

Youth Justice in Canada: Theoretical Perspectives of Youth Probation Officers¹

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The Youth Criminal Justice Act, like its predecessor, the Young Offenders Act, incorporates philosophies, principles, and procedures from several theoretical models of youth justice. Concerns have been raised regarding how challenging it is for the various youth justice professionals responsible for implementing this law to apply it consistently across cases with varying characteristics. This article reports on a study of youth probation officers in British Columbia under the YCJA. It involves probation officers' reviewing five, actual, serious and/or violent young offender cases from across Canada. Their theoretical orientations to the different cases were derived from divergent models of youth justice. Despite the hypothesis that probation officers' responses would vary on the basis of case characteristics, overwhelming consistencies were evident in four of the five cases. The probation officers' approach typically rejected sentencing recommendations drawn from polarized models of youth justice, such as welfare or as crime control. Instead, probation officers preferred a model that represented a more eclectic approach, such as corporatist and modified justice.

Keywords: youth justice, youth probation officers, models of youth justice, YCJA

Introduction

Like other areas of the criminal justice system, youth probation in Canada has historically been influenced by different political, social, cultural and philosophical principles embedded within the legislative frameworks of juvenile justice beginning with the Juvenile Delinquents Act (1908) (JDA), followed by the Young Offenders Act (YOA) (1984) and the current Youth Criminal Justice Act (YCJA), which came into force in 2003. At the same time, over the past century, understandings of the roles of youth probation officers (YPOs) have oscillated philosophically between requiring rehabilitative, caring interventions and requiring interventions oriented towards public safety, accountability, and control. Under the JDA, YPOs "acted in the best interest of the child" by providing information to assist juvenile court judges in informal and non-criminal adjudications and in supervision of these decisions. In contrast, the YOA shifted the YPO role to reflect regulatory due process and public safety principles. However, the YOA was criticized for having a set of philosophical principles whose incoherence resulted in major discrepancies among the different provinces and territories, particularly in regard to the sentencing of young offenders; and for relying too heavily on the court process and custodial dispositions for minor offenders (Corrado and Markwart 1992).

After nearly two decades of criticism, the YOA was replaced with the YCJA on 1 April 2003. This legislation provides an explicit preamble and numerous principles that are expected to interweave at different stages of the youth justice process, seeming to allow considerable discretion and individual interpretation regarding the importance and relevance of the various overarching objectives built into the Act. Some scholars view the YCJA as more focused and directive than the YOA (Corrado, Grondahl, and MacAlister 2007); however, the authors will illustrate, using five distinct theoretical models of youth justice, that this Act is very complex, particularly when it comes to the provisions governing the sentencing of young offenders.² It was hypothesized that youth probation officers would not be consistent in their interpretations and applications of the more complex sections of the YCJA in relation to five hypothetical cases typical of the challenges faced in their youth justice roles. To test this hypothesis, a study was conducted with youth probation officers, involving an analysis of their theoretical orientation under the YCJA. This article reports the results of that study.

Youth justice models

For several decades social scientists and legal scholars have examined the structures and operations that influence the establishment of juvenile justice laws in Western societies. Once laws are enacted, they often become unwieldy and cumbersome to understand, and deciphering the complexities of some legislation can prove to be challenging. Canada's YCJA, with its 165 sections (compared to 70 sections under the YOA), is no exception: Enormous effort and depth of legal knowledge is required to comprehend its various definitions, principles, and procedural provisions. Youth justice models provide a comprehensible set of concepts and principles that can be used to understand complicated laws. In effect, such models reduce laws to an essential set of legal, philosophical, and procedural themes. In addition, models can provide a summary depiction of the actual functioning of a youth justice system compared to its operation as stipulated by law (Roach 1999).

This study asked YPOs to reflect on five different models, based on differing philosophical conceptions of youth justice. The models can be conceptualized on a continuum, focusing on the needs of the young person at one end and the protection of society at the other end. Most youth justice scholars are cognizant of the three long-established models of juvenile justice; namely, welfare, justice, and crime control. Each model has distinct philosophical principles and, for the most part, different procedures. The *welfare* model focuses on identifying a youth's problems and needs and then adjudicating dispositions or sentences that address them through juvenile or youth court proceedings. The *justice* model emphasizes youth procedural rights and proportional sentencing, while the *crime control* model places a premium on protection of the public through incapacitation of young offenders and custodial sentences to enhance both the specific deterrence of the young offender and the general deterrence of other potential young offenders. Elements of all three models are reflected in the YCJA: the welfare model emphasis on the rehabilitation and reintegration of young offenders; the justice model emphasis on due process, rights, and procedures; and the crime control model, as reflected in the potential for lengthy adult sentences for some very serious young offenders. Furthermore, two rather innovative models have been developed over the past two decades as alternatives to the three traditional and purist models.

John Pratt's (1989) *corporatist model* was formulated as an option to the welfare and justice models that had been the focus of debate in England and Wales until the late 1980s. This model emphasizes an increase in the use of administrative decision making and broader discretion for professionals such as social workers and YPOs. It also embodies a decreased reliance on the formal criminal procedures central to the justice model. A corporatist process, therefore, envisions the merging of various multidisciplinary juvenile-justice agencies and personnel to manage, negotiate, and resolve conflicts with most young offenders in order to produce a planned outcome that often includes diversion to specific community programs. Equally important, this model trifurcates the youth justice process by separating procedural and sentencing approaches for *minor* offenders (usually first time and non-serious property offenders), *moderate* offenders (multiple property offenders and less serious violent crimes), and *serious or violent* offenders (*presumptive* offences, including murder, attempted murder, manslaughter, aggravated sexual assault, or a third serious violent offence for which an adult is liable to imprisonment for a term of more than two years).

Corporatist options are evident in the YCJA in the increased use of extrajudicial measures and conferencing. Extrajudicial measures, such as police diversion, which are presumed to be adequate under the Act for non-violent offenders who have not previously been found guilty of an offence, avoid formal judicial hearings and more punitive sentencing outcomes. Beyond police diversion, most provincial governments have explicit policy and administrative guidelines for YPOs (or sometimes agencies) to conduct screening assessments for extrajudicial sanctions, a more formalized kind of diversion from court. Typically, most cases involving repeat minor offenders are referred by Crown counsel to a YPO, to assist in deciding the appropriate non-judicial sanction(s).

The clearest expression of the corporatist model in the YCJA is found in the provisions promoting conferencing. The main goal of conferencing is a resolution - mutually agreed upon by the young offender, the victim, community members, and youth justice representatives - of the harm done by the crime. The YCJA's definition of a conference is purposefully vague, allowing for broad discretion and differing approaches among the provinces and territories in setting up and convening conferences. For instance, British Columbia, and specifically, Calgary, Alberta have youth justice specialists, such as POs, as the primary case workers responsible for convening judicially ordered conferences.³ Once a resolution has been reached among the various parties, the youth probation officer formally reports the outcome back to the youth justice court, where the judge can decide whether or not to incorporate the suggestions into the sentence. As an explicit example of the corporatist model, conferencing offers a seemingly important alternative to the mainstream justice-model proceedings typically characterized under most juvenile justice laws.⁴

The modified justice model (Corrado 1992) reflects the more recent trend, evident first in the United Kingdom as early as 1908, of combining different elements of the other youth justice models. This approach originally synthesized the justice, welfare, and crime control models, and much later, beginning in the 1970s, brought in elements of the corporatist model. Under this model, Crown prosecutors, defence counsel, and judges are guided by the goals of ensuring procedural fairness, protecting society, holding young

persons accountable for their offending in accordance with their maturity level, maintaining proportionality between the harm caused by the offence and the severity of the sentence, and providing rehabilitative resources to meet the needs of the youth. Again, procedural fairness is the dominant process principle in the modified justice model; thus, a youth is protected from making uninformed and/or coerced choices regarding admissions of guilt or selection of procedures and, where outcome options exist, is supported in selecting the least intrusive alternative.

Both the YOA and the YCJA have been characterized as examples of the modified justice model, albeit with differences in emphasis with reference to the principles espoused in the other four models (Corrado 1992; Corrado et al. 2007). For example, the option of adult custodial sentences for presumptive offences, such as murder, currently available in the youth justice court can be seen as a shift to the crime control principle of incapacitating serious and violent offenders in order to protect the public. It also embodies the justice model's principle of proportionality connecting the seriousness of the offence to the length and type of sentence (i.e., the severity of the punishment).

In comparison to the YOA, the YCJA has a more explicit or clear preamble, which outlines the key policy objectives of the legislation. It also contains detailed provisions describing procedural and outcome options at each stage of the youth criminal justice system, beginning with police investigations and culminating in a non-judicial sanction or judicial sentence. However, considerable decision-making discretion remains for youth justice professionals. It is this discretion that has led to several controversial Supreme Court of Canada decisions. These rulings have assessed whether sentencing can include a deterrence principle (*R. v. B.W.P.*; *R. v. B.V.N.*), what constitutes a "violent offence" meriting a sentence of incarceration (*R. v. C.D.*), what a judge should consider in determining whether a "pattern of findings of guilt" are present so as to justify incarcerating a youth (*R. v. S.A.C.*), whether a judge should leave the onus on the young person to show why adult sentencing should not be applied in presumptive offence cases (*R. v. D.B.*), and when a judge should exercise discretion to refuse to compel a convicted youthful offender to surrender a DNA sample for inclusion in the national databank (*R. v. R.C.*). Intense political reactions to these cases have also resulted, including the view expressed by the current Stephen Harper-led Conservative Party minority government that deterrence and denunciation should be recognized as legitimate youth sentencing principles, together with their claim that the YCJA continues to require additional reform, which is "meant to be tough"; these views have resulted in changes the government asserts will strengthen the Act (Nicholson 2008).

Similarly, other forms of discretion conferred on youth court officials have caused controversy. For instance, youths remanded into pre-trial custody have not declined in numbers. It is not entirely clear why there has not been a decrease in the number of remanded youth commensurate with the decrease in sentenced admissions, despite the philosophy of the Act, which clearly focuses on minimizing youth incarceration of any kind (Kong 2009; Bala, Carrington, and Roberts 2009). In response to the Nova Scotia Nunn Commission (2006), which drew attention to the YCJA as unduly limiting pre-trial detention, the Harper government wants to alter the pre-trial detention provisions to make it easier to deny bail to certain youth. It is also unclear why the *intensive rehabilitative custody and supervision* sentence (IRCS) has been under used.⁵ As well, how decision makers choose among available options remains unclear. For example, there are marked variations among provinces in the use of restorative justice programs, remand, conferencing, and access to treatment sources in custody and in the rates of community and custody sentences (see, e.g., Milligan 2008; Thomas 2008). Also, there likely are within-province variations (e.g., urban, suburban, smaller cities, and rural regions), and within- decision-maker-group variations (e.g., judges, Crown counsel) with regard to decision-making practices (Doob and Cesaroni 2004). Explaining differing approaches to the application of the Act requires an analysis of the values and philosophical frameworks of youth justice professionals that influence their decisions and recommendations and an understanding of the extent of the discretion granted by the legal and policy structure within which decisions are rendered.

There is a long theoretical history both asserting and explaining that discretionary decision making increases the importance of ideological bias in the individual decision makers (Doob and Beaulieu 1992; Harris and Webb 1987; Bortner 1982; Hogarth 1971). This literature also suggests that the type of youth justice model favoured by professionals working with young offenders reflects their ideological bias. For example, crime control-oriented professionals lean towards protecting the public through incapacitation and punishment, while decreasing their emphasis on rehabilitation. Meanwhile, those favouring the justice model ideology downplay corporatist principles of nonjudicial diversion and conferencing in favour of strict adherence to due process rights of accountability and the principle that sanctions be proportionate to the seriousness of the offence (Corrado and Turnbull 1992). Accordingly, it is important to examine how YPOs' ideological biases affect their approach to young offenders under the YCJA.

Role of the youth probation officer

Under the YCJA, YPOs have diverse and complex roles. For example, in British Columbia, YPOs work closely with Crown counsel in conducting extrajudicial-sanction inquiries as well as in preparing breach of probation reports for Crown approval. Equally important, YPOs in British Columbia provide oral and/or written pre-bail reports for court; write judicially ordered pre-sentence and adult-

sentencing hearing reports, write custodial review reports, and convene court-ordered conferences.⁶ In addition, YPOs work with young offenders and various resource networks well after the completion of court proceedings, work which usually involves supervising bail and orders for probation and intensive support and supervision, coordinating access to community treatment programs, supervising the community portion of a sentence to custody and supervision in the community, and playing a key and multifaceted role in youth custodial institutions vis-a-vis case planning and transition to the community following custody.

While there is an expectation that YPOs will provide non-ideological recommendations to the court, there is also a long-standing assertion that they are not “disinterested experts” (Pitts 1999: 71). Under the complex mandates of the YCJA, YPOs strive to balance their “officer of the court” mandate with the responsibility of supervising young offenders, attempting to ensure the youths’ best interests through rehabilitative, treatment-based approaches as well as ensuring the enforcement of court orders to promote accountability and public safety. In effect, the more diverse and complex the roles of the YPOs, the more likely it is that personal, usually ideological bias, will become important to their approach:

[T]o truly understand the process of individualized justice as implemented within the modern juvenile court it is necessary to examine the behaviour, attitudes, and propensities of those who administer juvenile justice . . . “Individualized” refers as much to the interpreter of juvenile characteristics as it does to the juvenile. The art of interpretation reveals more about the artist than the subject. (Bortner 1982: 249)

There have been very few studies that explain a YPO’s orientation with young offenders.⁷ Therefore, there is a need to explore the hypothesis that a YPOs’ ideological bias or commitment to the above five models are important determinants of their approach with youth. This is accomplished by examining whether these models are associated with their responses to actual YCJA cases. In addition, it is essential to determine whether laws based on the modified justice model, such as the YCJA, are difficult for youth probation officers to apply in a consistent manner. Differing YPO ideologies, favouring either a welfare, corporatist, justice, or crime control model, all evident under the YCJA, decrease the likelihood that similar and consistent orientations will prevail when a sample of YPOs responds to the same set of actual cases. Since YPOs make important decisions under the YCJA (for example, whether to forward a breach of probation to Crown counsel or request a warrant of suspension for a youth serving the community portion of a sentence to custody and supervision in the community) and offer recommendations in pre-sentence reports, it is valuable to ascertain the personal ideologies of different YPOs and to determine how these might influence their decisions and recommendations.

While pre-sentence reports (PSR) have not been the subject of recent scholarly debate, there are studies attesting to their being an important and integral part of judicial decisions. Maurutto and Hannah-Moffat (2007) report a strong correlation between PSR recommendations and judicial decision making in Canada (80%), United States (92%), United Kingdom (78%), and New Zealand (77–80%), suggesting the significance of PSRs in affecting the sentencing process. Equally important, Bonta, Bourgon, Jesseman, and Yessine (2005) found the judiciary was satisfied with PSRs 87.4% of the time and that 95.2% favoured the inclusion of treatment recommendations. In Canada, a YPO’s discretion to offer general recommendations in a PSR was a historical practice in most jurisdictions⁸ well before the YOA was amended in 1995 to allow the author of a pre-disposition report to include appropriate recommendations (Bala 2003; Tustin and Lutes 2009).⁹ The current study is a theoretical extension of research on pre-sentence reports in that it explores what approach or model YPOs might select based on the background and offending histories of five young offender cases.

Methodology

Sample

An initial sample of 156 YPOs throughout British Columbia was approached to participate in this study. To be eligible, respondents had to be actively involved in the handling of young offender cases, either through direct supervision or case management. Others considered eligible were those who had previously been YPOs and were presently direct supervisors of YPOs and those who worked in the provincial policy analysis department where YPOs frequently consult regarding young offender legislation. Of the 156 participants, nine were eliminated because they either did not meet the probation-officer

Table 1: YPO demographics

Gender	
Male	52.9%
Female	47.0%
Ethnicity	
Caucasian	88.2%
Aboriginal	2.0%
Other	9.8%
Age	
25–34 years	30.0%
35– 49 years	49.0%
50+ years	21.0%
Marital Status	
Married or Common Law	70.0%
Never Married	19.0%
Separated or Divorced	11.0%
Education	
University Degree- MA	6.0%
University Degree- BA	84.0%
College or High School Diploma	10.5%

eligibility criteria just described, because they submitted incomplete surveys, or because they declined to take part in the study. Therefore, the sample was composed of 147 present and former YPOs from across British Columbia, reflecting an inclusion rate of 94% of the total population of YPOs in the province.

There was a similar number of male (52.9%) and female (47%) officers, with the majority being Caucasian (88.2%). The average age was 40.7 years and most were married or living common-law (70%). The majority had attained a bachelor's degree (84%) level of education. Respondents had been employed a median of 10.3 years, with the highest number of years being 37 and the lowest one year. At the time of the study, 67% of the sample actively supervised a generic caseload, while 8%, each of whom had previous line-probation-officer experience, were supervisors of local probation offices. The remaining officers worked in specialty units (13%) (e.g., conferencing, sex offender, violent offender units) as well as case management and policy departments (12%) (e.g., youth justice consultant, policy analyst, youth custody case management). Equally important, 84% said they worked in a multi-disciplinary office with social workers, and 59% indicated they worked together with mental health workers.

YPOs in British Columbia work under the provincial Ministry of Children and Family Development (MCFD), which is responsible for a diverse range of child and family services including, for example, child protection, mental health, services to special needs children, and youth justice services. This ministry is divided into five geographic regions. While each region includes both rural and urban communities, 45% of respondents worked predominantly in a large urban centre in the southern part of British Columbia, where the majority of the province's population of four million is concentrated. More than half of the officers (55%) worked in mid-size cities, small towns, and remote rural communities.

Five case studies and survey questionnaire

The 147 YPOs were presented with five young offender cases and asked what model represents their approach to the case studies. The five serious and/or violent young offender cases were selected from Canadian trial and appellate case law. The cases were chosen because they represented 10 profiles of complex, multi-problem young offenders requiring the most challenging application of the principles included in the YCJA. While the content of the five cases were retained, the names, ethnicity, and cities of origin of the offenders were altered and realigned with the geography and demography in British Columbia. This study was conducted between January and March 2004, approximately 10 months after the YCJA had been implemented. Given that the YPOs had a median 10.3 years of employment, their overall experience working with young offenders and their understanding the new Act were sufficient to provide realistic responses to the cases. The respondents were given all five samples and were required to read a three-page summary of each case and answer a series of questions pertaining to sentencing options and factors considered when making a recommendation as well as questions designed to reveal what type of youth justice model represented their approach in each case (see Appendices A, B and C). The respondents did not know what model their answers were associated with (crime control, corporatist, welfare, justice, modified justice; see Appendix C), as the number for each model was arbitrarily assigned. While it is

beyond the scope of this article to analyse the responses pertaining to sentencing options and factors considered when making a recommendation (Appendix A and B), we have included these items in this article to illustrate the sequence of questions the respondents had to answer in order to arrive at a model best represented in their approach. A brief description of

Table 2: Percentage of probation officers categorizing what would be the appropriate response to each case

	Case #1 Kara	Case #2 Carlos	Case #3 Edward	Case #4 Andy	Case #5 Amir
Welfare	25.2	10.2	14.3	12.2	2.8
Corporatist	11.6	4.1	3.4	3.4	0.7
Modified Justice	61.2	61	65.3	67.3	37.5
Justice	1.4	5.4	3.4	4.1	13.9
Crime Control	0.7	19	13.6	12.9	45.1

each case is provided followed by a determination of the theoretical approach taken by the youth probation officers.

Case #1: Kara

This case involved a 15-year-old Caucasian female youth who pleaded guilty to assault and uttering threats to cause bodily harm. The offences were in relation to an assault on a male staff member at the youth treatment centre where Kara had been residing for 18 months. Kara had a horrendous and tragic background, having been raised by alcoholic parents prone to violence, abuse, and neglect, which included locking her in cupboards for lengthy periods of time. Abandoned by her father, Kara was eventually placed with the social services minis- try at age five (22 therapeutic and hospital placements).

Kara had not been in a regular school setting since Grade two due to her aggressive behaviour and limited cognitive abilities, which fell into the borderline range of intellectually deficient. She had been diagnosed with several mental health conditions and was prone to self-harm. Kara's last placement was a highly structured adolescent treatment centre, which was detrimental to her overall development, with the result that her institutionalized aggressive behaviour patterns became more serious.

The psychiatrist who had been treating Kara for many years described her criminal involvement as diminished responsibility because of her cognitive and emotional limitations. The male victim of her assault suffered a five-inch scratch on his cheek, with slight scarring. Kara had a prior history of similar offences, including eight assaults against other staff members in the same treatment centre six months prior.

Nearly two thirds (61.2%) of YPOs indicated that the modified justice model best represented their approach in Kara's case in contrast to only one quarter (25.2%) for the welfare model. Despite the apparent relevance of the corporatist model (non-judicial sanctions and the possibility of a conference to coordinate an immediate and comprehensive community-based treatment plan and avoid lengthy and costly court proceedings), only 11.6% of respondents were identified as applying this model. In the case of a mentally disturbed young person, such an approach would be expected to have little or no effect on recidivism.

The respondents acknowledged that, under the YCJA, Kara does not fit into a simple welfare-model stream. Rather, most perceived Kara as requiring more than a treatment-focused approach, due to the obvious need to consider the issue of mental health and special needs and her consequent diminished responsibility for her persistent violent behaviour. As well, key justice personnel were seen as necessary to ensure treatment and support, including an alternative placement for Kara, which was seen as likely to assist in ameliorating her already negative institutionalized behaviour and to promote greater com- munity involvement.

Case #2: Carlos

Sixteen-year-old Carlos was convicted of robbing a convenience store while wearing a face mask. The robbery was part of an initiation into a local gang. Carlos and two co-accused took \$20.00 in change and \$300.00 worth of cigarettes. The victim, a clerk, had been robbed twice before, with the most recent victimization being only two weeks prior. Carlos was also charged with breaching a previous probation order on a subsequent night, after he was found passed out from alcohol intoxication in a backyard garden, face down in the mud.

Carlos had been born in Honduras and was the second of four children. His family immigrated to Canada when Carlos was 6. Carlos was 13 when his father committed suicide, using a firearm in the family home in the presence of his wife and oldest daughter. Carlos's

mother was so traumatized that she was unable to speak for seven months. Carlos refused any counselling and began to act out his grief during the following three years, with addictions, crime, and the choice of anti-social peers. Prior to his father's suicide, Carlos was an above-average student, but he left school after the loss of his father.

Carlos's youth record involved multiple offences of theft, possession of stolen property, weapons, obstruction, attempted robberies, and breaches of bail and probation. His response to youth justice services (custody and community) had been poor. Carlos said that his initiation into the gang was more important than the consequences of the robbery and that he feared reprisal and discipline from the gang. He expressed remorse for his actions and was well aware that his behaviour had negatively affected the store clerk who was victimized in the robbery.

Again, close to two thirds (61%) of the responses conformed to the modified justice model, with far less support for the other four models. It was somewhat unexpected that, despite Carlos' extensive prior record of violence and the failure of less punitive sentencing to prevent his recidivating, there was not more support for a crime control approach; for example, a recommendation for a lengthy and punitive custodial sentence to ensure public safety and individual deterrence. Instead, participants recognized a modified justice principle that, even for serious and violent offenders, limited accountability is attributed to youth as compared to adults. In effect, this case illustrates the not uncommon difficulties of a Central American immigrant family suffering the long-term traumatic impact on "peasant" and working-class families of a generation of civil war: The tragic suicide of Carlos's father, Carlos's subsequent serious substance use, and his joining a gang, at least in part as a surrogate family, could all be seen as critical mitigating experiences, and that mitigation explained the YPOs' less punitive responses, in addition to their view that treatment and community reintegration objectives were also important. In other words, the modified justice model characteristically calls for a mitigated proportionate sentence to ensure that violent behaviour is sanctioned but not to the point where punishment adversely affects the impact of treatment.

Case #3: Edward

Further support for the modified justice model comes from the responses to a case involving 17-year-old Edward, charged with one count of sexual interference. While he was staying overnight at a friend's home and sleeping on the couch in the living room, his friend's sister, age 12, was asleep on another couch; she awoke to find Edward's penis in her hands. This sexual assault offence occurred on the last day of a 24-month probation order Edward had been serving for a prior sexual assault.

Edward was the younger of two sons. There had been significant problems within the family arising from unclear rules and boundaries being set for the boys. Brother Tim had left home at 17 to escape his overbearing and controlling mother, whose behaviour had been described as erratic and unpredictable. After the offence, Edward disclosed that his mother walked around the house naked, insisted he watch her while she bathed, and she gave him uncomfortable back massages, with inappropriate whispering in his ear and tickling of him. This occurred in the absence of their father, but in his presence, their mother would revert to being a strict disciplinarian. Attempts to explain their mother's behaviour to their father were dismissed by him as fabricated and ridiculous. For two years, Edward's means of coping had been the weekly use of alcohol and drugs. Edward attended a modified educational program at the local high school, but he was failing due to truancy. His mother covered her son's absenteeism with excuses.

Edward had previously completed a forensic out-patient sex offender treatment program, but was still assessed as high risk to re-offend. Mental health professionals described Edward as having cognitive distortions that resulted in his perception of forced sex as normal and his fantasizing about sexually abusing others. Edward did not feel guilty for his aberrant behaviour; rather, his assaults were viewed as exploitive and he displayed no remorse. Edward had poor problem-solving abilities and low self-esteem; he displayed impulsivity; and he tended to be a follower, showing elevated scores on an antisocial sub-scale measurement.

Given the seriousness of the offence, the young age of the victim, the prior history of sex offending, the non-response to treatment, the complete lack of a sense of responsibility and remorse, and the apparently high likelihood of recidivism (possibly including an escalation in the seriousness of the sexual offending), it was expected that a substantial percentage of YPOs would support either a crime control model, by emphasizing protecting potential victims through incapacitation, or a justice model, by recommending a lengthy custodial sentence both to convey responsibility for the seriousness of the second sexual offence and to conform to the principle of proportionality. Yet, again, nearly two thirds (65.3%) of respondents viewed the modified justice model as more appropriate: focusing on offender characteristics and rehabilitation while, at the same time, reinforcing procedural fairness and accountability through sentences that are proportionate to the seriousness of the offence. In other words, it appeared that most YPOs accepted the implicit YCJA inclusion of key developmental and theoretical perspectives on serious criminal offending, seeing the impulsive basis for Edward's sexual offending during late adolescent as being different from that of an adult's similar offending history. Under the YCJA, this difference would not only mitigate the punitive severity of the recommended sentence, but

also be seen as requiring a continued treatment emphasis, despite the previous ineffectiveness of treatment.

Case #4: Andy

This case involved a 17-year-old Aboriginal youth who was raised by an alcoholic father prone to physically abusing his mother. When Andy was 4 years old, his mother left his father after an altercation that resulted in physical violence. His father immediately quit drinking and never became involved in another relationship. Andy's mother remarried when he was 7. When Andy was 16 his father was diagnosed with cancer and died a year later.

Two weeks after his father's death, Andy engaged in an extremely serious and very violent assault. On the night of the offence, Andy had been drinking with his friends and talking about his father. When Andy was walking home, he was confronted by the victim, who initially attacked him. As Andy had been robbed many times in this neighbourhood, he started to fight back and went far beyond what was necessary to defend himself in terms of kicking and stomping on the victim after he was on the ground. The victim became unconscious and subsequently suffered a severe brain injury, facial swelling, broken nose, punctured lung, fractured rib, and liver lacerations. The victim required numerous plastic and facial surgeries and had to spend one year in a chronic care rehabilitation facility where his prognosis was poor. He was unable to swallow properly, had limited speech which was not expected to improve, used a walker, was cognitively impaired, and would always require supported living in the community.

A psychological assessment of Andy revealed symptoms of depression and anxiety-based disorders. His early exposure to family violence, his father's alcoholism, his repression of his father's death, his own substance use, which started six months before the offence, his poor choice of peers, and his moderately disrupted schooling are all related to an elevated risk to re-offend. Andy's only court history stemmed from breaching his bail order on two occasions by being out past his curfew. These bail breaches resulted in Andy's being remanded into custody for three months while awaiting sentencing. Andy demonstrated considerable remorse for the aggravated assault on his victim. Andy asserted he consumed so much alcohol that he only vaguely remembered most of the assault, but he was aware that anger over his father's death is not an excuse for his offending behaviour.

While multi-problem profiles are typically evident for serious and/or violent youth, in Canada, such profiles for Aboriginal young offenders are more prevalent than among non-Aboriginal young offenders (Corrado and Cohen 2004). The unique cultural context of Aboriginal young offenders was not explicitly recognized under Canada's previous youth justice legislation, the YOA, even though it was unmistakable that a disproportionate number of Aboriginal youths were given custodial sentences, even where they had not been convicted of violent offences (Corrado and Cohen 2002). Moreover, the lack of intervention programs often resulted in Aboriginal young offenders' problems not being effectively addressed under the YOA. Because of their overrepresentation in custody and the predominance of early incarceration experiences, there was, and still is, a major concern that Aboriginal communities would suffer long-term negative consequences as a result of too many of their youth continuing on as serious adult offenders.

The Government of Canada acknowledged the unique position and social disadvantage of Aboriginal youth by incorporating provisions into the sentencing principles of the YCJA similar to those of the Criminal Code of Canada for adult offenders, which recognize the inherent special needs of Aboriginals. The YCJA explicitly acknowledges the distinctive cultural context of Aboriginal young offenders and this concern is reflected in the principles and policy objectives of reducing the disproportionate number of Aboriginal youth who are processed through the formal youth justice system and, most importantly, reducing the highly disproportionate number of Aboriginal youth sentenced to custody.

YPOs have a critical role with Aboriginal young offenders because their pre-sentence reports typically influence judicial sentencing (Bonta et al., 2005). The YCJA's sentencing philosophy and specific criteria both inhibit the use of custody for property and less serious violent offences and emphasize community-based alternatives, especially for Aboriginal youth. In addition, YPOs are central in identifying, co-ordinating, and ensuring that appropriate community alternatives are made available as options for the court.

In the case of Andy, more than two thirds (67.3%) of the YPOs selected the modified justice model; there was substantially less support for the welfare model (12.2%) or the crime control model (12.9%), while the justice and corporatist approaches received minimal support. It seems that the modified justice model approach is seen as commensurate with the YCJA's provisions of recognizing and implementing culturally sensitive rehabilitative strategies linked to the multiple needs profiles of many Aboriginal young offenders.

Case #5: Amir

This was a tragic case of criminal negligence causing death and impaired driving causing death. While 17-year-old Amir had no previous criminal record, his prior driving history reflected two traffic tickets for excessive speeding and a stern warning by police officers a few months before the offence. On the night of the offence, Amir had been drinking at a party and was driving his new sports car when he decided to get involved in a high-speed street race with another youth. Amir lost control of the vehicle and crashed, causing the death of his friend in the right front passenger seat.

Born in Tehran, Iran, Amir comes from a very privileged but not a troubled family background. When Amir was 15 years old the family moved to British Columbia. Amir had experienced difficulties adjusting to Canadian culture and the language and expressed a desire to return to Iran. In addition, he had had a poor educational experience, where the objectives of school and the language were significant barriers. Amir's parents compensated for his loathing of Canada by purchasing the sports car.

Amir completely denied being the driver of the car even though police evidence contradicted his version of events. He did not attend his friend's funeral because of the ongoing negative tension within the Iranian community and with the victim's family. After a lengthy trial and subsequent appeal, Amir was on bail for two years pending the outcome of the court proceedings.

The nature and context of this offence made a striking difference in the YPOs' response to this case in comparison to the previous four cases. It seems the seriousness of the offence and the absence of the offender's taking responsibility raised doubts about the need for or appropriateness of rehabilitation of this young person. Accordingly, the YPOs responded by splitting between two models: crime control (45.1%) and modified justice (37.5%). The remaining three models were significantly under-represented as relevant approaches to be considered in this case.

Under the crime control model, the maintenance of social order through laws designed to punish behaviour and thereby establish public protection take precedence over the interests of the offender. Probation Officers regard Amir's case as one requiring accountability, punishment, and incarceration as a means of protecting the public and to some extent deterring the young person. However, the modified justice model is an alternative to the crime control model, allowing the recognition of diminished responsibility for young persons. A mixed model approach would sanction on the basis of the severity of the offence and prior driving record, which in this case were both key elements. However, mitigating issues such as family and educational background are moderating factors, making punishing the young person less important in comparison to what would be appropriate for an adult offender under similar circumstances. Therefore, it appears reasonable to assert that the probation officer sample was divided in their approach to Amir, as some focused on public protection and punishment while others preferred a more balanced and progressive consideration and selected the modified justice model.

Conclusions and discussion

This study reflected the views of practising YPOs in the province of British Columbia one year after the implementation of the YCJA. Despite being presented with five different cases that diverged widely in relation to offender characteristics (e.g., age, gender, and needs), offender's admitting responsibility for the offence, and the seriousness of the offence, YPOs consistently and appropriately (i.e., as directed by the YCJA) utilized a modified-justice-model orientation. Approximately two thirds of the YPOs surveyed indicated that they would take a mixed-model approach to four of the five cases presented to them. In comparison with the far more frequent use of custody under the YOA, arguably, the option of punishing was less evident in the YPOs' response to the five cases. In effect, differences involving a more consistent use of mixed-model principles in their approach under the YCJA were obvious, and YPOs avoided over-reliance on the formal court process and custodial dispositions. In the present study, the only example where the YPOs were clearly divided between the modified justice and crime control models was in Amir's case; the youth committed a driving offence resulting in the death of an innocent person and denied responsibility for his actions. This was a case that could focus completely on public protection and deterrence of the young person, but even in response to this scenario, approximately one third of the YPOs utilized a modified justice approach, indicating a reluctance to apply the more punitive approach to Amir's conduct.

It is also noteworthy that a quarter of those surveyed suggested that a welfare approach to Kara's case would provide the best outcome. Kara was the only female young offender presented to the subjects. She had a background that included many factors that might be viewed as providing causal explanations for her actions. In essence, the system had failed her in that she was not given the kind of treatment one would expect to be provided to a child with such a difficult upbringing. In her case, the young offender lashed out at the system, and the victim was an agent within that very system. Only one respondent promoted a crime control response to this case, a response that others likely thought would exacerbate her life circumstances. However, the majority of YPOs adopted a mixed-model philosophy with this case, which mimicked the premises underlying the YCJA. The Act establishes a regime that fosters

divergent approaches to youth crime, depending on the facts of the case and the background of the offender.

Equally important, the YPOs were also universal in their approach to Carlos, Edward, and Andy. These three cases were significantly different in terms of offence type (e.g., robbery, sexual offence, and assault causing bodily harm), and young offender characteristics (e.g., an immigrant youth with a tragic family history of suicide; a youth with considerable mental health issues, likely stemming from an extremely dysfunctional parent–child relationship; and an Aboriginal boy with a family history of alcoholism and abuse), yet over two thirds of the YPOs cited the modified justice model as an appropriate theoretical framework for dealing with these adolescents. This underscores the utility of a mixed-model perspective when examining the very diverse developmental, cultural, and familial backgrounds of young offenders.

Notwithstanding modest variability, YPOs confirmed their utilization of the modified justice model or mixed-model philosophy explicitly embodied in the YCJA. This Act, more than the YOA, identifies specific approaches to youth crime; that is, a tri-furcated system, depending on the seriousness of the offences and the needs of the young offender. Despite their individual ideological differences and the discretion to choose from a wide range of varied and potentially conflicting principles under the YCJA, therefore, YPOs were very consistent in their responses. The modified justice model approach under the YCJA and the discretion left to YPOs did not lead to the inconsistencies and over-reliance on custody evident under the YOA. In effect, YPOs overwhelmingly applied the same ideologies and principles to the cases provided. This study underscores that, although the YCJA is more directive and prescriptive than the YOA, the YCJA still allows for an individualistic approach by YPOs in responding to the variability in the types of youth offending, in youth's needs, and in the need for protection of the public. In effect, the hypothesis that youth probation officers would not be consistent in their interpretations and applications of the more complex sections of the YCJA, when faced with five hypothetical cases typical of the challenges faced in their youth justice roles, is not supported by this study.

Limitations of the study

While this study utilized actual cases from across Canada, it nonetheless involved hypothetical responses. There are obvious differences between responding in a research context and responding in typical or real-time YPO case work. The latter involves various pressures and complexities that do not exist in a research environment.

Another limitation concerning the generalizability of the empirical results of this study are the differences within and between provincial and territorial YCJA youth justice systems. There are significant variations in the structure of youth justice systems in Canada, despite the YCJA's being a federal law. Certain provinces and territories emphasize different principles and models (e.g., welfare, corporatist) of youth justice, depending on, for example, the age, ethnicity, and geographical location of the youth. Therefore, in allowing flexibility and a progressive approach of individualized justice when working with young offenders, the modified justice model is likely to be manifested differently in each province and territory.

Notes

1 Special thanks to Alan Markwart for his thought provoking and very helpful comments on an earlier draft and to Anne Kimmitt for greatly assisting in surveying other provinces and territories.

2 See, e.g., *J.P. v. Green*, which highlights the complexity of the YCJA in relation to the calculation of youth sentences. J.P. was convicted of second degree murder and sentenced at the age of 20 to seven years custody and conditional supervision under the YCJA. He was serving his sentence in an adult facility. J.P. challenged the way remission was applied, arguing that it should only apply to the custodial portion of his sentence. The BC Supreme Court decided in his favour. The result of this decision has been that any youth who, because of his or her age, serves his or her sentence in an adult facility will end up serving a shorter period of time in custody (unless any remission is forfeited). J.P. also succeeded in Federal Court in challenging his parole eligibility's being based only on the custodial portion of the sentence, resulting in earlier parole eligibility. Both decisions are inconsistent with the intention of the legislation in terms of the language and interaction of provisions of the YCJA, the Prisons and Reformatories Act, and the Corrections and Conditional Release Act as they pertain to persons serving a youth sentence in an adult facility. See also *R. v. K.T.J.W.* regarding whether a young person has a right to a bail hearing immediately after being arrested on a warrant for allegedly breaching the community portion of a conditional supervision order. The issue has to do with the time period right after arrest and the legislated 48-hour time period given to the provincial director to review the suspension and decide whether to release the young person back into the community or refer the matter to youth justice court pending a review. Judge Auxier determined that the young person does not have the right to a bail hearing during the provincial director 48-hour-review window. A bail hearing can only take place when the matter is referred to the youth justice court for review, which is consistent with an earlier decision by Judge Whelan in *R. v. S.A.P.* Again, both cases

illustrate the complexities of the legislation and its intention to be significantly different from provisions (e.g., conditional sentence breach proceedings) applied to adults in the Criminal Code.

- 3 Prince Edward Island has trained a number of youth justice services staff, including some probation officers, in facilitating community justice forums. Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, and Nova Scotia do not have youth probation officers trained in restorative justice conferencing.
- 4 Theoretically, conferencing is an excellent example of a corporatist approach; but from a procedural, operational, and administrative stand- point, conferencing has not been fully utilized across Canada.
- 5 *Intensive rehabilitative custody and supervision* is a sentence that may be imposed on a young person under s. 42(2)(r) of the YCJA, where the youth has been found guilty of one or more serious presumptive offences and the youth is suffering from a mental, psychological, or emotional disturbance. The youth is placed in an institution with appropriate rehabilitative services going beyond those normally available in conventional custody. A plan of treatment and supervision must be in place, and adequate resources must be available and ready before a sentence of this nature can be imposed. Recent court decisions reveal that some judges are beginning to find the IRCS sentence to be a viable alternative to adult sentencing for serious offenders with good prospects of rehabilitation; see *R. v. C.R.B.*, *R. v. N.H.*, *R. v. A.J.D.*
- 6 These examples highlight the duties of YPOs in British Columbia. Each province and territory will differ to some extent regarding probation officer roles and processes (e.g., pre-sentence reports are common across the country, but the availability of conferencing specialists is very limited).
- 7 For initial studies in this area, see Cohn (1963); Carter (1967).
- 8 Personal communication from Anne Kimmitt, Youth Justice Consultant with British Columbia's Ministry of Children and Family Development, who surveyed provincial counterparts, confirms that, as in British Columbia, YPOs in six other provinces and territories do write pre-sentence reports with general recommendations in relation to community- or custody-based sentences, restrictions on custody, and available alternatives to custody as well as conditions appropriate for community supervision. It is clear that YPOs do not normally include specific recommendations regarding the level or length of custody nor the length of community orders. Of particular interest, Ontario and the Yukon use a standardized risk/needs assessment to inform and support their recommendations, while Manitoba and Saskatchewan incorporate the tool and the risk scores into the report to assist in making recommendations; see Cole and Angus 2003; Hannah-Moffat and Maurutto 2003; Maurutto and Hannah-Moffat 2007).
- 9 Like the YOA, the YCJA does not require but nonetheless expressly authorizes recommendations in pre-sentence reports, as section 40(2)(f) indicates that the "provincial director" (typically a YPO) may include "any recommendation" the provincial director considers appropriate.
- 10 See original case law: *R. v. K.D.*; *R. v. B.R.S.*; *E.S.A.*; *R. v. H.A.M.*; *R. v. S. (S.)*, [2003] B.C.J. No. 2366 (B.C. P.C.); *R. v. S. (S.)*, [2004] B.C.J. No. 320 (C.A.).

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R. v. K.T.J.W. (5 August 2009), North Vancouver 4754–3–C (B.C. Prov. Ct.).

Appendix A

Of the sentencing options listed below, which option(s) would you recommend to the court? (e.g., custody and probation or just a fine or just an absolute discharge)

(Please check Z No or Yes for each sentencing option)

Court-Ordered Conference	(1) No k (2) Yes k
Reprimand	(1) No k (2) Yes k
Absolute Discharge	(1) No k (2) Yes k
Conditional Discharge	(1) No k (2) Yes k
Fine – Max. \$1,000	(1) No k (2) Yes k
Compensation – refers to \$	(1) No k (2) Yes k
Restitution – refers to property	(1) No k (2) Yes k
Compensation to Innocent Purchaser	(1) No k (2) Yes k
Compensation in Kind / Personal Service	(1) No k (2) Yes k
Community Work Service	(1) No k (2) Yes k
Prohibition, Seizure or Forfeiture	(1) No k (2) Yes k
Probation	(1) No k (2) Yes k
ISSP	(1) No k (2) Yes k
Custody and Supervision in the Community Order	(1) No k (2) Yes k
Custody and Conditional Supervision Order for Presumptive Offences of Attempted Murder, Manslaughter and Aggravated Sexual Assault	(1) No k (2) Yes k
Deferred Custody and Supervision Order	(1) No k (2) Yes k
Custody and Conditional Supervision Order for First and Second Degree Murder	(1) No k (2) Yes k
IRCS – Intensive Rehabilitative Custody and Supervision Order	(1) No k (2) Yes k
Receive an Adult Sentence	(1) No k (2) Yes k

Appendix B

What *factors* did you consider when making your recommendation? (Check Z all that apply)

Of the factors considered which ONE was the MOST IMPORTANT? (Check Z only ONE)

	Question 87 Check Z	Question 88 Check Z ONE Most Important Factor
1 Sentence is proportionate to the seriousness of	k	k
2 Offence is violent	k	k
3 Prior record / youth court history of young offender	k	k
4 Degree of participation by the young offender in the commission of the offence(s)	k	k
5 Young offender is accountable and responsible for	k	k
6 Young offender acknowledges harm done to victim	k	k
7 Young offender does not acknowledge harm done to or express remorse	k	k
8 Young offender acknowledges harm done to the	k	k
9 Best interest and needs of the young offender	k	k
10 Family background / History	k	k
11 Consideration of young offender being Aboriginal	k	k
12 Educational history of young offender	k	k
13 Employment history of young offender	k	k
14 Medical / Psychological / Psychiatric history of young	k	k
15 Medical / Psychological / Psychiatric history of family members (e.g., mother, father, sibling, grandparent)	k	k

16	Alcohol / Drug history of young offender	k	k
17	Peer associations	k	k
18	Response to previous youth justice services (e.g., community supervision, completing CWS hours)	k	k
19	Young offender has failed to comply with non-sentences (e.g., breach of probation)	k	k
20	How offence has impacted the victim's life and any sustaining injuries (physical and / or psychological)	k	k
21	How offence has impacted the victim's family	k	k
22	Any reparation made by the young offender to the or the community	k	k
23	Any time spent in custody on remand status	k	k
24	Sentence suggested is not greater than what an offender would receive in similar circumstances	k	k
25	Protection of society / community from young	k	k
26	Indictable offence that is an exceptional case aggravating circumstances of the offence make non-custodial sentence not feasible	k	k
27	Deterring this young offender or other young committing this type of offence	k	k

Appendix C: Models of Youth Justice

Below are five distinct models of youth justice labelled from one to five. Please *CIRCLE ONE* number that *most closely* represents your approach to the case study.

	1	2	3	4	5
General Features	Legal rights / Discretion Punishment Determinate sentences	Legal rights / Informality Sentence based on severity of offence, prior record and needs	Best interest / Legal rights Informality Individualized sentences Indeterminate sentencing	Least restrictive alternative Determinate sentences	Administrative decision making Diversion from youth court system and custody Alternatives to custody programs
Key Personnel	Police, Judge, Crown, and Corrections	Lawyers, Probation Officer, Social Worker and Mental Law and Multidis-	Social Worker Child Care Experts	Judge, Crown Defence Lawyers	Police and Probation Officers
Key Agency	Law	Law and Multidis-	Social Work	Law	Multidisciplinary Agency
Justice System Goals	Incarceration / Punishment	Diversion / EJS Conference / ICM All sentence types	Diagnosis	Punishment	Integrated Case Management Intervention
Understanding of client behaviour	Responsibility and accountability	Diminished or individual responsibility	Pathology is environmental and socially determined	Individual responsibility	Poor socialization - Negative peers - Poor family - Impulsive / Risky
Purpose of Intervention	Protection of the public and deterrence	Sanction their behaviour and provide	Provide treatment	Sanction behaviour	Retrain youth - employment - education
Objective	Maintain public order	Respect youth rights and respond to	Rehabilitation	Respect youth rights and punish	Implementation of policy and guidelines

Note: Option 1 is the *crime control model*; option 2 is the *modified justice model*; option 3 is the *welfare model*; option 4 is the *justice model*; option 5 is the *corporatist model*.