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CROWN DECISION-MAKING UNDER THE *YOUTH CRIMINAL JUSTICE ACT*

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EXECUTIVE SUMMARY

Crown decision-making was examined in five youth justice courts in two provinces in the summer of 2003, three to four months after the proclamation of the *Youth Criminal Justice Act*. The main decisions described in the research are:

- the decision to approve charges in British Columbia (also known as Crown screening);
- the decision to divert a young person from the court process to Extrajudicial Sanctions (EJS);
- whether to release a police-detained young person from pre-trial detention “on consent”;
- the contents of the submission to sentence.

Offices of Crown counsel in Saskatchewan and British Columbia urban youth courts participated in the research after permission was obtained by Justice Canada personnel.

The research combined observation, interviews and review of case files. It was prospective in nature in that the field worker asked Crown attorneys about their decisions at the time that they were being made, or very soon thereafter. The main emphasis was on the collection of qualitative information, but statistical analysis of file data was also undertaken.

The Study Sample

During this study the caseloads of the courts were remarkably low because of the proclamation of the *Youth Criminal Justice Act*.

The study courts differed in a number of ways, such as the type of cases heard by the judiciary (other than youth matters), the delivery of legal services to accused, the degree of specialization of Crown and defence counsel and the characteristics of their clientele. In terms of the social characteristics of the samples, Saskatchewan courts had many more youth of Aboriginal origin but lower percentages of the youth alleged to be out of control, substance abusers, living outside the parental home, and involved with the child protection agency. More British Columbia young persons were on probation, fewer had had been diverted in the past, and fewer had outstanding charges.

Charge Approval in British Columbia

British Columbia is one of two provinces in Canada where police do not lay charges. (Québec is the other.) Crown screening, or charge approval as the procedure is termed in B.C., involves a review of police documentation and a Crown decision to charge or to take no further action, other than perhaps to send a Crown caution letter.

In the B.C. charge approval sample, a slight majority of cases were approved and therefore charged by the Crown. Among the cases that were observed, pre-charge referral to EJS was rare. It was found that Crowns may approve charges with the intent of later diverting them post-charge; this delay appears to be done in order to impress upon the accused the seriousness of his/her behaviour. Most cases of no further action – where charges were not laid – were not approved because the Crown assessed the evidence as insufficient to meet the standard of substantial likelihood of conviction; a good number were dropped because of procedural flaws. About half of both approved and non-approved charges involved young persons with prior findings of guilt.

The primary source of information available to the Crown counsel is the police report and the prior record of the young person. Only if the youth has had previous youth justice system experience may others become involved. As noted, the majority of cases screened out of the system did not meet the substantial likelihood of conviction standard found in British Columbia.

Post-charge Diversion to Extrajudicial Sanctions

From observational and interview data, it is apparent that there were overlapping rationales for diverting cases to EJS. Prior record and offence type are major factors in the Crown's decision. Offences at the "low end of the spectrum" and those that are non-violent are most likely to result in diversion as long as the youth has no prior convictions, a very minor record or a record sufficiently old enough to suggest that there is no pattern of criminal behaviour. Common assaults (assault level one) were diverted if there were extenuating circumstances such as the youthful age of the alleged offender. An important interest of the Crown in making the diversion decision was that the young person be "held accountable".

Social circumstances play a much lesser role than offence and prior record. On occasion, the presence of specific programs in the community was influential in the Crown decision to divert.

Compared to Saskatchewan cases, a smaller proportion of B.C. cases were diverted a second time. This was attributed to the lack of variety in EJS programming, especially the lack of offence-specific programs. Crowns and defence in British Columbia were more concerned about the lack of variety in Extrajudicial Sanction programs than were those in Saskatchewan.

A multivariate analysis of the factors affecting the use of diversion by Crown counsel found that having no previous findings of guilt, having a current property charge and having few current and no outstanding charges were the factors that most influenced the Crown decision to refer a case to EJS. No social characteristics of the young person were associated with the referral to Extrajudicial Sanctions.

The Crown Decision to Release Young Persons at Bail Hearings

No provincial policies specifically on bail decision-making were located. All Crown prosecutors participating in this research were aware of the bail provisions in the *YCJA* although there was variation, and some confusion, in their interpretation.

In the bail decision sample as a whole, over 4 out of 10 cases were released on consent of the Crown. This is considerably lower than the estimates made by Crown counsel and defence interviewed during the study and also lower than the only other Canadian research on youth court decisions (Varma, 2002). The lower-than-expected release rate could be related to the recency of the proclamation of the new legislation and to the characteristics of the cases entering the youth courts participating in this research.

The child welfare and mental health status of young persons is closely intertwined with their offence history and it is difficult to determine what factors are operating in the decision to release on consent. Nine out of ten cases that were detained by police had some type of current involvement with the youth justice system and two-thirds had earlier findings of guilt. One-half of the cases were accused of offences against the administration of justice.

The multivariate analysis of the factors affecting the Crown's decision to release suggest that having fewer current charges, having no outstanding charges and no evidence of abuse of alcohol or drugs were influential in the decision to release on consent.

The Crown's Submissions to Sentence

The Crown's submissions to sentence tended to be accepted by the youth courts. This finding could mean that the Crown was attune to the sentencing practices of the sitting judge, that the youth court tends to be influenced by the Crown's perspective, and/or that the Crown and the court use the same criteria for sentencing. The submissions to sentence as well as the sentences themselves were in keeping with the provisions of the *YCJA*.

At sentencing youth prosecutors did not simply rely on the police report but consulted other system personnel, social services staff and sometimes parents or guardians for information on the young person. Social reports, especially pre-sentence reports, were found in about 40 percent of cases; in a substantial majority of cases where the Crown recommended a custody sentence, a PSR was available. In about two out of three cases in the sample, the Crown attorney had two or more sources of information, either verbal or written, in addition to the police report and prior record of the young person.

Both case characteristics and other factors appear to influence the contents of the submission to sentence by the Crown. Of the former, one feature of the young person's prior record – having an earlier custody sentence – was most influential. However, a large number of factors unrelated to the characteristics of the individual case were mentioned during case reviews and interviews with prosecutors.

In summary, the decisions examined in this exploratory research on key decisions made by Crown prosecutors in youth justice court were most influenced by legal factors especially the prior offence history of the youth, the presence of outstanding charges and the number of current charges.