracted from McCarthy, 1995, p. 15)

It is not surprising that, in addition to sexual abuse, many street youth have also come from physically violent homes (Hagan & McCarthy, 1997).

Sexual abuse experienced at home is further perpetuated when a youth becomes involved in the sex trade. Consequently, the issue of sexually exploited youth continues to be a pressing concern. It is, however, questionable if there has actually been an increase in the sexual exploitation of youth or whether the issue has become a *renewed* concern.²⁸ The threat of violence, however, is an unquestionable reality for these youth as illustrated by the McCreary Centre Society's (2002) research.

Several young women interviewed for this project describe the climate of fear that accompanies working in the sex trade in the Downtown Eastside [Vancouver]. Kristina, who was watched from across the street by her pimp during the interview, spoke of being bossed around. Alisha vividly relates her work-related fears: "Sometimes it's really scary. There are cars I'm scared to go in. The duffle bag thing scares me. I was staying at the Astoria, and they pulled a body out of the dumpster in the parking lot. Not a body – pieces. That day, passing the dumpster, it felt really scary. I was sick to my stomach." The body in the dumpster was a friend of Christy's, another sex trade worker. Christy, who says she "used to be promiscuous" and now calls herself a "working girl," tells her interviewer about having

²⁸ As acknowledged in the federal government's revised report on the sex trade, Report and recommendations in respect of legislation, policy and practices concerning prostitution-related activities, 1998. .

regular “bad dates who rape and beat” her. Alisha recounts past brushes with danger and lessons learned. “I wouldn’t have worn a scarf to work, and I wouldn’t [have worked] when I was really high on heroin...I can always tell when something is going to go bad. One time, this guy tried to suffocate me. He was drunk. This junkie punched him and chased him down the street....”Working’s fucked me up with guys.” (pp. 22-23)

Unlike juvenile delinquency, legislative responses to child prostitution were essentially non-existent until the federal government appointed two committees in the early 1980s, “one to examine the sexual abuse of children [the Badgley Report] and the other to examine the larger issues of pornography and the sex trade [the Fraser Report]” (Van Brunschot, 1995, p. 305). There has also been increasing awareness of sexual exploitation outside metropolitan areas. Towards the end of the 1990s, small communities in British Columbia began to identify youth involved in the sex trade as a local concern (McCreary Centre Society, 1999). The McCreary Centre Society reports that both the health and the behaviours of sexually-exploited youth in small communities are strikingly similar to sexually-exploited youth in Vancouver.²⁹ The nature of sexual exploitation, however, is noticeably different. As one moves away from urban centres into rural areas, the visibility of sexual exploitation diminishes, making it much more difficult to understand and describe the behaviour. Along with the more clandestine nature of the activity, the venues are somewhat different than in urban centres. For example, in rural areas commercial sexual exploitation has been reported to occur in private homes, public docks, back alleys, parks, truck stops and fishing boats (McCreary Centre Society, 1999).

²⁹ The findings reported subtle differences in the demographics of sexually exploited youth in the small communities compared to sexually exploited youth in Victoria, BC; however, as with the Vancouver data, the health and behaviours, such as drug use and risky sexual behaviour, are very similar.

Street youth face many negative social and psychological problems as a result of living on the street. The negative social and psychological impacts on sexually exploited street youth are far more devastating than for youth not engaging in sexual activities for money and/or goods. Table 2, which sets out data from the McCreary Centre Society's (2001) research on 523 street/homeless youth from six communities in British Columbia³⁰, illustrates the high levels of social and psychological problems sexually exploited youth experience compared to their non-sexually exploited peers.

Table 2

Street Youth Who...	Have Traded Sexual Favours	Have Not Traded Sexual Favours
Ever been in care	48 %	34 %
Ever been charged or convicted of a crime	66 %	52 %
Poor self-rated health status	21 %	8 %
Diagnosed with a health condition*	71 %	44 %
Diagnosed with an addiction problem	55 %	33 %
Severe emotional distress in past month	33 %	18 %
Attempted suicide in past year	44 %	22 %
History of sexual abuse	59 %	37 %
Injured in a physical fight in past year	47 %	29 %
Sexual Intercourse before age 13	41 %	29 %
Ever injected a drug	38 %	12 %

*Includes a learning disability, epilepsy, Fetal Alcohol Syndrome/Fetal Alcohol Effect (FAS/FAE), Attention Deficit Hyperactivity Disorder/Attention Disorder (ADHD/ADD), schizophrenia, major depression or bipolar, chronic anxiety disorder or panic attacks

Source: McCreary Centre Society (2001). No place to call home: A profile of street youth in British Columbia. Vancouver, British Columbia, Canada: Author.

According to the findings of the McCreary Centre (2001), sexually-exploited youth report higher levels of injection drug use than their non-sexually exploited peers (38 percent compared to 12 percent). While 44 percent of non-sexually exploited youth report being diagnosed with a health condition, including Attention Deficit Hyperactivity Disorder (ADHD) and Fetal Alcohol Syndrome/Fetal Alcohol Effect (FAS/FAE,) 71 percent of

³⁰ Vancouver, Victoria, Abbotsford/Mission, Surrey/White Rock/Langley, Prince Rupert and the Sunshine Coast.

sexually exploited youth report diagnoses of similar health conditions. Given the level of social and psychological problems these youth experience, it is not surprising that sexually exploited youth attempt suicide at higher rates than non-sexually exploited youth (44 percent compared to 22 percent). Qualitative research on street youth in Toronto involved in the sex trade report that 76 percent have attempted suicide. A comparison sample indicates that male street youth have suicide rates that are 10.3 times higher than non-street male youth (Kidd & Kral, 2002).

An Era of Government Cutbacks: A New Way of “Doing Business”

When asked to explain why they are homeless...youth described multiple, cumulative factors that create severe stress and sometimes emotional trauma. Many state that stress is exacerbated by street involvement, while others claim that life on the street is easier than their previous situation...[T]he path to homelessness often begins with family conflict, including rejection, neglect, or poor interpersonal relationships, as well as drug and alcohol misuse. (McCreary Centre Society, 2002, p. 39)

Current legislative and policy responses to ‘problem’ youth are intensifying the issues facing children and youth. In many circumstances, the legislative and policy initiatives that will be discussed in this chapter are neo-liberalist responses to the government’s failure to protect children and youth. While it may seem ironic that the majority of these reform initiatives have been driven by government officials, and not individual, concerned citizens (e.g., child-savers) as was the case in early 20th century Canada, a closer look at economic policies, both at the federal and provincial level, reveal that such policy changes are consistent with the neo-liberal policy currently driving the Canadian economy. Indeed, “[n]eo-liberal concerns such as budget deficits and federal funding cuts to social programs, have conveniently provided an avenue for the dismantling of social programs”(Hunter & Diazdyck, 2004, p.6).

The emergence of neo-liberal economic policy occurred in tandem with the destructuring movement (the second transformation affecting social control systems) and “marked the death of state socialism”(Bittle, 2002, p.321).

“Social programs must change to keep up with new realities – realities around a changing economy, around unmanageable public debt and around problems with the programs themselves” (Axworthy, 1999, as cited in Hunter & Diazdyck, 2004, p.20).

Much of the social safety net that has historically been in place to mitigate economic inequality and poverty has eroded over approximately the last 15 years. In addition to dramatic changes in social assistance eligibility, health care and education, the voluntary sector has experienced dramatic cuts in government financial support (Lee, 2004). For example, just in British Columbia alone, approximately 20,447 public sector jobs have been cut since 2001 (Fuller & Stevens, 2004). Rather than funding social programs, federal and provincial governments have focused much of their fiscal responsibility on lowering taxes for high-income earners and privatization efforts (Lee, 2004). As a result, social democracy has been redefined by ideologies that utilize the state of the economic market as a means of measuring the outcomes of a just society (Hunter & Miazdyck, 2004). The impact of neo-liberalism has been particularly significant in government strategies to control and prevent crime and deviance (Bittle, 2002).

Current legislative attempts to fix the ‘problem’ of troublesome children and youth may simply be efforts to redefine the ‘problem’, thereby shifting the sites of responsibility and accountability. There has been a shift in discourse; from one of “entitlement” to one that advocates “responsibility”. Much of the rhetoric supporting neo-liberal economic policy insists that historically, government intervention has resulted

in dependent populations, populations that should be empowered by taking responsibility for their life circumstances (Hunter & Miazdyck, 2004). As more problems are identified and more legislation is created to address the issues, services and programs that have traditionally responded to *troubled youth* are being drastically cut. This is particularly ironic given that, along with more identified problems, the numbers of youth being caught in the net of social control continues to increase.

In May 2001, a provincial election in British Columbia resulted in a change in government. A Liberal government was elected and the NDP lost all but two seats in the Legislature. The Liberal government set out its new campaign, *A New Era*, and in February 2002 announced plans to cut \$2 billion from the provincial budget.³¹ \$270 million was scheduled to come from service cuts in the Ministry for Children and Family Development.³² Half of those cuts (\$146 million) were to be achieved by reducing the number of children removed from their families and put into government care.³³ What was not outlined in the government's fiscal projections, however, was how the reduction in services would translate into the need to remove fewer children from unhealthy and dysfunctional home situations.³⁴

In fact, since 2001 budget and staff reductions of up to 30 percent have occurred in all provincial departments in British Columbia.

³¹ Retrieved February 20, 2003, from http://cbc.ca/stories/2002/05/25prottext_bc020524

³² Thousands rally against B.C government cuts. (2002, February 19). *Canadian Press Newswire*. Retrieved February 20, 2003,

³³ Liberal budget offers glimpse of social cuts to come in British Columbia. (2002, February 19). *Canadian Press Newswire*. Retrieved February 20, 2003,

³⁴ In July 2003, the Ministry for Children and Family Development announced that they would not implement the extensive cuts initially forecasted. Given that the number in children and care rose by 60 percent between 1996 and 2001, it was recognized that that such cuts would create "unacceptable health and safety risks". Nevertheless, the 2004-2005 budget will be reduced by \$70 million and there will be a 25 per cent reduction in payments to foster parents (2003, July 9). *Newsleader*, p.33).

Unemployment for youth is far higher than the general rate of 9 [percent] in BC. There are new social assistance laws as of 2002. With few exceptions, youth must document two years of employment and independent living, or prove they have escaped a violent family situation, that they live with a significant disability, or they care for a child. British Columbia is the only Canadian province with a two-year limit on assistance. As of April 2004, single “employable” persons who have received income assistance for two years while looking for jobs will no longer be eligible for any social assistance, unless they can document reasons for a temporary exemption. (Hillian, Reitsma-Street & Hackler, 2004, p. 361)

Cuts to social welfare programs have also taken place in other provinces. In Ontario, for example, the government has not only introduced “work for welfare” and tightened the eligibility criteria for welfare benefits, but also cut benefits by 21.6 percent for those ‘fortunate’ enough to receive assistance (Mosher, 2002). Saskatchewan has also experienced similar changes to its social assistance programs (Hunter & Miazkyck, 2004). Additionally, many provinces are removing social housing programs and deregulating rent (Irwin, 2004; Martin, 2002). According to Martin (2002):

These decisions have contributed to an increase in homelessness and visible poverty in all parts of the country but most dramatically in the cities. In turn, this new presence of homeless and disenfranchised young adults on the street, in full view of respectable citizens, has reinforced the arguments of neo-liberals that these social failures must be made ‘responsible’ for themselves, or face the consequences...The effect of these policies has been exceptionally hard on youth. (p. 93)

Martin argues that the consequence of the policies surrounding these fiscal cuts “have literally guaranteed that certain young people have nowhere to go but the street...” (2000, p. 93). More specifically,

The totality of these policies is that the least fortunate among a generation of youth receive little or no support from the social welfare regime, from child welfare authorities or from the school system. Left to their own devices, usually on the street, they are also demonized as dangerous and lawless and bear the brunt of campaigns that have politicized criminal justice in unprecedented ways. (Martin, 2000, p. 93)

The Government Response: Changes in the Social Control of Youth

The youth's opinions were varied with respect to services, ranging from outright belligerence to distrust to gratitude. Many youth seem to be cynical and jaded about the system. Brent says, "Everybody is too wound up around the system when it comes to social workers, teachers, and counselors. They are all greedy and they all want their money...and they will do anything to get that. And they are going to end up screwing your life, they don't care, right." Jeana agrees: "I never talked to [counselors] and I never will. I figure if I'm going to talk to someone that needs to know something, I'll talk to my friends 'cause they know me. Like the time that it would take to get a counselor to know you and actually to be able to understand you, your friends could do it in three minutes." (McCreary Centre Society, 2002, p. 51)

It is interesting that calls for supplementary legislative and policy initiatives to address the social problems affecting small groups of children and youth directly followed significant changes made to the youth criminal justice system in the early 1980s. Indeed, these calls for change were, in many respects, the catalyst for a widening of the net of social control with respect to youth. Although the *Young Offenders Act* (1984) provided safeguards against the civil rights violations found in the *Juvenile Delinquents Act*, it also removed mechanisms in the legislation that could be used to deal with street kids. For example, under the new legislation a youth could no longer be charged with status offences; that is, offences defined as such because of a person's age (e.g., drinking alcohol and truancy). In many respects, the Badgley Report (1984) was the impetus for the legislative responses that followed and that were initiated at the provincial level. The Report concluded that the only effective way to eliminate child prostitution was to implement criminal sanctions for children and youth involved in the

sex trade in order for the appropriate “social intervention to take place” (The Badgley Report, 1984 as cited in Van Brunshot, 1995:305). As Van Brunshot points out,

Contrasting markedly with the objectives of the 1982 *Young Offenders Act*, stating that youth will not be criminalized for behaviour that is not illegal for adults, the Badgley Committee recommended that a form of the sex trade, namely juvenile the sex trade, be criminalized. Although the Report indicates that juvenile the sex trade may only be ameliorated through social rather than legal initiatives, these initiatives were to take place after the youth had been criminally incapacitated. (1995, p. 305)

The response to youth sexual exploitation has intensified over the last few decades. In addition, as legislation is created to deal with the issue of youth involved in the sex trade many youth, particularly females, are caught in a social control net that is becoming increasingly punitive. Although specific federal laws criminalizing juvenile prostitution were not created as a result of the Badgely Report, the unintended consequence of subsequent legislative changes at the provincial level, such as Alberta’s *Protection of Children Involved in Prostitution Act*, has been criminal sanctions for children and youth involved in the sex trade. Since it is very difficult to detect and arrest adults buying sex from juveniles, as this would involve the cooperation of the youth themselves, the police response has been to arrest the youth instead (Van Brunshot, 1995). Furthermore, Van Brunshot (1995) indicates that, once convicted, youth are sentenced much more harshly than adults convicted of the sex trade related offences. The sentencing data, when analyzed, showed that 80 percent of adults convicted of communicating for the purposes of the sex trade were fined, compared to probationary sentences imposed on 63 percent of youth convicted of the same offence (Van Brunshot, 1995). Not only are youth sentenced more harshly for prostitution related offences but, also, female youth are often placed in custody for various (non-serious) offences

primarily as a method of protection rather than punishment (Corrado, Odgers & Cohen, 2000).

Van Brunshot (1995) argues that restrictive measures imposed on this group of sexually exploited youth have been justified under the “rehabilitative youth-as-victim guise” (p. 307); in other words, in the best interest of the child. This rhetoric has continued unabated and, by the end of the 1990s, a distinct discourse regarding the need for legislation specific to high-risk children and youth began to surface. In February 1998, for example, the then British Columbia Minister for Children and Families appointed a working group to provide advice on whether the Ministry should develop options for secure treatment of high-risk children and youth in British Columbia (Government of British Columbia, 1998). The Working Group’s report on the idea of a *Secure Care Act* was premised on the belief that all children and youth have the right to protection from harm or threat of harm. According to the Working Group, however, there were situations where that harm is caused by the person’s own behaviour and there is, to date, no legislation that guides the provision of services for youth involved in self-destructive behaviours.

Similarly, in 1999 the Alberta government passed the *Protection of Children Involved in Prostitution Act*.³⁵ While certain sections of the legislation did not initially withstand a constitutional challenge, the legislation was amended to accommodate the *Charter* violations. Despite the questionable constitutional validity of such legislation, the British Columbia government pressed ahead and in July 2000 passed similar

³⁵ Discussions to implement similar legislation have also occurred in Manitoba and Saskatchewan, however, to date, no specific initiatives have been undertaken.

legislation: the *Secure Care Act*.³⁶ In addition, although not yet proclaimed in force, in 2002 the Ontario government passed *Protection of Children involved in Prostitution Act*.³⁷ Similarly, the Nova Scotia government has recently tabled a new Bill called *An Act to Protect Children Involved in Prostitution*.³⁸ The B.C. legislation implemented a broader mandate for the care and control of children and youth. Whereas Alberta's legislation sets out to deal specifically with sexually exploited children and youth, the intention of British Columbia's *Secure Care Act* was to deal with children and youth involved in *any* high-risk behaviour, such as drug use.

The proposed *Secure Care Act* provided for *intervention* and the provision of *assistance* to children under 19 years of age who are at high risk of serious harm and are *unwilling* or *unable* to reduce that risk. The *Act* provided for two mechanisms to assist children at risk: the planned certificate application process; and, the urgent intervention process. The planned certificate application provided for a parent, the director of secure care, or any other director who has guardianship of a child to apply to the Secure Care Board to request that a child be taken into secure care. After a hearing, the Board could issue a secure care certificate, if it was satisfied that the child had an emotional or behavioural condition that presented a high risk of serious harm or injury to him or herself; the child was unable or unwilling to take steps to reduce that risk; less intrusive measures were not available or were not adequate to sufficiently reduce the risk; it was in the *child's best interests*; and, for a child under age 12, the consent of the Minister for Children and Families had been obtained. A secure care certificate enabled the director of secure care to detain a child in a secure care facility. If the child's circumstances had

³⁶ SBC 2000 c.28

³⁷ SO 2002 c. 5

not improved in the initial 30-day period and the child remained at risk, the director of secure care could apply to the Board to renew the certificate. The certificate could be renewed twice, extending the detainment to 90 days.³⁹

A possible 90-day assessment and treatment period is more accurately 100 days, when the initial 10-day assessment period is taken into account. Urgent intervention without a certificate was a procedure designed to deal with emergencies. The director of secure care could detain a child for up to 72 hours without a certificate, if the director had reasonable grounds to believe that the child had an emotional or behavioural condition that presented an immediate risk of serious harm or injury to the child; less intrusive measures were not available or were not adequate to sufficiently reduce the risk; and the detainment was necessary to ensure the child's safety.

If, within the 72-hour period, an application was made for a certificate, the period of detention was to be extended until the Board decides whether to issue a certificate. The Board had to make a decision within a maximum of 10 days after the first day of the child's detainment.⁴⁰

A secure care certificate gave the director of secure care the right to authorize an examination of the child and to consent to health care directly related to the risk that led to the child's detainment. The director could also consent to minor health care unrelated to the risk that led to the child's detainment, if the child was not capable of giving consent and the child's guardian was not available. In addition, a court could issue a

³⁸ K. Gorkoff (Personal correspondence, 2003)

³⁹ See Bill 25-2000. Retrieved March 31, 2004, from http://www.legis.gov.bc.ca/2000/3rd_read/gov25-3.htm

⁴⁰ See Bill 25-2000. Retrieved March 31, 2004, from http://www.legis.gov.bc.ca/2000/3rd_read/gov25-3.htm

warrant authorizing a police officer to enter private premises to apprehend a child for whom a certificate had been issued. The police officer had to have reasonable and probable grounds to believe that the child to be apprehended was present on the premises.⁴¹

During debates in the Legislative Assembly, one of the most significant criticisms of the *Secure Care Act* was the lack of services available to youth in general, and specifically to high-risk youth. Linda Reid, a member of the then Liberal Official Opposition expressed such concerns, inside and outside the Assembly.

Secure care is necessary, but only if it is part of a continuum of care, including detox and recovery programs. This is much bigger than locking kids up. This must be a part of a network of services...[I am] not optimistic the NDP government has put any of the backup services in place. They have had nine years and they [have not] put the building blocks in place.⁴²

Although the current government stands behind the purpose of the *Secure Care Act*, it also recognized many of the concerns that were raised during the debates and, consequently, initially put the idea of a *Secure Care Act* on hold.

Given these criticisms, government will focus on developing new legislation, to be called the Safe Care Act, which will replace the Secure Care Act. This proposed legislation will focus on sexually exploited youth through a more efficient, court-based adjudicative process which will better protect the rights of youth. The new legislation will also feature shorter maximum periods of detainment. Existing legislation will provide the framework for individual consent for medical treatment. The system of services supporting the new Safe Care Act needs to be designed so that services to these vulnerable children will be delivered in a manner that is streamlined, effective and efficient.⁴³

⁴¹ See Bill 25-2000. Retrieved March 31, 2004, from http://www.legis.gov.bc.ca/2000/3rd_read/gov25-3.htm

⁴² (2000, June 22). *Times Colonist*, p. A1.

⁴³ Retrieved March 27, 2002 from http://www.mcf.gov.bc.ca/secure_care/sc_letter.htm

At the time of writing this thesis (May 2004), the Ministry of Children and Family Development announced that new legislation will be introduced in the Spring 2005 session. In preparation, stakeholder consultations will be occurring between May – July 2004, along with the release “Safe Care for British Columbia’s Children: A Discussion Paper”. Similar to Alberta’s legislation, the new *Safe Care Act*, deals specifically with youth involved in the sex trade. Although the government proposes to develop legislation that is “streamlined, effective and efficient”, it is not clear how successful implementation will be, particularly in light of the increasing cuts in services.⁴⁴

A strong neo-liberal influence is evident in legislation like *PCIP* and the *Safe Care Act*. Through the use of Garland’s (1996) “responsibilization strategies”, Bittle’s (2002) work demonstrates that through such neo-liberal policies, the state transfers responsibility for crime prevention “on to agencies, organizations and individuals which are quite outside the state and persuades them to act appropriately”(p. 320).

As a result of these neo-liberal strategies, the youth prostitution issue is governed at a distance, the onus for combating the youth sex trade is placed upon the individual prostitute and the community, and the meaning of ‘success’ in addressing the youth prostitution phenomenon is redefined. At the same time, however, relations of power – or the conditions that make prostitution a choice for some youth – remain unchallenged (Bittle, 2002, p. 320).

Some municipal governments are dealing with the issue of youth sexual exploitation in a more holistic framework than punitive legislative reforms. In 1995, the City of Saskatoon formed a task force on child prostitution to develop an action plan to work toward the elimination of children and youth involved in the sex trade. This community-based approach was developed on the premise that child prostitution is a manifestation of many social issues (Mayor’s Task Force on Child Prostitution, 1996)

⁴⁴ Retrieved June 9, 2004, from http://www.mcf.gov.bc.ca/safe_care/

and the focus was on prevention, awareness and treatment. Although laying charges and placing youth in custody were methods of last resort, the primary focus of the Task Force's recommendations were built around the introduction of youth friendly shelters, trained front-line workers and non-traditional justice interventions. Whether any of the recommendations have been implemented is unknown; however, in 1998, the City published a news release commenting on the plans to open a safe house for sexually exploited youth. According to the release:

The common objective of the working group is to work with several government agencies to create a continuum of services to assist children who have been sexually abused on the street to leave street life. The service will begin with providing a physical facility (a safe house) for children requesting assistance and allow for progressive treatments and/or supports to allow the children to establish a more positive and constructive lifestyle.⁴⁵

Unfortunately, to date, it is unclear if such a 'continuum of services' exists.

Over the last 10 years, Canadian society has experienced a host of complex problems affecting a relatively small group of children and youth. One consequence of these social problems has been a drastic increase in visible street and homeless youth; a situation not dissimilar from that which prevailed in the late 19th and early 20th centuries. While many of the present day problems are similar to those that first surfaced during the late 19th century, there are some important differences. The *street urchins* of the late 19th and early 20th centuries experienced severe poverty and homelessness while, in addition to poverty and homelessness, the risks and problems affecting the "new street urchins" are more complex and, in many respects, much more serious.

The numbers of street involved and homeless youth infected with HIV and/or Hepatitis C continues to increase. The risk of infection is exacerbated by the high levels of intravenous drug use by homeless youth. This group of high-risk youth use a wide variety of illicit drugs; the incidence rate is higher than non-street involved and homeless youth and drug use amongst the street youth population continues to increase.

While it is not clear whether the number of children and youth involved in the sex trade has actually increased, the increasing visibility of homeless youth has created an awareness and widespread concern that many vulnerable youth are at risk of sexual exploitation. In addition, as with drug use and homelessness, this issue has been identified as a problem that is affecting many communities in Canada. Many smaller rural communities, as well as large urban areas, have reported increases in drug use, a visible homeless population, and children and youth who are involved in the sex trade.

When the *JDA* was replaced by the *YOA* as a product of the larger destructuring movement, the provisions that dealt with street youth were repealed. Although guided by benevolent intentions, there were no mechanisms in the *YOA* that specifically dealt with the “new street urchins”. While this did not, initially, pose problems for the social control apparatus, by the late 1980s it was becoming apparent that new legislative tools were needed. In keeping with Cohen’s (1985) thesis, the efforts of the destructuring movement did not reduce the size and scope of the formal mechanisms of social control for youth. In fact, as will be demonstrated in the next chapter, as the provincial governments responded to the

⁴⁵ Retrieved February 17, 2003, from http://www.city.saskatoon.sk.ca/org/news_releases/detail.asp?id=49

problem of the “new street urchins” and attempted to rectify the shortcomings of the *YOA*, the net of youth social control increased, both in size and scope.

Chapter Five

Where are we today?

Good intentions are taken entirely at their face value and are radically separated from their outcomes. It is not the system's professed aims which are at fault but their imperfect realization. The solution is 'more of the same.' (Cohen, 1985, p. 18)

While the *Juvenile Delinquents Act (JDA)* was not replaced until the 1980s, the larger movement that was the impetus for such legislative change began in the 1960s. The new legislation, the *Young Offenders Act (YOA)*, signaled remarkable shifts in the social control of youth. The legislative change marked a move away from a focus on treatment and rehabilitation to what would become a much more punitive focus on responsibility and accountability. Simultaneously, and despite the fact that the *YOA* called for more severe punishments, most punishment was not to take place in institutions; instead, a focus was to be placed on community-based diversion techniques and alternative measures, with custodial sentences limited to serious and repeat offenders. The "community" had become the new site, and agent, of youth social control.

The outcomes of deinstitutionalization and destructuring were not an informal, less state-involved system as anticipated. Instead, informal measures became formalized, state control expanded its reach, and the numbers of youth processed through the new youth justice system increased. The new legislation did not reduce youth crime as intended. In fact, the new legislation was ineffective in dealing with much of the troublesome behaviour - youth violence - that was a cause of social anxiety, and that sparked calls for new, tougher legislation.

In April 2003 the *Youth Criminal Justice Act*⁴⁶ (*YCJA*) replaced the *YOA* but, despite the rhetoric, the new legislation is very similar to its predecessor. The *YCJA* maintains the “legal rights” focus found in the *YOA*, and the *YCJA* is not any less punitive. Similar to the *YOA*, the *YCJA* provides for alternative measures for minor and/or first time offenders—the primary difference being that the new legislation formalizes the use of alternative and restorative justice measures. Hillian and his colleagues (2004) raise concerns about alternative and restorative justice measures and question whether the similarities, in addition to a lack of choice and resources, doom the new law to failure.

Does the *YCJA* conferencing option offer a new approach for youth, communities, and professionals or are we using new jargon to dress up older alternative measures and victim reconciliation initiatives that will fall short due to the optional nature and lack of resources for implementation? (p. 346)

Critics of the *YCJA* have argued that the new legislation calls for unnecessarily harsh punishments for violent and repeat offenders. The *YCJA* lowers the age at which a youth will be sentenced in adult court to 14; however, this measure is at the discretion of the individual provinces. The justification for harsher punishments follows a perceived increase in out-of-control violent youth.

Youth Violence

There is much debate about whether violent youth crime is increasing. Although statistics show that there has been a decrease in youth charged with crime since 1991 (Canada, 1998), society’s fear of youth crime, particularly crimes of violence, continues to increase. According to Statistics Canada, 495/10,000 youths were charged with a crime in 1997. This marked a 23 percent decrease from 1991, when 643/10,000 were charged

⁴⁶ 2002, c.1

with a crime and the decrease brought the 1998 rate to almost the same level as it was in 1988 (Stevenson, Tufts, Hendrick & Kowalski, 1998). By 2002, the youth crime rate was 33 percent lower than it was in 1992.⁴⁷

At the beginning of the 1990s, Carrigan (1991) argued that youth crime was not only increasing significantly, but was also more violent (as cited in Bell, 2002). Corrado and Markwart (1994), however, argued that although there has been an increase in youth crime, the increase is relatively small and, the most significant increase in violent youth crime is for common assault (See, also, Bell, 2002; Winterdyk, 2000). Statistics Canada data support this argument.

Changes in the violent crime figures can be partly explained by the growth in youths charged with common assault. Despite decreases in both 1996 and 1997, the rate of youths charge with common assault in 1997 was 119 [percent] higher than it was 10 years earlier. The increase in the rate may reflect more aggressive “zero tolerance” strategies on the part of police, schools and others.” (Stevenson, Tufts, Hendrick & Kowalski, 1998, p. 22)

Statistics from 2002 report a seven percent increase in youth violence since 1992; however, the evidence does not support the notion of out of control violent youth. For example, homicide charges accounted for 0.1 percent of youth charged with a criminal offence in 1997 and 88 percent of violent incidents reported in schools that year *did not* involve any type of weapon (Stevenson, Tufts, Hendrick & Kowalski, 1998). In 2002, homicide accounted for .06 percent of youth charged with an offence.⁴⁸ In addition, as argued by Corrado and Markwart in 1994, the majority of youth violent crime continues to be common assault. Out of a national total of 22,462 violent crimes committed by

⁴⁷ Retrieved June 9, 2004, from <http://www.statcan.ca//Daily/English/030724/d030724a.htm>

⁴⁸ Retrieved June 9, 2004, from www.statcan.ca/english/Pgdb/legal24a.htm

young people in 2002, 8,968 (40 percent) were for common assault.⁴⁹ Arguably, high-profile events, such as the stabbing death of a sixteen-year-old (Jesse Cadman) by a group of youth in 1992⁵⁰ and the beating death of a 14-year-old girl (Reena Virk) by a group of her peers in 1997,⁵¹ are partly responsible for the increased fear of violent youth crime.

Immediately following the fatal stabbing of Jesse Cadman in 1992, newspapers began to show an interest in reporting incidences of increased youth violence.⁵² Similarly, when Reena Virk was beaten to death by a group of teenagers in 1997, the media recounted an unprecedented wave of fear throughout British Columbia.⁵³ Even though such tragic events are isolated, they often create fear and undoubtedly re-instigate emotional debates regarding youth violence and what measures will most effectively deal with the issue. The fear of youth violence generally coincides with an increased fear of violence. Consider B.C. Liberal MLA Loren Mayencourt's address to the British Columbia Legislative Assembly on May 10, 2004.

I rise in the House today to speak about the problems of ever-increasing violence in our streets. We made a commitment to creating safer streets and safer schools in every community. Our streets and our schools will never be safe if we do not address the problems of violence. While Vancouver is one of the most beautiful places in the world to live, there are many areas of the city and surrounding cities where street violence is a real fear. I envision a city where people can go jogging late at night without fear of attack, where seniors can walk the busy streets without fear of robbery, where children can go to school without fear of bullying, where parents can sleep at night without worrying their children are hearing gunshots. This is the Vancouver that I'd like to see.

⁴⁹ Retrieved June 9, 2004, from www.statcan.ca/english/Pgdb/legal24a.htm

⁵⁰ (1992, October 19). *Vancouver Sun*, p. A1.

⁵¹ (2000, March 10). *Canadian Press*

⁵² See for example, (1992, October 20). *Vancouver Sun*, p. B2.

⁵³ See for example, Joyce, G. (2000, March 10). *Canada Press*,

The news has been full of stories of street and gang violence. Often this violence has horrific results. For example, a 23-year-old male was shot at the PNE just recently—a victim of gang violence. Last week in Vancouver two young Indo-Canadian men were found dead in an East Vancouver home. Police believe that these murders were related to gang violence. These murders happened very close to an elementary school, and it took quite a while for the police to clear the area so that they could actually let those kids go home. What a scary experience for those kids. What a scary experience for their moms and dads. (Hansard Debates, May 10, 2004 Vol.25, No. 6, p. 1035)

The Youth Criminal Justice Act

Statistics do not support society's concern that there have been significant increases in violent youth crime, yet the Federal Government enacted the *Youth Criminal Justice Act*. Carrington & Schulenberg (2004), question whether the new legislation is different from the *YOA* and whether its objectives will be achieved or whether the outcomes will mirror the consequences of the *YOA*. While it is argued that the *YCJA* is more prescriptive than its predecessor (see for example, Hillian, Reitsma-Street & Hackler, 2004), Carrington and Schulenberg (2004) recognize that, similar to the *YOA*, "the fate of the *YCJA* lies in the hands of those responsible for its implementation"(220). While any analysis of the new law is preliminary, the writings of three youth court judges provide a warning that things do not seem to be much different.

As Justice Peter Harris points out,

...rather than the dawn of a new age, the early days under the new youth law have been marked by changes that are inconsequential for the majority of youth facing charges. There is a gap—at times small and at times large—between the discourse of entitlements under the *YCJA* and the practice. (Harris, Weagant, Cole, & Weinper, 2004, p. 368)

Justice Harris' experiences have demonstrated that some fundamental components of the new law are not working. Specifically, despite the statutory policy on court delay set out

in section 3, youth court cases are not being brought to trial any more timely than they were under the *YOA*. According to Justice Harris, the gap between legal principles and their actual implementation is the result of competing values: judicial conservatism; avoidance of organizational costs; and divided authority.

Judicial conservatism denotes the courts' overly cautious interpretation of legislation. Therefore, when the legislature utilizes vague terminology, as is the case in the *YCJA*, and does not provide specific requirements (e.g., administrative delay guidelines that must be followed), ineffective interpretation is inevitable. Avoidance of organizational costs is evidenced in that "criminal justice organizations will ignore changes in the law if their adoption leads to serious organization costs" (p. 370). Finally, because of the divided authority between the provincial and federal governments, it is not clear who is responsible for following the principles of the *Act*, such as the speedy trial provision.

A criticism of the *YOA* was the high number of administrative offences (e.g., breach of probation), which, when a violation occurred, would result in a custodial sentence, thereby dramatically increasing custody rates throughout the country.

The Department of Justice statistics for 2001 indicate that more than one-quarter of all young persons in Canada in secure custody are there for breaches of bail and probation. It appears in our courts that a substantial proportion of detentions after show-cause occur where a breach is the most serious offence presented to the court. (Harris, Weagant, Cole, & Weinper, 2004, p. 376)

Justice Brian Weagant's experience with the new law suggests that the reduction of custody rates is only temporary, given that the significant number of charges continues to involve breaches of non-custodial measures, and these charges will most likely result in custodial sentences (Harris, Weagant, Cole, & Weinper, 2004). Justice Weagant's

insistence that there must be a logical connection between the conditions of release and the facts of the offence is particularly telling in light of Bala and Anand's (2004) preliminary findings that report significant increases in community-based responses to youth crime since the implementation of the *Act*. Bala and Anand (2004) also caution that a consistent reduction in youth custodial sanctions will be contingent upon actual reductions in youth crime.

Furthermore, Justice Weagant questions the punitive nature of the *YCJA*'s alternative measures provisions. Specifically, he alludes to the potential net-widening effect of such measures when he asks, "[i]s not a house arrest or curfew nothing more than a form of community detention?" (Harris, Weagant, Cole, & Weinper, 2004, p. 376). This concern is reiterated by Hillian and his colleagues (2004), with specific reference to the conferencing provisions of the *Act*.

The experiences of Justice David Cole bring to light equality issues with respect to the extrajudicial measures in the new *Act* (Harris, Weagant, Cole, & Weinper, 2004.). As experienced under the *YOA*, whether a youth receives a custodial disposition or an extrajudicial measure in place of custody, largely depends upon the availability of alternative programs in the jurisdiction where the offence was committed. This unequal access problem continues under the new law. Additionally, Justice Cole cautions that the informal sanctions that are imposed are often much harsher than formal sanctions.

I have seen several cases in which 13 and 14 year olds are being required to perform as much as 100 hours of community services as a condition of the charge not being proceeded with...sometimes when I hear—again informally—of these arrangements, I must confess that I sometimes feel like searching out the young person in the halls of the court building to tell them, "Look, why don't you plead guilty to the charge. True, you will have a criminal record for a time, but I will likely impose only 30 hours of

community service for this offence!” (Harris, Weagant, Cole, & Weinper, 2004, p. 380)

In concluding their early experiences with the *YCJA*, Harris and his colleagues (2004) offer a thought-provoking sentiment.

The young people of this country are our future. How we respond to this important legislation—whether we act decisively and deliver sensible justice for youth who never asked to be brought before us, whether we just pay lip service—will determine the type of society we convey to future generations. (p. 386)

In many respects, the *YCJA* has legislated neo-liberal economic policy. In particular, alternate measures, now formalized under the new legislation, provides the government with opportunities for policy and program measures that will cost them less money. At the same time, governments can proclaim that their efforts to reduce youth custody rates and increase community capacity are benevolent and in the best interest of both the child and the community (Woolford & Ratner, 2003).

An increasingly punitive approach

Given that preliminary evidence indicates that the *YCJA* is virtually the same as the *YOA*, and does not provide measures to deal with the “new street urchins”, it is unlikely to diminish the need for municipal and provincial legislation that mirrors the provisions of the old *JDA*. In fact, given that the new law prohibits the use of pre-trial detention for child welfare or mental health purposes (see, for example, Barnhorst, 2004) it may actual *require* additional legislation to deal with such missing provisions. Not only has a plethora of municipal and provincial legislation been passed dealing with the “new street urchins” (as discussed in Chapter Four), but additional *JDA*-type legislation to deal with deviant youthful behaviour has also surfaced.

In 1996, the Manitoba government passed the country's first *Parental Responsibility Act*,⁵⁴ a statute with the expressed intention of ensuring that "parents are held reasonably accountable for the activities of their children in relation to the property of other people". The *Act* places the onus on the parent(s) to prove that they "[were] exercising reasonable supervision over the child at the time the child engaged in the activity that caused the property loss, [and had] made reasonable efforts in good faith to prevent or discourage the child from engaging in the kind of activity that resulted in the property loss". If the parent(s) cannot prove that they were exercising reasonable supervision, the courts can find them financially responsible for their child(ren)'s damage, as set out in section 3 of the *Act*.

The parent of a child who deliberately takes, damages or destroys the property of another person is liable for the loss suffered by the owner of the property as a result of the activity of the child, and the owner of the property may commence a civil action under this Act against the parent of the child to recover damages, in an amount not exceeding \$7,5000, in respect of the owner's loss.

The impetus for such legislation is not clear, since youth property crime declined by 40 percent between 1991 and 1997 (Stevenson, Tufts, Hendrick & Kowalski, 1998). Despite this downward trend, the Ontario provincial government followed Manitoba's lead and in 2000 proclaimed similar legislation, also entitled the *Parental Responsibility Act*.⁵⁵ Similar to Manitoba's statute, the Ontario legislation forces parents "to prove to the court that they have control of their children...".⁵⁶ Thus, while youth are increasingly being made accountable for verbal and physical threats, their parents will be held accountable for their children's acts of vandalism and other inappropriate behaviour. For

⁵⁴ C.C.S.M. c.P8

⁵⁵ S.O. 2000 C.4

example, the parents of two youth who had a party at their home were forced to pay “part of a \$2.5 million award to another teen injured in a drunk driving crash afterwards”.⁵⁷

The British Columbia government has also introduced similar legislation. The B.C. *Parental Responsibility Act*⁵⁸ requires parents to prove they were exercising reasonable supervision over their child at the time the child engaged in the activity that caused the property damage. Failure to do so will result in the parent(s) being held financially responsible for the damage.

The provisions of all three provincial statutes are virtually the same; in particular, the onus is on the parent(s) to prove they were exercising reasonable supervision of their child(ren) under the age of 18 years at the time the damage occurred. If reasonable supervision cannot be proved, they can be sued in civil court for the damage caused by their child(ren).

All three *Acts* bear striking similarities to section 22 of the *JDA*:

- (1) Where a child is adjudged to have been guilty of an offence and the court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without restitution or any other action, the court may, if satisfied that the parent or guardians has conduced to the commission of the offence by neglecting to exercise due care of the child or otherwise, order that the fine, damages or costs awarded be paid by the parent or guardian of the child, instead of by the child.

As mentioned earlier, the 1997 beating death of Reena Virk caused a great deal of concern with regard to youth violence. In particular, newspapers began to report stories of bullying as if it was a new phenomenon or, if it was not new, its incidence was

⁵⁶ See for example, (2000, April 2). Canadian Press Newswire,

⁵⁷ (2001, March 16). Canadian Press Newswire,

⁵⁸ S.B.C 2001 C.45

reaching epidemic proportions.⁵⁹ Within a few years, the issue of bullying was transformed from behaviour that must be dealt with within the family and the school, to behaviour that warranted criminal or quasi-criminal sanctions. The specific act of bullying is not an offence under the *Criminal Code*; however, in 2002, charges of criminal harassment and uttering threats were laid against two teen-age girls in connection with the suicide of “a 14-year-old girl who hanged herself rather than [to] have to face the bullies who tormented her at [an Abbotsford] school”.⁶⁰ This landmark case resulted in the conviction of one of the charged youth.

The City of Edmonton recently passed an amendment (no.5) to their *Public Places Bylaw*, specifically targeting the issue of bullying. The amendment, which took effect May 1, 2003, makes “bullying (referred to as “harassment” in the bylaw) an offence in certain, limited circumstances” (City of Edmonton City Council Minutes, March 11, 2003). According to the amended bylaw, bullying is considered an offence when the following can be proved.

1. A person communicates with another person in a way that causes the other person to feel harassed:
2. The communication is made in a public place or any place to which the public reasonably has access:
3. The communication is of a repeated nature:
4. The recipient of the communication is under 18 years of age: and
5. The feeling of harassment is reasonable in all the circumstances (City of Edmonton City Council Minutes, March 11, 2003).

⁵⁹ See for example, (1998, July 25). *The Province*, p. B3

⁶⁰ (2002, March 30). *The Montreal Gazette*,

It is not uncommon for municipalities to create bylaws in attempts to deal with youthful misbehaviour. Since the 1970s, curfew legislation has been introduced throughout the country (Hay, 2000). According to Hay (2000), “curfew measures are currently in place in many communities across Canada” (p. 31). According to her analysis; however, many are not being enforced, while others, are only partially utilized. Perhaps what is most telling about Hay’s (2000) thesis, which looks at the constitutionality and efficacy of such curfews, is the evidence that calls for curfews and curfew enforcements re-surfaced in the 1990s in tandem with the increasing discontent with the *YOA*. While the violation of a municipal curfew bylaw does not result in a custodial disposition, in most cases violations of court-ordered curfews do. Hay’s (2000) analysis of court ordered curfews in Vancouver support concerns regarding the high number of administrative offence breaches. These concerns, which initially surfaced as a result of the *YOA*, appear to be an ongoing concern under the new law.

Why have reform attempts failed?

What is responsible for the unexpected consequences of the deconstructing movement? Why is there such a gap between the progressive goals and ambitions, the hopes and aspirations, of the deconstructing reformers in the 1960s and the actual outcomes and consequences? A careful review of the current situation raises the question of whether there has been any advancement since these deconstructing changes. Indeed, in many respects, it may be argued that a relatively small category of children and youth are more destitute now than they were 40 years ago. What went wrong? Cohen’s (1985) analysis provides two possible explanations that are helpful in making sense of what has occurred:

Progress: According to Cohen (1985), the notion of progress – innovation and reform – riveted the social control system in the 1960s.

Old practices seemed outmoded in the light of new ideas. The destructuring ideology appeared, offering not just novelty but a genuinely radical reversal of traditional assumptions. Diversion, deinstitutionalization, reintegration and the move to community all signaled a new era in deviancy control. (Cohen, 1985, p. 90)

While Cohen (1985) concedes that this model is essentially self-evident, there are a few points worth noting. It is true that the notion of progress is always present; that is, “things can always get better” p. (89); however, ideas of progress, change and perhaps even revolution, were intensified in the 1960s. Thus, as mentioned, “a spirit of innovation and reform somehow gripped the social-control system...” (p. 90). Cohen (1985) also notes that the idea of progress is significant because, unlike other explanations, this model views the “control system as a direct and *rational* response to the problem of crime” (emphasis in original, p. 91).

According to Cohen’s (1985) analysis, unintended consequences are often the inevitable result of progressive thinking on the part of benevolent reformers trying to make valuable changes in an unpredictable social environment. The intention of the destructuring reformers was to replace the *JDA* because, amongst other things, it was ineffective in dealing with youth crime and was the root of many civil rights violations. It was believed that the move away from a welfare-based approach to one that was based on a justice model would be more effective in dealing with youth crime. In addition, it would also provide youth in trouble with the law with some guaranteed and basic rights and freedoms. However, *because of* these inconsistencies (welfare vs. right/justice),

which were embedded in the *YOA*, the intentions of the reformers were virtually impossible to realize.

In addition, the emergence of a new group of “street urchins” was not foreseen. Subsequently, there was no clear legislative basis for intervention, as the mechanisms to deal with this group of troublesome children and youth no longer existed under the new legislation. This occurred despite the fact that most of the efforts continued to be driven by “the best interests of the child” rhetoric. Whether or not an increase in street involved and homeless youth was foreseeable is irrelevant. More importantly, although the intentions of reformers were “progressive”, as discussed in Chapter Three, the changes for which these reformers advocated required a fundamental ideological shift—not legislative tinkering.

Ideological contradictions: According to this model, the original intentions of reformers are “contradictory and mixed and, for this reason, virtually impossible to realize”(Cohen, 1985, p. 88). This model is much more complicated than the progress model; however, as will be demonstrated below, it is a much more useful tool for understanding why things went wrong in the Canadian youth justice context. Ideological contradiction is often masked by rhetoric, or as Cohen (1985) puts it, social control talk. This rhetoric, or control talk, is used to explain, justify and announce what is currently going on in the system. For example, the destructuring principles (decarceration, diversion and decentralization) were sustained, in part, by “the rhetorical quest for community” (p. 116). Even though it has never been clear “what community control (or treatment, alternatives, corrections, care, placement) actually means” (Cohen, 1985, p. 116), this idea continues to dominant crime-control policy in Canada.

As Cohen (1985) notes, words are very powerful “for guiding and justifying policy changes and for insulating the system from criticism” (p. 115). Thus, it becomes very important to *listen* to such rhetoric, social control talk, or stories for their ideological constructions. These constructions are “full of contradictions, anomalies and paradoxes. These internal impurities reveal a hidden agenda, a message which is not as simple as the surface tale” (Cohen, 1985, p. 115).

Furthermore, this model asserts the notion that the objectives and outcomes that result from such rhetoric, social control talk, or stories in the name of benevolence do not address the social problems and contexts that are responsible for creating “problem” populations. In turn, similar to legislation and policy that arose out of the child-saving movement of the late 19th and early 20th century, present-day community-based alternatives continue to focus on the individual offender as the subject of change, rather than the community.

While both explanations – progress and ideological contradiction - are useful in understanding how Canadian society ended up with the unexpected consequences of a significant increase in homeless and street involved youth and a more punitive youth social control system than was intended, the ideological contradictions model provides a much more compelling analysis and understanding. For, as demonstrated throughout this thesis, “the rhetoric of destructuring is, in fact, used to justify the creation of new structures—a movement from the established closed institutional domains to new territories in the open parts of society” (Cohen, 1985, p. 124).

Control talk under the rhetorical guise of benevolence cannot always be trusted and often results in unexpected negative consequences. The “best interests of the child”

rhetoric was the ultimate justification for the treatment of juvenile delinquents under the *JDA*. According to this principle, there was no reason to be concerned with the civil rights of troubled and troublesome youth because legislators were acting in the “best interests of the child”. As discussed in Chapter Three, with the *YOA*, benevolence remained—the legislators were still acting in “the best interests of the child”—but most of these welfare-based principles conflicted with the rights-based principles embedded in the *YOA*. Thus, legislators attempted to act in the “best interests of the child” and at the same time, provide these children and youth with their guaranteed rights and freedoms. The reality, however, is that the two principles in the modified justice model are incongruent and, as mentioned earlier, impossible to realize. Also, mechanisms to deal with the “new street urchins” fell by the wayside. For this reason, whether either or both the “welfare” and the “justice” principles are the most effective and appropriate ways to deal with troublesome youth is, in some respects, irrelevant.

With such ideological contradictions there has been a consistent attempt to group problem children and youth into different categories based upon their behaviour. This task is problematic because, while the problem behaviour may manifest itself differently, many of these children and youth come from the same sets of circumstances. Thus, society is faced with the arduous task of balancing the desire to provide appropriate care for children and youth who are troubled and/or in trouble, while at the same time fulfilling our cultural need for accountability, which is very often measured by the degree of punishment imposed. As a result, although these control systems are embedded in “developed commitments to ‘welfare’ and more or less sophisticated ideologies about

‘treatment’” (Cohen, 1985, p. 3), what has emerged is a care and control system of punishment driven by punitive ideologies which are masked by social welfare ideologies.

As new, supplemental, provincial legislation and policy emerges that attempt to compensate for the ‘short-comings’ of the *YOA*, there has been a resurgence of ideas of dependence indicative of the welfare-based model. As evidenced throughout this thesis, such ideas contradict the strong rights-based and youth accountability model in the *YCJA*. Well-intentioned legislators and policy makers continue to expand the apparatus of care and control of deviant children and youth and, rather than the intended, informal, non-institutional youth justice system, the result has been a formal, punitive system placed within the community, whose net continues to catch more youth than ever was intended.

Additionally, given that a significant part of the reform efforts of the *YCJA* focuses on community-based initiatives and alternatives, it may be prudent to heed Cohen’s (1985) observations about the emerging failures of the destructuring movement some 20 years ago. Specifically, the “idea” of community cannot be imposed on groups of people by legislative and policy changes; this is antithetical to the true concept of community. Notions of community are often times inherent and arise out of both common beliefs and the social contexts of various groups of people. These efforts were further hindered by the fact that attempts to mobilize community were being “implemented” by the state whose employees were often external to the community. They were workers “employed to tell other people that they do, after all, have a community” (Cohen, 1985, p. 123). Furthermore, attempts to re-integrate certain deviants back into the community were often defeated because the community itself was

the problem. As Cohen (1985) argues, it was more likely the case that many did not have a community to return to.

Some clients ... are only to well integrated into their communities—subcultures which supported and justified their deviance before they were sent to institutions and will continue to do so on their return. But, for most, there is simply no community to which to return. (p. 122)

Chapter Six

Implications and future research directions in youth social control measures

Implications

This thesis has three fundamental conclusions. First, Canadian society is experiencing many of the social problems with respect to homeless and street-involved children and youth that Canada faced in the late 19th and early 20th centuries. For example, the population of visible homeless and street-involved youth has rapidly increased over the past ten years, which has created concerns over their criminal and quasi-criminal behaviour. To some extent, we are dealing with “old wine in new bottles”. Second, while many of the issues that the “street urchins” of both the past and the present are similar, there are some notable differences. The “street urchins” of the late 19th and early 20th centuries faced poverty, potential starvation, illness and waywardness, the “new street urchins” are often caught in a destructive matrix of homelessness, drugs, sexual exploitation and HIV infection. Third, individual provinces are responding to the appearance of these “new street urchins” by creating legislation that provides similar control mechanisms to those formerly available in the *Juvenile Delinquents Act (JDA)*.

Cohen’s (1985) account of the changes to social control systems that began in the 1960s and lasted well into the 1980s, has been vital in understanding how, despite well-intentioned efforts, there are often unexpected negative consequences to reform. Specifically, Cohen’s account provides a framework for understanding how the past has influenced the present and the framework places many unintended consequences of youth justice legislative and policy reform into context. For example, Cohen’s description of

the four interlocking ideas of the destructuring movement that attacked the original transformation (as described in Chapter Three), provide the basis for understanding why the *Young Offenders Act (YOA)* was fraught with inconsistent and contradictory principles. Benevolence does not automatically translate into “good ideas” or positive outcomes. In fact, as argued by Cohen (1985) and taken up in this thesis, the rhetoric of benevolence cannot be trusted. For the past 100 years, benevolence has been used to justify restrictive and punitive measures that have been used to deal with troubled and troublesome children and youth.

Further, it is evident that children and youth who fall outside of the criminal justice system, but whose behaviour is problematic and potentially deleterious to their health, have been an area of concern for policymakers, legislators and criminal justice officials. It is likely that contradictory definitions of childhood and notions of appropriate youthful behaviour have been a direct result of this discord between what do with neglected, but not necessarily troublesome, children and youth. Consistent with Cohen’s (1985) concern regarding ideological contradiction, the result of this tension has been inconsistent and ineffective legislation. As the ineffectiveness of each legislative and policy reform is realized, the net of social control expands in an attempt to address the anxiety caused by a seemingly increasing group of troubled and troublesome children and youth. Much of this anxiety has been caused by an increasing number of visible homeless and street involved youth.

This thesis addresses Smandych’s (2001) concern with shortcomings of the youth justice literature, especially the failure to bridge the past with the present. In light of the recent abundance of provincial legislation designed to address the issues that troubled and

troublesome youth face, this thesis provides some insight into why this legislation has occurred and, perhaps most importantly, draws from past experiences to caution against the probable consequences of this most recent development.

Such an exploratory analysis provides legislators and policy makers with a critical framework with which to understand the consequences of their decision-making. For significant reform to occur, legislators and policy makers must move away from creating legislation to change behaviour, and concentrate on social conditions that are often at the root of much youthful misbehaviour. Throughout the last 100 years, each generation has identified specific behaviours as problematic and, with each identified problem behaviour, legislation has been created that sought to change and/or punish such behaviour. Depending upon the time period, the characteristics of the persons responsible for the behaviour, as well as ideas about what should be done about the problem, have changed.

Since the modern youth control system casts a much more expansive net than Cohen anticipated, the question arises of whether a third transformation is occurring. This issue of transformation is particularly salient given the recent decrease in youth custody rates and the subsequent closures of youth correctional centres. The closure of institutions (i.e., reform schools) during the early 20th century did not have the anticipated outcome and resulted in the reinstatement of many of these institutions. Thus, contemporary expansion in the community control net (as opposed to institutional control) will have unexpected consequences, especially since the closure of youth custody institutions is occurring in tandem with an expansion in the youth social control net.

As evident by recent neoliberalist government budget cutbacks in the social service sectors, little has been done to identify and improve social conditions that precipitate the situations which leave children neglected, and which consequently increase the likelihood of problematic and deviant behaviour. What is clear, however, is that legislators and policy makers have real and valid concerns regarding Canadian children and youth, and the legislation that currently exists is evidence of genuine (i.e., benevolent) attempts to address these issues. However, legislators and policy makers need to be aware of the possibility that they may be creating problems through legislation and policy.

This thesis has demonstrated that a great deal of the new provincial legislation for the control of youth mirrors provisions of the *JDA* which, in many cases, were intentionally excluded from the *Young Offenders Act (YOA)*. The exclusion of such provisions has, arguably, made it difficult to deal with the increase in street-involved and homeless youth. Throughout this thesis, it has been demonstrated that the provinces are responding to a perceived inability to provide appropriate care to an increasing number of high-risk children and youth by creating supplemental legislation. Such an increase in control measures raises the question of why the provinces are not using existing child protection legislation and/or revising such legislation to ensure the appropriate mechanisms are in place to provide the necessary care. Under such legislation, mechanisms exist (or should exist) that provide authorities with the ability to remove children from dangerous or potentially dangerous situations. It is not clear, therefore, why additional legislation, such as the Alberta *Protection of Children involved in Prostitution Act*, is required.

The problematic nature of current child welfare legislation may stem, in part, from inconsistencies throughout the provinces with regards to the maximum age of youth served under child protection legislation, in addition to increasing cuts to social welfare spending. Little academic attention has been given to child welfare legislation and its effectiveness in intervening with high-risk children and youth. Kelly Gorkoff's (2003) national scan of programs dealing with sexual exploitation, however, provides insight into how individual provinces are dealing with this group of high-risk youth involved in the sex trade and the extent to which provincial child welfare legislation contains the mechanisms for appropriate and adequate intervention.

Nova Scotia's legislation, for example, covers youth up to 16 years of age. Under the legislation, therefore, the province is unable to remove children from dangerous situations once they have reach the age of 16. Considering that the province is in the process of passing a Bill (*An Act to Protect Children Involved in Prostitution*) that will allow for the forcible removal and possible confinement of children and youth involved in the sex trade, it might have been prudent to have first revisited their existing legislation to see if less restrictive measures would appropriately address the problem. Child protection legislation is similar in New Brunswick; however, to date there have been no attempts to implement legislation specifically to deal with children and youth involved in the sex trade. This may, in part, be because the sexual exploitation of youth is very much a hidden problem in New Brunswick's urban centres.⁶¹

Youth in the sex trade have also been described as a hidden problem in Newfoundland and Labrador. While existing legislation covers youth up to the age of 16,

⁶¹ Kelly Gorkoff, 2003: personal correspondence

new child welfare legislation has been tabled to raise the age of intervention to 19.⁶² Prince Edward Island's legislation already covers youth up to 18 years old but, to date, the issue of sexual exploitation has not surfaced. It is unclear, however, whether this is because child welfare legislation covers a larger range of potentially at-risk children and youth and, therefore, the appropriate mechanisms for intervention are available, or whether it is the outcome of the relatively small population of the province.

British Columbia's child welfare legislation also covers youth up to and including age 18 and sexual exploitation has been identified as an increasing problem; however, it is questionable whether the existing legislation contains adequate measures in support of appropriate responses. As discussed earlier, however, inadequate measures may not be the problem. The problem may rest in the increasing cut backs to the social service sector which disrupt the ability to provide appropriate interventions already stipulated in the legislation.

Recommendations for future research

This exploratory thesis has provided some provisional findings on the increasing net of social control of youth in Canada. Future directions are set out below as a set of eight recommendations.

Applications of child welfare legislation

1. It is evident that more research is required regarding provincial applications of child welfare legislation to at-risk youth, particularly, youth involved in the sex trade. This would also involve in-depth analyses of the nature of child and youth sexual exploitation in the provinces.

⁶² Kelly Gorkoff, 2003: personal correspondence

Impact of provincial legislation on the migration of street youth

2. For example, should research indicate that there is a considerable proportion of street involved youth in British Columbia who have migrated from Alberta, particularly those involved in the sex trade, it would be valuable to examine whether they have had any experience with the Alberta justice system as a result of the *Protection of Children Involved in Prostitution Act* and, further, if the *Act* influenced their decision to leave that province. Before legislators create additional statutes to regulate youth behaviour, the impact of existing legislation should be evaluated. As more provinces consider enacting and implementing similar statutes it is critical to evaluate whether Alberta's legislation has been successful in helping children and youth leave the sex trade indefinitely.

Examinations of the social welfare approach in responding to and regulating troublesome youth

3. Another important issue that arises out of this thesis is the need to examine the value of the social welfare approach to the regulation of troublesome youth. Society continues to express its desire to save children and implement measures that are believed to be in their best interests. As demonstrated throughout this thesis, however, the consequences of such attempts have most often had a negative impact on the children and youth who are to be "saved". As previously discussed, the fault may not have been in the social welfare approach but, rather, in its implementation. It may be that social welfare, in an authentic sense, is the most appropriate

way to deal with neglected *and* delinquent children and youth. In reality, however, what has occurred is the creation of control systems that become embedded in “developed commitments to ‘welfare’ and more or less sophisticated ideologies about ‘treatment’”(Cohen, 1985, p. 3). What has emerged is a care and control system based upon punishment and driven by punitive ideologies which are masked by social welfare motivations.

The role of informal mechanisms of social control

4. This thesis has identified and discussed the array of contemporary, formal mechanisms for the social control of children and youth. What has not been addressed, but is of equal importance, is the role of various informal mechanisms of social control and the extent to which these mechanisms differ between Canadian cities and small towns. An exploration of this issue is timely as many small rural areas are beginning to experience social problems such as homelessness and sexual exploitation that, historically, have been of concern solely in large urban centres.

Rural responses to troublesome youth

5. The youth criminal justice system represents stages of care and control over youth *after* a youth has been identified as deviant and is processed through the formal system. Given the availability of services in urban centres, data collection and analysis of formal structures have most appropriately concentrated on the urban situation. Most rural areas in Canada would not be able to provide many of the services necessary for an efficient formal system. Consequently, it would be interesting to examine

how youth living in rural areas are dealt with after they come into conflict with the law. Also, an appreciation of the extent to which informal mechanisms of social control such as the school, the church and, perhaps, the family influence the care and control of youth in rural areas would be valuable for gaining a greater understanding of the consequences of such intervention. The degree of influence exerted by informal mechanisms of social control in rural areas could also be further understood by exploring the extent to which this influence differs from the larger, urban centres.

The role of alternative measures in reducing recidivism

6. In light of the increasing use of alternative measures in the youth criminal justice system and given the lack of formal systems in rural areas, we could examine whether alternative measures are more successful in reducing the likelihood that a youth engage in further deviant behaviour. Part of this analysis should look at the criminogenic influences of urban areas on youth and, also, the utility of formal mechanisms versus informal mechanisms in preventing and controlling deviant behaviour. Additionally, to fully understand the consequences of informal mechanisms of social control, it would be beneficial to investigate the utility of formal and informal mechanisms at an historical level. To date, such an historical analysis has not been conducted.

Further explorations of street-involved and homeless youth

7. Although considerable research on street youth exists, there are significant gaps in the literature. McCreary Centre Society research indicates that not

only are the numbers of street youth increasing in major Canadian cities but, also, that there has been an increase in street youth in smaller Canadian cities. It would be useful to look at levels of street youth in smaller cities and the extent to which informal mechanisms are used to deal with street youth. Additionally, researchers indicate that there has been a substantial increase in street youth in Vancouver. The McCreary Centre Society has reported that large proportions of these youths are coming from other provinces. It is argued that Toronto's social welfare approach to dealing with street youth decreases exposure to the traumas of street life (Hagan & McCarthy, 1997) and it would, therefore, be worthwhile to examine how many of these street youth are migrating to Vancouver from Toronto. If there are youth who are identified as coming from Toronto, it would be useful to look at how these youth sustained themselves during their time on Toronto's streets. Specifically, it would be valuable to investigate whether Ontario's *Safe Streets Act* influenced youth, who made their living squeegeeing and/or panhandling, to migrate to cities in provinces that did not have such punitive legislation.

The impact of the Youth Criminal Justice Act in responding to youth in trouble with the law and its influence on the social control of youth

8. Finally, with the newly-implemented *Youth Criminal Justice Act (YCJA)*, it will be useful to compare how many youth are processed informally through alternative measures, how many are formally sentenced to youth custody, and how many are sentenced as adults. A valid concern that has arisen as a result of this new legislation is whether there will, in the future,

be a need for a separate youth justice system. As demonstrated throughout this thesis, current legislation has, in many respects, restored provisions once found in the *JDA*. The concern that the *YJCA* may, in fact, lead to the re-creation of the archaic system that existed *before* the *JDA* is worthy of further investigation and monitoring.

Conclusion

Legislators, policy makers and youth criminal justice officials must remain cognizant that a tremendous amount of time and effort has been spent creating a youth justice system that is separate from the adult system. The deterioration of the separate system would make any progress achieved over the last 100 years meaningless.

It is crucial to recognize and understand the failed attempts of the past. Additionally, it is essential to contextualize the changing notions of childhood and the expectations of appropriate youthful behaviour. Such an endeavour will assist in understanding the lived experiences of our children and youth and also force Canadians to be self-reflexive and consider what these conceptions reveal about Canadian society in general. Until scholars and policy makers adequately link the past with the present, the provision of a successful service delivery system for children and youth will remain elusive.

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