Youth Court Judges' Views of the Youth Justice System: The results of a survey

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The opinions expressed in this report are those of the author alone, and do not necessarily represent the views of the Department of Justice Canada.

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Table of Contents

Introduction.

Judges clearly play a central role in the youth justice system. Not only do they make many of the key decisions concerning what happens to a youth who comes into the formal court system, but they also have special credibility that others in the system lack. The police, the Crown Attorneys, defence counsel, the accused youth and the youth's family, and the victim and the victim's family all have -- or are seen to have -- interests in the system. However, their perspectives are typically more constrained than is that of the judge.

The judge, and perhaps the probation officer, are unusual in the court structure in that they have an important interest in the fairness and appropriateness of the procedure and the outcome, but do not have a professional attachment to any particular result. Furthermore, the judge has the advantage over the probation officer of having a view of most, if not all, of the system.

Governments, professional organizations, and other observers of the youth justice system often publicly express their views of the youth justice system. In contrast, judges are largely prevented from doing so because the public expression of an individual judge's views of the youth justice system may be seen, by some, as compromising his/her ability to deal fairly with cases that come before him/her. Consequently, it appears that while judges are allowed to have views -- about whether cases should be brought before them, whether they are provided with adequate resources, whether the lawyers in the case are well trained and well prepared, etc. -- there are limits placed on their ability to express these opinions.

Looking ahead at some of the findings, one can understand why judges are reluctant to express their views publicly lest it bring criticisms to their doors. Survey results document two judges who, in response to one of the questions, indicated that only "a few" defence counsel appearing in youth court before them were well prepared. This statement is contrasted with "all, or almost all" Crown attorneys appearing in their courtrooms who were "well prepared for the case and well informed about the youth justice system." I would expect a judge who expressed these views publicly might raise concerns among defence counsel regarding whether they would be treated fairly. But surely it is important to know that judges, in general, see defence counsel who appear before them as less well prepared than Crown attorneys appearing in their courtrooms. Further, although the two lawyers (defence counsel and the Crown attorney) received different evaluations by a few judges, a fairly strong relationship ($r = .67$) between the two sets of ratings was found, in general.

Thus, this survey represents a mechanism for all of us – judges and others – to hear the views of youth court judges. Moreover, it constitutes a means through which youth court judges can have their views expressed publicly, in an aggregate format, whereby they cannot be personally criticized for their opinions.

The views of youth court judges are particularly important at this point in the history of our youth justice. Within the next year or so, it is likely that we will be operating our youth justice system under new legislation. The *Youth Criminal Justice Act* (YCJA) has been criticized as being both "too harsh" and "not harsh enough" by its various critics. The "harshness" dimension is probably one of the least important characteristics on which the YCJA *may* differ from the current law, the *Young Offenders Act* (YOA). For the youth court judge, the YCJA requires an almost entirely different way of thinking about some of the critical decisions to be made about young people appearing in youth court. Sentencing, for example, is to be governed by a set of explicit principles that are designed to dramatically change the way in which judges go about deciding how to respond to wrongdoing. Evidence of how judges now see their responsibilities in this area may help facilitate the changes that are necessary for compliance with the law as it is laid out in the YCJA.

Method.

The development of this questionnaire took place over many months and involved a number of different people. In the end, of course, as author of the report and the person responsible for the questionnaire, I take full responsibility for its final form. The questionnaire went through more than a dozen drafts, some of which were quite substantial. The most extensive changes to the questionnaire came as a result of feedback which I received from judges in four provinces. These judges responded thoughtfully to early drafts of the questionnaire, patiently explaining to me how particular questions were either ambiguous or incomplete (or both), how certain choices had to be modified or extended, and how specific topics that had not been contained in the earlier drafts needed to be included. In addition, various researchers and youth justice policy people gave important suggestions with regard to the areas in which questions should be asked, as well as the ways in which they should be framed. Although the final product is my responsibility, this "pre-testing" was crucial to the development of the questionnaire.

For practical reasons, it was decided that the questionnaire would be sent to judges (with a covering letter from me) by the Department of Justice, Canada. In order to be able to assure anonymity of the responses, and to alleviate potential concerns by judges that their answers would become the property of the government, the questionnaires were returned to me at the Centre of Criminology, University of Toronto.[2]

After several enquiries, a decision was made to send the questionnaire to all provincial court judges in Canada listed on a document obtained from the National Judicial Institute. It is known that some provincial court judges do not hear youth court matters. Nevertheless, no one with whom I spoke appeared to be confident in the accuracy of lists which might be available in some provinces indicating whether which a judge heard youth court matters. I was told that the decision regarding the types of cases a judge

[2] The agreement that I have with the Department of Justice ensures that the data (in all forms) remain at the University of Toronto. The results – e.g., this report – are, of course, public. The interpretation of these findings are my own and should not be seen as the only possible interpretation.

hears is often made locally rather than centrally. Aside from the costs of this "over-extensive" definition of the population that we were interested in reaching, we are left with no reliable way of estimating the population size (of judges who have heard youth court matters in the previous 12 months). Hence, a "response rate" cannot be calculated.

The questionnaire was sent to the judges in the language in which their address appeared on the list obtained from the National Judicial Institute. A cover letter, signed by A.N. Doob, was included. It was written in both official languages and explained the purpose of the survey. Judges were invited to request a questionnaire in the other official language in cases in which we had made a mistake. Questionnaires[3] were sent on 27 December 2000. The cutoff for the receipt of questionnaires had been decided in advance: 5 mail deliveries without receiving any additional completed questionnaires. This event occurred on 21 March 2001.[4]

For many comparisons, I have collapsed jurisdictions into "regions" of Canada. Generally, it appeared to me that such aggregations made empirical sense. However, the principal reason for doing so was methodological in nature: the sample size was too small for some of the provinces (and both territories that are represented in this survey) to be meaningful.[5]

A survey as long and as complex as this one cannot be "fully" analyzed in the sense that a large, if not infinite, number of analyses could be conducted. As a result, I have presented the findings that appeared to me to be the most interesting or important. However, I am not suggesting that other findings of equal or greater interest do not exist. On the contrary, I welcome suggestions for additional analyses.

In this report, I have often abbreviated the questions that were asked, or the responses that were given. Consequently, when interpreting the responses, it is important to read them in the context of the actual questions that were asked. The questionnaire is included as an appendix. I have, occasionally, quoted comments which judges added to clarify certain answers that they had given. It should be understood that these comments were relatively rare. Few questions elicited more than approximately 10-15 comments from the 238 respondents.

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[3] A copy of the questionnaire is included as an appendix. I have generally indicated the question numbers in footnotes.

[4] Three questionnaires were received after this date and could not, unfortunately, be included in this report. Data entry had already been completed and analysis had begun (or, in one case, had been completed) at the time that these additional questionnaires arrived.

[5] Those wanting specific findings for particular jurisdictions should contact me.

The respondents and the context in which they work.

The 238 respondents[6] of the questionnaire came from all provinces and two of the three territories.

Province or Territory of Respondents

		Frequency	Percent
	NF	4	1.7
	PE	1	.4
	NS	16	6.7
	NB	9	3.8
	QC	24	10.1
	ON	68	28.6
	MN	17	7.1
	SK	17	7.1
	AB	21	8.8
	BC	53	22.3
	YK	1	.4
	NW	3	1.3
Missing		4	1.7
Total		238	100.0

Seventy-four percent of the respondents were male. The 238 respondents had varied experience as judges, with one judge being appointed in 1966 and another in 2000. The median year of appointment was 1990, which was also the median year in which the judges heard their first youth court cases. Most of the respondents also hear adult court cases on a regular basis. Eighty-eight (37%) of the respondents indicated that YOA cases are mixed in with adult criminal cases on their normal dockets with varying frequency (median = 6 days per month of hearing youth court cases).

Judges were asked the size of the community in which they sit. Most judges (60%) indicated that they regularly sit in one size of community. The other 40% indicated that they sit in communities of two or more different sizes on a regular basis.

The number of judges indicating that they sit in communities of varying sizes are shown in the table below.[7]

[6] The number of respondents on which the findings are based varies slightly from analysis to analysis because a small number of judges did not answer particular questions. In addition, analyses involving province or region necessarily exclude the responses of the four judges for whom their province could not be determined.

[7] Percentages sum to more than 100% because many judges sit in more than one (size) community.

Community in which judge regularly sits	
Size of community	Percent sitting regularly
Large metropolitan area (population 500,000+)	34%
City/metro area with population 250,000-499,000	11%
City/metro area with population 100,000-249,999	20%
Smaller centre, population 25,000-99,999	32%
Smaller community, population under 25,000	38%
Aboriginal community	25%
Number of respondents	235

Judges generally see youth crime as staying the same or decreasing in the communities in which they sit as judges.[8]

View of judges regarding the change in magnitude of youth crime				
	Increasing	Staying same	Decreasing	Total (N)
In largest or only community in which judge sits	7%	71%	22%	100% (219)
In smallest community in which judge sits	7%	72%	22%	100% (155)

Judges were also asked if they were currently seeing more serious cases than they had 5 years ago. Slightly more judges reported that they have seen an increase rather than a decrease. In addition, they were asked if they were presently seeing more minor cases than in the past. Minor cases appeared to be slightly more likely to be seen as decreasing in frequency than increasing.

View of judges of change in serious and minor cases compared to 5 years ago				
	Increasing	Staying same	Decreasing	Total (N)
Serious cases	27%	53%	20%	100% (205)
Minor cases	23%	48%	30%	100% (203)

The use of court.

One of the major concerns about the operation of the youth justice system, signaled by the Minister of Justice's "Strategy" document in May 1998 as something which would be addressed in the YCJA, was the view that there were too many cases coming to youth

[8] Questions L1 and L1A.

court in Canada that could better be dealt with outside of the formal court system. During 1998-9, for example, one case was brought to youth court for every 23 youths aged 12 through 17 (inclusive) in the country. The exceptional jurisdiction on this dimension is Quebec in which one case was brought to youth court in 1998-9 for each 50 youths aged 12-17 (inclusive) in the province.

In this context, it is not surprising, as shown in the following table, that Quebec judges were considerably less likely[9] to indicate that they were seeing large numbers of cases that could be dealt with just as adequately elsewhere.[10]

Judges' views on proportion of cases that could be dealt with outside of court

			Proportion of cases that could be dealt with adequately outside court			
			Most - all	About half	Few-none	Total
Region	Atlantic	Count	3	14	12	29
		% within Region	10.3%	48.3%	41.4%	100.0%
	Quebec	Count	2	4	16	22
		% within Region	9.1%	18.2%	72.7%	100.0%
	Ontario	Count	8	29	30	67
		% within Region	11.9%	43.3%	44.8%	100.0%
	Prairies	Count	8	20	26	54
		% within Region	14.8%	37.0%	48.1%	100.0%
	BC	Count	10	21	22	53
		% within Region	18.9%	39.6%	41.5%	100.0%
	Territories	Count	1	2		3
		% within Region	33.3%	66.7%		100.0%
Total		Count	32	90	106	228
		% within Region	14.0%	39.5%	46.5%	100.0%

Note: Variation across jurisdictions was not significant.

The comparison between Quebec and the rest of Canada is clearly illustrated in the next table.

[9] I have used standard "statistical tests" to evaluate statements such as "more likely" or "less likely" etc. Variation between groups can be explained in two distinct ways. On the one hand, it can be thought of as "real" (i.e., there is a genuine difference between the groups). On the other hand, it can be seen as occurring "by chance." If a coin was flipped 10 times and it came up heads 7 of these 10 times, we would probably think that it came up heads more than the "expected" score of 5 "by chance." Alternatively, if we were to flip the coin 1000 times, and it came up heads 700 times, we would probably be more likely to say that the coin was, in some way, more likely to come up heads. "More likely" can be quantified by saying that the chances of it being "this extreme or more extreme" is very small – e.g., $p < .01$. In normal language, one is unlikely to get an "effect" this large (or larger) completely by chance. In probability language, the probability of getting an effect this large or larger purely by chance is less than one in a hundred. Hence, an effect that is "significant" is an effect that is unlikely to be due to the variation that we expect, and see, *within* each group. In other words, a "real" difference exists between the groups.

[10] Question A1.

Judges' views on proportion of cases that could be dealt with outside of court

			Proportion of cases that could be dealt with adequately outside court			
			Most-all	About half	Few-none	Total
Quebec compared to Rest of Canada	Quebec	Count	2	4	16	22
		Row percents	9.1%	18.2%	72.7%	100.0%
	Rest of Canada	Count	30	86	90	206
		Row percents	14.6%	41.7%	43.7%	100.0%
Total		Count	32	90	106	228
		Row percents	14.0%	39.5%	46.5%	100.0%

Note: Chi-square = 6.83, df=3, p<.05

Judges would appear to attribute the overuse of the court, in part, to the inadequacy of alternative measures or other non-court measures.[11] It was not clear whether these responses referred to an inadequacy in the *number* of available non-court programs or the frequency in which these programs were *being used*. Nonetheless, the point was clear: those judges who indicated that large numbers of cases could be dealt with outside of the court were most critical of the unavailability and/or under-use of alternative measures programs. For those judges who hear cases in more than one location, we also asked their views of the adequacy of alternatives in both the smallest as well as the largest locations in which they hear cases[12]. Not surprisingly, judges who indicate that there are few cases coming before them that could be adequately handled outside of the court were more likely to indicate that there were adequate alternative (non-court) programs.[13]

Adequacy of alternative measures as a function of judges' views on proportion of cases that could be handled outside court

			Adequate alternative measures?			
			Definitely yes	Probably yes	No, don't know	Total
Proportion of cases that could be dealt with adequately outside court	Most/almost all/all	Count	2	3	27	32
		Row percents	6.3%	9.4%	84.4%	100.0%
	About half	Count	7	14	72	93
		Row percents	7.5%	15.1%	77.4%	100.0%
	Few-none	Count	37	39	31	107
		Row percents	34.6%	36.4%	29.0%	100.0%
Total		Count	46	56	130	232
		Row percents	19.8%	24.1%	56.0%	100.0%

Chi-square = 60.77, df=4, p<.001

This relationship holds when one looks separately at the views of Quebec judges, on the one hand, and judges in the rest of Canada, on the other. (Note, however, that almost all Quebec judges were content with the availability of alternative measures.)

[11] Question A2.

[12] Question A2a.

[13] Table not included.

Adequacy of alternative measures

Quebec compared to Rest of Canada				Adequate alternative measures? Definitely yes	Probably yes	No, don't know	Total
Quebec	Proportion of cases that could be dealt with adequately outside court	Most/almost all/all	Count	1	1		2
			Row percents	50.0%	50.0%		100.0%
		About half	Count	3	1		4
			Row percents	75.0%	25.0%		100.0%
		Few-none	Count	15	1		16
			Row percents	93.8%	6.3%		100.0%
	Total		Count	19	3		22
			Row percents	86.4%	13.6%		100.0%
Rest of Canada	Proportion of cases that could be dealt with adequately outside court	Most/almost all/all	Count	1	2	27	30
			Row percents	3.3%	6.7%	90.0%	100.0%
		About half	Count	3	13	70	86
			Row percents	3.5%	15.1%	81.4%	100.0%
		Few-none	Count	22	37	31	90
			Row percents	24.4%	41.1%	34.4%	100.0%
	Total		Count	26	52	128	206
			Row percents	12.6%	25.2%	62.1%	100.0%

Adequacy of alternative measures (Largest or only community)

			Adequate alternative measures? Definitely yes	Probably yes	No, don't know	Total
Region	Atlantic	Count	2	10	18	30
		Row percents	6.7%	33.3%	60.0%	100.0%
	Quebec	Count	21	3		24
		Row percents	87.5%	12.5%		100.0%
	Ontario	Count	7	17	44	68
		Row percents	10.3%	25.0%	64.7%	100.0%
	Prairies	Count	9	14	32	55
		Row percents	16.4%	25.5%	58.2%	100.0%
	BC	Count	7	11	35	53
		Row percents	13.2%	20.8%	66.0%	100.0%
	Territories	Count	1		3	4
		Row percents	25.0%		75.0%	100.0%
Total		Count	47	55	132	234
		Row percents	20.1%	23.5%	56.4%	100.0%

Adequacy of alternative measures (Smallest community)

			Adequate alternative measures? (smallest community)			
			Definitely yes	Probably yes	No, dont know	Total
Region	Atlantic	Count	1	5	19	25
		Row percents	4.0%	20.0%	76.0%	100.0%
	Quebec	Count	13	4	1	18
		Row percents	72.2%	22.2%	5.6%	100.0%
	Ontario	Count	4	6	21	31
		Row percents	12.9%	19.4%	67.7%	100.0%
	Prairies	Count	6	7	28	41
		Row percents	14.6%	17.1%	68.3%	100.0%
	BC	Count	3	8	33	44
		Row percents	6.8%	18.2%	75.0%	100.0%
	Territories	Count	1		3	4
		Row percents	25.0%		75.0%	100.0%
Total		Count	28	30	105	163
		Row percents	17.2%	18.4%	64.4%	100.0%

Adequacy of alternative measures (Largest or only community)

			Adequate alternative measures?			
			Definitely yes	Probably yes	No, dont know	Total
Quebec compared to Rest of Canada	Quebec	Count	21	3		24
		Row percents	87.5%	12.5%		100.0%
	Rest of Canada	Count	26	52	132	210
		Row percents	12.4%	24.8%	62.9%	100.0%
Total		Count	47	55	132	234
		Row percents	20.1%	23.5%	56.4%	100.0%

Chi-square = 76.97, df=2, p<.001

Adequacy of alternative measures (Smallest community)

			Adequate alternative measures? (smallest community)			
			Definitely yes	Probably yes	No, don't know	Total
Quebec compared to Rest of Canada	Quebec	Count	13	4	1	18
		Row percents	72.2%	22.2%	5.6%	100.0%
	Rest of Canada	Count	15	26	104	145
		Row percents	10.3%	17.9%	71.7%	100.0%
Total		Count	28	30	105	163
		Row percents	17.2%	18.4%	64.4%	100.0%

Chi-square = 46.33, df=2, p<.001

Overall, it would appear that in every region of Canada other than Quebec, a substantial portion of the respondents thought that many (half or more) of the cases coming before them could have been dealt with "just as adequately (or more adequately) outside of the youth court." Even in Quebec, where judges were most likely to believe that adequate alternative measures or other "non-court" programs in the community existed, approximately a quarter of the judges indicated that many of the cases they were hearing could be dealt with outside of the court. The proportion holding this view was considerably higher for the rest of Canada.

There were 159 judges who sat in at least two different communities and who rated the adequacy of the "alternative measures or other non-court… measures" for both their largest and smallest communities.

For those judges who sit in at least two communities: "Are there adequate alternative or other "non-court" measures…" (n=159)		
	Largest community in which judge sits	Smallest community in which judge sits
Definitely yes	22%	18%
Probably yes	25%	20%
Probably not	26%	25%
Definitely not	27%	38%
Total	100%	100%

Treating the four responses as a "scale" (running from 1=definitely yes to 4=definitely no), judges saw non-court alternatives as being more adequate in the larger community (mean = 2.58) than in the smaller community (2.82; t = 3.08, df=158, p <.01). Interestingly, this rather straightforward finding did *not* hold when I looked at the responses from judges who sat in only one community (or whose communities were of roughly the same size).

Judges were also asked[14] whether they thought that youths who had been through the court process had benefited from the overall experience in court. As can be seen in the table below, only in Quebec did a majority of judges think that most youths benefited from the court experience.

[14] Question H1.

Judges' views of proportion of youth benefitting from court

			Proportion of youth for whom court had beneficial impact			
			All, almost all, most	About half	A few, almost none, none	Total
Region	Atlantic	Count	9	14	3	26
		Row percents	34.6%	53.8%	11.5%	100.0%
	Quebec	Count	15	7	1	23
		Row percents	65.2%	30.4%	4.3%	100.0%
	Ontario	Count	19	24	13	56
		Row percents	33.9%	42.9%	23.2%	100.0%
	Prairies	Count	10	23	12	45
		Row percents	22.2%	51.1%	26.7%	100.0%
	BC	Count	10	19	12	41
		Row percents	24.4%	46.3%	29.3%	100.0%
	Territories	Count		2	2	4
		Row percents		50.0%	50.0%	100.0%
Total		Count	63	89	43	195
		Row percents	32.3%	45.6%	22.1%	100.0%

Chi square (excluding the territories)[15] = 17.87, df=8, p<.05

Judges' views of proportion of youth benefitting from court

			Proportion of youth for whom court had beneficial impact			
			All, almost all, most	About half	A few, almost none, none	Total
Quebec compared to Rest of Canada	Quebec	Count	15	7	1	23
		Row percents	65.2%	30.4%	4.3%	100.0%
	Rest of Canada	Count	48	82	42	172
		Row percents	27.9%	47.7%	24.4%	100.0%
Total		Count	63	89	43	195
		Row percents	32.3%	45.6%	22.1%	100.0%

Chi square = 13.77, df=2, p<.001

However, the belief that court had a beneficial impact on youths was not related to the judge having a welfare orientation in the imposition of custodial sentences. A "welfare orientation" in the use of custody at sentencing was determined by combining the responses of the judge to three questions: the proportion of cases in which the youth needed a rehabilitative program available in custody, the proportion of cases in which the youth was out of control and needed a custodial sentence to break the cycle of behaviour,

[15] The territories were excluded from this test (and many other tests) of significance for methodological reasons. The small number of judges sampled from the territories does not allow for statistical tests of this type without producing biased estimates. However, the descriptive data are included for descriptive purposes.

and the proportion of cases in which the youth's living conditions were such that it was necessary to arrange for a more stable environment.[16]

Perceived beneficial impact of court as a function of welfare orientation in use of custody

			Proportion of youth for whom court had beneficial impact			
			All, almost all, most	About half	A few, almost none, none	Total
Welfare orientation in the use of custody	Low	Count	11	24	12	47
		Row percents	23.4%	51.1%	25.5%	100.0%
	Med	Count	26	33	15	74
		Row percents	35.1%	44.6%	20.3%	100.0%
	High	Count	26	30	17	73
		Row percents	35.6%	41.1%	23.3%	100.0%
Total		Count	63	87	44	194
		Row percents	32.5%	44.8%	22.7%	100.0%

Chi-square = 2.58, df=4, not significant

Detention before trial.

The "responsible person" provision of the YOA (S. 7.1) indicates that a youth who otherwise would be detained prior to trial can be released to the care of a "responsible person" if the judge deems it appropriate. In the period leading up to the introduction of the YCJA, some concern was expressed that this section was rarely invoked, at least in some locations. Hence, the YCJA requires that the judge enquire as to the availability of a responsible person with whom the youth might reside. It would appear that the invocation of this section varies enormously across judges, and, to some extent, across provinces. British Columbia judges were most likely to indicate that this possibility is raised regularly in court.[17]

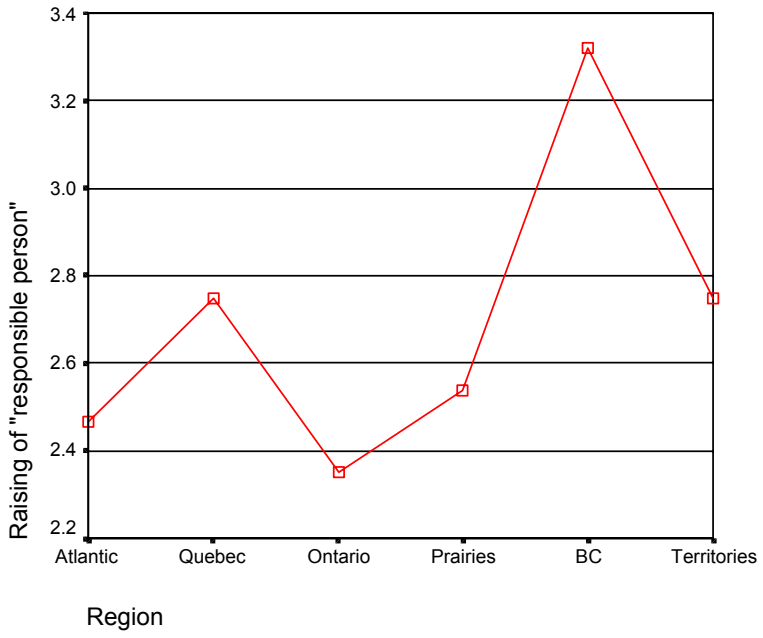
[16] These were all part of Question D4 concerning the reasons for custody.

[17] Question B1.

Proportion of detention cases where "responsible person" raised in court

			Proportion of detention cases, responsible person raised in court					
			All, almost all	Most	About half	A few	Almost none, none	Total
Region	Atlantic	Count	1	7	4	11	7	30
		Row percents	3.3%	23.3%	13.3%	36.7%	23.3%	100.0%
	Quebec	Count	1	6	7	6	4	24
		Row percents	4.2%	25.0%	29.2%	25.0%	16.7%	100.0%
	Ontario	Count	7	6	6	11	21	51
		Row percents	13.7%	11.8%	11.8%	21.6%	41.2%	100.0%
	Prairies	Count	6	9	9	14	16	54
		Row percents	11.1%	16.7%	16.7%	25.9%	29.6%	100.0%
	BC	Count	11	13	15	10	4	53
		Row percents	20.8%	24.5%	28.3%	18.9%	7.5%	100.0%
	Territories	Count		1	1	2		4
		Row percents		25.0%	25.0%	50.0%		100.0%
Total		Count	26	42	42	54	52	216
		Row percents	12.0%	19.4%	19.4%	25.0%	24.1%	100.0%

Treating the responses as a "scale" going from 1 (almost none, or none) to 5 (all, or almost all), there was a significant effect of region (including or excluding the territories). The issue of finding a "responsible person" was raised more often in B.C. than elsewhere.



$F(5,210) = 3.47$, $p<.01$; without the territories $F(4, 207) = 4.31$, $p <.01$

In explaining why this section was rarely raised, one judge noted that "the kids who are detained are 'out of control' of their parents and/or child protection agencies." Another commented that instead of invoking this section, the parent would be named as a surety. This judge pointed out that "withdrawing" as a surety was easier than changing the status of a 7.1 order. On the other hand, a number of judges indicated that bail hearings were

typically heard by justices of the peace rather than judges. As a result, they did not have much information about them.

The detention decision is formally governed, in large part, by the principles laid out in the Criminal Code. Nevertheless, it would appear that judges, when faced with troubled youth, are often responding to the needs of the youth. The proposed YCJA has an explicit provision allowing the judge to refer the case to child welfare authorities at any stage of the proceedings. It would appear that at the "detention" stage, such a reference might frequently be useful since many judges, in all regions of Canada, indicate that a substantial portion of youths are being detained where "the detention [was] only because the young person had no adequate place to stay, or for some other child welfare reason."[18] The portion of youths being reported as having been detained for this reason in Quebec was lower, presumably because such youths had already been diverted from the youth justice stream into the child welfare system.

Proportion of cases where detention necessary for welfare reasons

			What proportion: detention necessary for welfare purposes only			
			Half or more	few	Almost none, none	Total
Region	Atlantic	Count	7	13	10	30
		Row percents	23.3%	43.3%	33.3%	100.0%
	Quebec	Count	2	12	10	24
		Row percents	8.3%	50.0%	41.7%	100.0%
	Ontario	Count	19	23	15	57
		Row percents	33.3%	40.4%	26.3%	100.0%
	Prairies	Count	24	15	15	54
		Row percents	44.4%	27.8%	27.8%	100.0%
	BC	Count	13	25	14	52
		Row percents	25.0%	48.1%	26.9%	100.0%
	Territories	Count	2	2		4
		Row percents	50.0%	50.0%		100.0%
Total		Count	67	90	64	221
		Row percents	30.3%	40.7%	29.0%	100.0%

Note: Excluding the territories, Chi-square = 13.82, df=8, p=.09, not significant.

[18] Question B2.

Proportion of cases where detention necessary for welfare reasons

			What proportion: detention necessary for welfare purposes only			
			Half or more	few	Almost none, none	Total
Quebec compared to Rest of Canada	Quebec	Count	2	12	10	24
		Row percents	8.3%	50.0%	41.7%	100.0%
	Rest of Canada	Count	65	78	54	197
		Row percents	33.0%	39.6%	27.4%	100.0%
Total		Count	67	90	64	221
		Row percents	30.3%	40.7%	29.0%	100.0%

Chi square = 6.36, df=2, p<.05

Judges' evaluations of other court professionals.

Generally speaking, the majority of judges thought that most Crown and defence counsel were well prepared for the case and well informed about the youth justice system.[19] However, judges were more likely to indicate that Crown attorneys were well prepared than defence counsel.[20] In addition, most judges were satisfied with most of the joint submissions that they received. [21] A majority of judges indicated that most submissions on sentences were helpful.[22] In response to these questions, judges noted that a dedicated group of defence and Crown counsel existed in some locations. Because of this characterization, this group was perceived as appearing to know what they were doing. In contrast, other judges observed that counsel were simply occasional visitors to youth court who were, as one judge commented, "ill-prepared, lazy, or inexperienced and hence useless." Unfortunately, we did not systematically gather information on whether there was an experienced and active group of defence and Crown counsel in youth court. Consequently, we cannot comment on whether, in general, frequent visitors to the court were seen, by judges, as doing a better job than infrequent users.

Interestingly, regional differences existed on the judges' ratings of the preparedness of counsel (defence and Crown) and the submissions on sentence by defence counsel. No regional differences existed with respect to the ratings of the quality of the joint

[19] Questions C1 and C2.

[20] Treating the responses as a 5-point scale in which 1=all/almost all were well prepared and 5 = almost none/none were well prepared, the mean for defence was 2.11 and the mean for Crown was 1.91 ($t(237)=4.29$, $p<.001$). The difference between the ratings of Crown and defence with regard to the quality of their sentence submissions was not significant.

[21] Question E2.

[22] Questions E3 and E4.

submissions, the sentence submissions by the Crown, and the quality of the predisposition reports.[23]

As can be seen in the following two tables, Crown and defence counsel in the prairie provinces and in Quebec were rated by the judges as being the most likely to be prepared and well informed about the *YOA*. Crown and defence counsel were rated least favourably on these dimensions by Ontario judges.

Proportion of defence counsel well prepared

			Proportion of cases defence counsel well prepared			
			All, almost all	Most	Half or fewer	Total
Region	Atlantic	Count	5	19	6	30
		Row percent	16.7%	63.3%	20.0%	100.0%
	Quebec	Count	7	16	1	24
		Row percent	29.2%	66.7%	4.2%	100.0%
	Ontario	Count	10	28	30	68
		Row percent	14.7%	41.2%	44.1%	100.0%
	Prairies	Count	26	23	6	55
		Row percent	47.3%	41.8%	10.9%	100.0%
	BC	Count	9	28	16	53
		Row percent	17.0%	52.8%	30.2%	100.0%
	Territories	Count			4	4
		Row percent			100.0%	100.0%
Total		Count	57	114	63	234
		Row percent	24.4%	48.7%	26.9%	100.0%

Excluding the territories, Chi-square = 39.43, df=8, p<.01.

[23] In addition to the cross-tabulations presented in the text, analyses of variances (treating the responses as a 5-point scale – see previous footnote) were performed on the original scale and the collapsed scale (collapsing the categories "about half", "a few" and "almost none/none"). Analyses were run with both the inclusion and exclusion of the territories. The results were the same as noted in the text.

Proportion of cases where Crown attorney is well prepared

			Proportion of cases Crown attorney well prepared			
			All, almost all	Most	Half or fewer	Total
Region	Atlantic	Count	9	17	4	30
		Row percent	30.0%	56.7%	13.3%	100.0%
	Quebec	Count	13	10	1	24
		Row percent	54.2%	41.7%	4.2%	100.0%
	Ontario	Count	14	35	19	68
		Row percent	20.6%	51.5%	27.9%	100.0%
	Prairies	Count	26	23	6	55
		Row percent	47.3%	41.8%	10.9%	100.0%
	BC	Count	14	34	5	53
		Row percent	26.4%	64.2%	9.4%	100.0%
	Territories	Count			4	4
		Row percent			100.0%	100.0%
Total		Count	76	119	39	234
		Row percent	32.5%	50.9%	16.7%	100.0%

Excluding the territories, Chi-square = 24.90, df=8, p<.01, 2 expected values <5, minimum=3.65

Proportion of cases with joint submission where judge is satisfied with the joint submission

			Proportion of cases satisfied with joint submissions			
			All, almost all	Most	About half or fewer	Total
Region	Atlantic	Count	11	17	2	30
		Row percent	36.7%	56.7%	6.7%	100.0%
	Quebec	Count	4	17	3	24
		Row percent	16.7%	70.8%	12.5%	100.0%
	Ontario	Count	8	46	14	68
		Row percent	11.8%	67.6%	20.6%	100.0%
	Prairies	Count	17	27	10	54
		Row percent	31.5%	50.0%	18.5%	100.0%
	BC	Count	9	34	10	53
		Row percent	17.0%	64.2%	18.9%	100.0%
	Territories	Count			4	4
		Row percent			100.0%	100.0%
Total		Count	49	141	43	233
		Row percent	21.0%	60.5%	18.5%	100.0%

Excluding the territories, Chi-square = 14.47, df=8, n.s. (1 expected value of 4.09)[24]

[24] "Expected values" (the number of cases in a cell that one would expect if no relationship existed between the two variables in tables such as this one) should be at least 5 in order that the chi-square give an accurate estimate of the significance of the relationship. Smaller expected values tend to inflate the value of the chi-square and, as such, make something appear significant when it is not. Minor variations from this rule of thumb regarding a minimum value of 5 do not make a great deal of difference if the chi-square is large. Nevertheless, I have included notes on small estimated values as a warning to readers. In the cases

When judges were asked, more specifically, about sentence submissions from Crown and defence counsel, a somewhat different pattern emerged. Sentence submissions from both lawyers had the highest likelihood as being rated as useful most often in Ontario and the prairies.

Proportion of sentence submissions by the defence that are helpful

			Proportion of defence submissions that are helpful			
			All, almost all	Most	Half or fewer	Total
Region	Atlantic	Count	2	13	15	30
		Row percent	6.7%	43.3%	50.0%	100.0%
	Quebec	Count	2	6	16	24
		Row percent	8.3%	25.0%	66.7%	100.0%
	Ontario	Count	17	30	21	68
		Row percent	25.0%	44.1%	30.9%	100.0%
	Prairies	Count	16	26	13	55
		Row percent	29.1%	47.3%	23.6%	100.0%
	BC	Count	5	27	20	52
		Row percent	9.6%	51.9%	38.5%	100.0%
	Territories	Count		2	2	4
		Row percent		50.0%	50.0%	100.0%
Total		Count	42	104	87	233
		Row percent	18.0%	44.6%	37.3%	100.0%

Eliminating the territories, Chi-square = 24.02, df=8, p<.01 (1 expected value <5 = 4.40)

in which I was concerned that the value of the chi-square did not accurately reflect the significance of the finding, I have either collapsed rows or columns, or eliminated certain groups (e.g., the territories from most jurisdictional comparisons).

Proportion of sentence submissions by Crown that are helpful

			Proportion of Crown submissions that are helpful			
			All, almost all	Most	Half or fewer	Total
Region	Atlantic	Count	2	15	13	30
		% within Region	6.7%	50.0%	43.3%	100.0%
	Quebec	Count	2	10	12	24
		% within Region	8.3%	41.7%	50.0%	100.0%
	Ontario	Count	15	21	32	68
		% within Region	22.1%	30.9%	47.1%	100.0%
	Prairies	Count	13	24	18	55
		% within Region	23.6%	43.6%	32.7%	100.0%
	BC	Count	3	27	23	53
		% within Region	5.7%	50.9%	43.4%	100.0%
	Territories	Count		1	3	4
		% within Region		25.0%	75.0%	100.0%
Total		Count	35	98	101	234
		% within Region	15.0%	41.9%	43.2%	100.0%

Excluding the territories, Chi-square = 15.41, df=8, n.s. (2 Es <5, minimum=3.65)

As shown in the next table, predisposition reports were generally seen as helpful by most judges in all regions of Canada.

Proportion of predisposition reports that are helpful

			Proportion of predisposition reports helpful			
			All, almost all	Most	About half	Total
Region	Atlantic	Count	14	13	3	30
		Row percent	46.7%	43.3%	10.0%	100.0%
	Quebec	Count	18	5	1	24
		Row percent	75.0%	20.8%	4.2%	100.0%
	Ontario	Count	30	31	7	68
		Row percent	44.1%	45.6%	10.3%	100.0%
	Prairies	Count	30	20	5	55
		Row percent	54.5%	36.4%	9.1%	100.0%
	BC	Count	27	22	4	53
		Row percent	50.9%	41.5%	7.5%	100.0%
	Territories	Count	3	1		4
		Row percent	75.0%	25.0%		100.0%
Total		Count	122	92	20	234
		Row percent	52.1%	39.3%	8.5%	100.0%

Eliminating territories, Chi-square = 7.48, df=8, n.s.

Theories of sentencing[25].

For each of three offences ("moderately serious violent offence (such as an assault causing bodily harm)", "a property offence such as a break-and-enter of a business establishment", and "an administration of justice offence such as 'failure to appear' or 'failure to comply with a disposition'") judges were asked to rate, on a five-point scale[26], the importance of each of the following principles or purposes of sentencing

- denunciation,
- general deterrence,
- deterring this young person (specific deterrence),
- proportionality (handing down a sentence in which the severity of the sentence reflects the seriousness of the offence),
- rehabilitating this young person,
- incapacitation (ensuring that this young person is separated from society),
- protection of the public.[27]

Before looking at the data, it is worth noting that a number of judges indicated that it was difficult or impossible to answer these questions. As one judge commented, it was "not possible to rank on a generalized basis -- each case is different."

Looking first at the "moderately serious violent offence", it is clear that judges differentiated among the various purposes/principles. In each of these tables, a high number signifies that the factor was important (1 = "not at all important" and 5 = "very important").

[25] I am using the word "sentencing" rather than the more correct YOA form of "handing down a disposition" as a shorthand and because "sentencing" refers to a specific kind of disposition which excludes other forms of dispositions (e.g., transfers to adult court, detention before trial). In any case, under the YCJA, if it becomes law, "sentencing" will become the "proper" term.

[26] With regard to this set of questions and those of Question G6, a small number of judges simply checked the factors that were important to them rather than rating the importance of all factors. Instead of eliminating these judges, we scored a "checked" factor as 4 and an unchecked factor as 2.

[27] Questions D1, D2, D3.

Mean importance of various factors in determining the sentence for three different offences. (1=not at all important; 5=very important)			
	Offence		
Factor	Moderately serious violent offence	Property offence: e.g., b&e business establishment	Admin. justice: e.g., failure to appear
Rehabilitating this young person	4.63	4.57	3.61
Deterring this young person	4.02	3.95	3.73
Proportionality	3.57	3.35	3.05
Protection of the public	3.45	3.07	1.79
Denunciation	2.81	2.61	2.42
General deterrence	2.62	2.59	2.54
Incapacitation	2.17	1.93	1.46

Moderately serious violence: F= 179.98, df=6, 1278, p <.001
Property offence: F = 201.47, df=6, 1272, p <.001
Administration of justice: F = 157.92, df=6, 1308, p<.001

When comparing the violent and property offences, it is clear that the patterns are quite similar. However, this pattern changes when examining the administration of justice offence. Although rehabilitation is, once again, relatively high for this offence, individual deterrence is seen as being just as important. (For the other two offences, individual deterrence was seen as the second most important factor to be considered.)

Another way of looking at the importance of these factors in sentencing is to examine the factors which tend to correlate with each other. Given that judges often invoke denunciation and (general) deterrence as a related pair of purposes, it is not surprising that these two factors are fairly highly correlated for each of the three offences -- .52, .65 and .52 (each p <.05) for the violence, property and administration of justice offences, respectively. In other words, judges who see one of these as important, tend to see the other as important; judges who see one as not very important, rate the other in a similar fashion.

On the other hand, the importance of rehabilitation was either negatively or not correlated with denunciation and general deterrence for each of the three offences (-.19 & -.15 for violence, each p<.05; -.25 & -.24 for property, each p<.05 ; .11 & .03, for the administration of justice offence, not significant).

Under the YCJA, proportionality will, in effect, determine the severity of the sentence, though, within the bounds defined by proportionality, the sentence must "be the one that is most likely to rehabilitate the young person and reintegrate him or her into society" (Section 38(2)(d)(ii) of the YCJA). Proportionality is often, incorrectly, seen as being a necessary component of general or individual deterrence. Sentences can be proportional to the harm done on the basis of "justice" concerns quite independent of deterrence concerns. Nevertheless, it is not surprising that the importance of proportionality was

positively correlated with the importance of general and individual deterrence for each of the three offences (.22 & .18; .17 & .24, and .14 & .16, for the three offences; $p < .05$ in all cases). In other words, judges who thought that deterrence was a significant factor also tended to see the principle of proportionality as being important.

Sentencing: The range of options.

Only judges in Quebec appeared to be content with the range of sanctions available[28] to them in their community (or in the largest community in which they sit for those judges who sit in more than one community). For judges who sat in two or more communities, this same regional effect appeared.

Adequate choice of sanctions available in largest (or only) community

			Adequate range of sanctions available?			
			Definitely yes	Probably yes	Probably or definitely not	Total
Region	Atlantic	Count	7	16	7	30
		Row percent	23.3%	53.3%	23.3%	100.0%
	Quebec	Count	15	9		24
		Row percent	62.5%	37.5%		100.0%
	Ontario	Count	16	31	20	67
		Row percent	23.9%	46.3%	29.9%	100.0%
	Prairies	Count	12	21	22	55
		Row percent	21.8%	38.2%	40.0%	100.0%
	BC	Count	15	22	16	53
		Row percent	28.3%	41.5%	30.2%	100.0%
	Territories	Count	2		2	4
		Row percent	50.0%		50.0%	100.0%
Total		Count	67	99	67	233
		Row percent	28.8%	42.5%	28.8%	100.0%

Ignoring the territories, Chi-Square = 22.63, df=8, p<.01

[28] Questions F1, F1a.

Adequate choice of sanctions available in largest (or only) community

			Adequate range of sanctions available?			
			Definitely yes	Probably yes	Probably or definitely not	Total
Quebec compared to Rest of Canada	Quebec	Count	15	9		24
		Row percent	62.5%	37.5%		100.0%
	Rest of Canada	Count	52	90	67	209
		Row percent	24.9%	43.1%	32.1%	100.0%
Total		Count	67	99	67	233
		Row percent	28.8%	42.5%	28.8%	100.0%

Chi-square = 18.45, df=2, p<.001

Adequate choice of sanctions available in smallest community

			Adequate range of sanctions available, smallest community?			
			Definitely yes	Probably yes	Probably or definitely not	Total
Quebec compared to Rest of Canada	Quebec	Count	12	5	2	19
		Row percent	63.2%	26.3%	10.5%	100.0%
	Rest of Canada	Count	19	56	75	150
		Row percent	12.7%	37.3%	50.0%	100.0%
Total		Count	31	61	77	169
		Row percent	18.3%	36.1%	45.6%	100.0%

Chi square = 29.77, df=2, p<.01 (1 expected value < 5, = 3.49)

Not surprisingly, for those judges who sat in two or more communities, a report of an inadequate range of sanctions in the largest community was associated with a tendency to indicate the same inadequacy with respect to the smallest community in which he/she heard YOA cases. Of those judges which thought that sanctions were "definitely adequate" in the larger community, 50% felt that this was also true of the smallest community in which they sat. Of those which thought that the range of sanctions was "probably or definitely not adequate" in the largest community, only 4.1% felt that the range was definitely adequate in the smallest community.

Adequacy of the range of sanctions available for the largest and the smallest community in which the judge hears YOA cases (for only those judges who hear cases in two or more communities)

			Adequate range of sanctions available, smallest community?			
			Definitely yes	Probably yes	Probably or definitely not	Total
Adequate range of sanctions available? (for the larger community)	Definitely yes	Count	26	15	11	52 (30.2%)
		Row percents	50.0%	28.8%	21.2%	100.0%
	Probably yes	Count	3	48	20	71(41.3%)
		Row percents	4.2%	67.6%	28.2%	100.0%
	Probably or definitely not	Count	2		47	49 (28.5%)
		Row percents	4.1%		95.9%	100.0%
Total		Count	31	63	78	172 (100%)
		Row percents	18.0%	36.6%	45.3%	100.0%

Chi square = 118.6, df=4, p<.001.

As can be seen in the above table, the range of sanctions available was seen as less adequate in the smallest community than in the largest community. For judges who sat in more than two communities, 28.5% indicated that the range of sanctions was "probably or definitely not adequate" in the largest of these communities. In the smallest of the communities in which a judge sat, 45.3% of the judges indicated that they believed the range of sanctions available to be "probably or definitely not adequate." This difference was statistically significant[29] (t=5.74, df=171, p<.001).

The main problem noted by most of the judges who wrote comments in response to this question was not that the YOA is lacking in choices, but rather that communities and provinces have not provided these choices to the court. Several judges suggested that it would be useful to have a conditional sentence (presumably like that which is included in the YCJA in Section 42(5) as the "deferred custody and supervision order.").

Most judges (approximately 92%) indicated[30] that there were particular types of youths for whom it was difficult to find rehabilitative programs. "Types" obviously could be defined in terms of offence, personal need, categories of youths (e.g., girls or particular ethnic groups) or on any dimension deemed important by the judge. Judges were permitted to list more than one type of youth, if they felt it appropriate, and they often did so. Of those judges listing one or more types of programs that were particularly difficult to find, approximately 90 different combinations of programs were given by the 219 judges. These were categorized into a number of non-exclusive categories. The proportion of the judges who listed one or more of each type of program is shown in the following table.

[29] Treating the values in the table as three-point scales.

[30] Question E8

Types of programs mentioned as being "particularly difficult" to find		
Program type	Proportion of *all* respondents (% of 238) mentioning	Proportion of respondents who mentioned one or more programs (% of 219)
Mental health, etc.	25.6%	27.9%
FAS/FAE	20.2%	21.9%
Drug, alcohol, solvent, etc.	19.3%	21.0%
Various categories of youths (e.g., girls, street youths, ethnic groups, disabled	42.4%	46.1%
Youths who had committed serious offences	8.8%	9.6%
Youths who had committed other, not so serious offences (e.g., shoplifters)	5.0%	5.5%

Community influences in sentencing.

Judges were asked[31] whether Crown attorneys or others mentioned "public opinion" or public views concerning what should happen to a young person. As can be seen in the table below, the mentioning of "public opinion" occurs more frequently for some judges than for others. No significant provincial or regional variation appeared to exist with regard to the frequency with which "public opinion" or public views were mentioned in court.

Crown or others mention public opinion

		Frequency	Valid Percent	Cumulative Percent
Valid	Yes, frequently	40	17.4	17.4
	Yes, occasionally	102	44.3	61.7
	Yes, but only rarely	68	29.6	91.3
	No, never	20	8.7	100.0
	Total	230	100.0	
Missing		8		
Total		238		

Not surprisingly, those judges who reported hearing comments about "public opinion" tended to be the same judges who indicated hearing about the "prevalence of a particular type of offence in the community."[32]

[31] Question K1.

[32] Question K3.

Frequency of mention of "prevalence" of particular type of offence as a function of "public opintion being mentioned"

			Is prevalence of particular kind of offence raised in court?			
			Yes, frequently	Yes, occasionally	Rarely or never	Total
Public opinion or views mentioned in relation to disposition	Yes, frequently	Count	29	10	1	40
		Row percents	72.5%	25.0%	2.5%	100.0%
	Yes, occasionally	Count	25	68	8	101
		Row percents	24.8%	67.3%	7.9%	100.0%
	Rarely or never	Count	20	52	14	86
		Row percents	23.3%	60.5%	16.3%	100.0%
Total		Count	74	130	23	227
		Row percents	32.6%	57.3%	10.1%	100.0%

Chi-Square = 38.95, df=4, p<.001 (1 cell with estimated value<5: 4.05)

Clearly, in some locations, or by some people in the court process, certain judges are likely to receive indications of prevalence and public opinion.

The judges who stated that "public opinion" was frequently mentioned in their courts, as well as those who were told about the "prevalence" of a particular offence, tended to be likely to indicate that they considered the impact that a decision might have on public opinion.

Consider impact of decision on public opinion

			Consider impact of decision on public opinion		
			Frequently or occasionally	Rarely or never	Total
Public opinion or views mentioned in relation to disposition	Yes, frequently	Count	24	16	40
		Row percent	60.0%	40.0%	100.0%
	Yes, occasionally	Count	53	48	101
		Row percent	52.5%	47.5%	100.0%
	Rarely or never	Count	36	52	88
		Row percent	40.9%	59.1%	100.0%
Total		Count	113	116	229
		Row percent	49.3%	50.7%	100.0%

Chi square = 4.72, df=2, p<.10; Linear component 4.612, df=1 p<.05, r=.142, unrecoded r=.186, p<.05

Consider impact of decision on public opinion

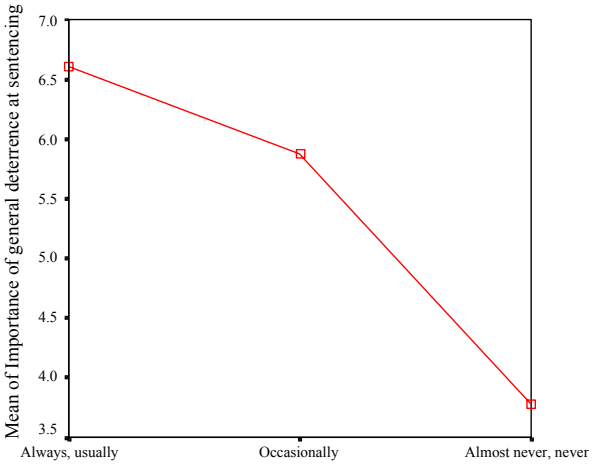
			Consider impact of decision on public opinion		
			Frequently or occasionally	Rarely or never	Total
Is prevalence of particular kind of offence raised in court?	Yes, frequently	Count	44	34	78
		Row percent	56.4%	43.6%	100.0%
	Yes, occasionally	Count	67	65	132
		Row percent	50.8%	49.2%	100.0%
	Rarely or never	Count	5	18	23
		Row percent	21.7%	78.3%	100.0%
Total		Count	116	117	233
		Row percent	49.8%	50.2%	100.0%

Chi square = 8.66, df=2, p<.05, linear component=6.108, df=1, p<.05, r=.16, unrecoded r=.16, p<.05

Similarly, those judges who indicated that the "prevalence" of a particular kind of offence was likely to be raised were also most likely to indicate that they took into account the prevalence of crime in the community (r=.31, p<.01).[33]

Not surprisingly, the use of the apparent prevalence of youth crime (or the prevalence of a particular type of youth crime) in the community is related to general deterrence. As noted earlier in this report, we asked judges to indicate, for each of three types of offences, the importance of various principles and purposes in determining the sentence for each of them. As an estimate of the importance of "general deterrence" for each judge, we simply combined the "importance" given to general deterrence by him/her for the three offences. As can be seen in the figure below, those judges most likely to take "prevalence" into account indicated that "general deterrence" was more important at sentencing than it was for those who indicated that prevalence "almost never or never" was relevant.

[33] Question K4.



Note: With "general deterrence" as the dependent variable, F(2,211)=9.39, p<.001

Not surprisingly, those judges who indicated that they were most likely to take prevalence of crime into account were also most likely to indicate that they "consider the impact that a decision (e.g., a sentencing decision) might have on public opinion.

Frequency of taking prevalence into account * Consider impact of decision on public opinion Crosstabulation

			Consider impact of decision on public opinion		
			Frequently or occasionally	Rarely or never	Total
Frequency of taking prevalence into account	Always, usually	Count	54	26	80
		Row percent	67.5%	32.5%	100.0%
	Occasionally	Count	54	68	122
		Row percent	44.3%	55.7%	100.0%
	Almost never, never	Count	9	22	31
		Row percent	29.0%	71.0%	100.0%
Total		Count	117	116	233
		Row percent	50.2%	49.8%	100.0%

Chi square = 16.84, df=2, p<.001

Help in the sentencing process.

A fair amount of variation existed regarding whether judges indicated that they could get a mental health assessment carried out in a timely fashion.[34] This did not appear to relate

[34] Question F2.

to the region of the country or whether the judge heard cases in relatively large centres (population of 100, 000 or more) or not.

Proportion of youths for whom judge could get timely mental health assessment

		Frequency	Valid Percent	Cumulative Percent
Valid	All, almost all	48	20.6	20.6
	Most	79	33.9	54.5
	About half	38	16.3	70.8
	Few, almost none, none	63	27.0	97.9
	Never seen need	5	2.1	100.0
	Total	233	100.0	
Missing		5		
Total		238		

Courts of appeal in all jurisdictions did not, overall, appear to be seen in a favourable light by most judges in terms of the helpfulness of their decisions for the judge when deciding particular sentences.[35]

[35] Question F3.

How helpful is judge's Court of Appeal in deciding on appropriate sentence?

			How helpful Court of Appeal in sentencing			
			Very helpful	Somewhat helpful	Rarely or never helpful	Total
Province	NF	Count		2	2	4
		Row percent		50.0%	50.0%	100.0%
	PE	Count		1		1
		Row percent		100.0%		100.0%
	NS	Count	1	9	6	16
		Row percent	6.3%	56.3%	37.5%	100.0%
	NB	Count	1	5	3	9
		Row percent	11.1%	55.6%	33.3%	100.0%
	QC	Count	3	16	5	24
		Row percent	12.5%	66.7%	20.8%	100.0%
	ON	Count	5	29	33	67
		Row percent	7.5%	43.3%	49.3%	100.0%
	MN	Count	2	5	10	17
		Row percent	11.8%	29.4%	58.8%	100.0%
	SK	Count		8	8	16
		Row percent		50.0%	50.0%	100.0%
	AB	Count	1	7	13	21
		Row percent	4.8%	33.3%	61.9%	100.0%
	BC	Count	2	19	32	53
		Row percent	3.8%	35.8%	60.4%	100.0%
	YK	Count			1	1
		Row percent			100.0%	100.0%
	NW	Count			3	3
		Row percent			100.0%	100.0%
Total		Count	15	101	116	232
		Row percent	6.5%	43.5%	50.0%	100.0%

However, Quebec judges appeared to be more likely than judges in the rest of Canada to indicate that their Court of Appeal was valuable to them.[36]

[36] Comparison of Quebec and the rest of Canada on "somewhat or very helpful" vs. "rarely or never helpful": Chi Square = 7.85, df=1, p<.01.

Quebec compared to Rest of Canada * How helpful Court of Appeal in sentencing

			How helpful Court of Appeal in sentencing			
			Very helpful	Somewhat helpful	Rarely or never helpful	Total
Quebec compared to Rest of Canada	Quebec	Count	3	16	5	24
		Row percent	12.5%	66.7%	20.8%	100.0%
	Rest of Canada	Count	12	85	111	208
		Row percent	5.8%	40.9%	53.4%	100.0%
Total		Count	15	101	116	232
		Row percent	6.5%	43.5%	50.0%	100.0%

Chi-square = 9.35, df=2, p<.01 (1 low expected value=1.55),
Pooling very and somewhat helpful, Chi-square = 7.85, df=1, p<.05.

Probation.

Little is known about how the length of a probation term is determined. Looking at a subset of provinces, it appears that in a case in which a youth is given a probation order without custody (i.e., probation is the most significant disposition), the length of the probation order is likely to vary somewhat as a function of the province in which the order is given. The following table shows this variability across provinces.

	Percent probation terms (without custody) of each length						Total (N)
	<1 month	1-3 mo.	4-6 mo.	7-12 mo.	13-24 mo.	>24 mo.	
NF	--	2%	15%	53%	30%	--	100% (869)
NS	<1%	2%	19%	53%	26%	<1%	100% (1122)
QC	<1%	2%	25%	67%	6%	<1%	100% (4964)
ON	<1%	1%	12%	57%	29%	<1%	100% (11,083)
SK	<1%	6%	26%	50%	19%	--	100% (3185)
AB	<1%	4%	27%	55%	13%	<1%	100% (4732)
BC	<1%	5%	22%	53%	19%	<1%	100 (4662)

Source: Youth Court Data Tables (Table 6 for each jurisdiction), 1998-99. CCJS, Statistics Canada.

The variation across provinces is most evident if one looks at the proportion of probation terms of over one year. Compared with the other provinces, Newfoundland and Ontario tend to have a higher portion of these relatively long probation terms while Quebec tends to have fewer.

Although there is a good deal of variation in the proportion of probation orders with lengths of over one year, no provincial or regional differences appeared to exist with regard to the frequency with which judges listed different factors as relevant in the determination of the length of a probation order.[37] The relevance of various factors for determining the length of probation orders is shown in the following table.

[37] Question E9.

Determining the length of a probation order			
Factor	Relevant to determining length of probation order	Not relevant to determining length of probation order	Total (n=238)
More or less standard length	18.5%	81.5%	100%
Depends on seriousness of offence	63.9%	36.1%	100%
Depends on how long it will take to connect with services/programs	60.1%	39.9%	100%

In their written comments, judges also mentioned various additional factors, including the following:

- the length of the (required) program;
- supervision and guidance needed by the youth;
- the time of year (e.g., where in the school year cycle the youth was);
- the criminal or custodial record of the youth.

A number of judges made a point that came up elsewhere in their decisions about youths: each case was seen as different, requiring a particular combination of factors. In addition, some judges expressed a preference for short probation orders ("long probation orders [are] of questionable value – young people cease to relate [the] terms [of the probation order] to [the] offence over time," or "I try to keep it as short as possible – make a point and move on"). Other judges expressed a preference for the opposite ("seldom will order probation of less than 12 months as 3-6 months are required to gain access to most programs" or "normally one year or more – I feel it takes at least one year to have any effect"). Another judge situated him/herself in the middle ("It is somewhat arbitrary: I err on the side of longer periods of probationary monitoring."

Judges tended to be favourable about sentences of probation, both in terms of its ability to control the behaviour of youths and in connecting a youth with programs and services.[38] No significant provincial (or regional) variation in these views appeared to exist, nor was a difference found between those judges who hear cases in large centres (i.e., populations of 100,000 or more) vs. smaller communities.

[38] Questions G1, G2.

How helpful is probation in controlling young person

		Frequency	Valid Percent	Cumulative Percent
Valid	Very useful	62	26.4	26.4
	Somewhat useful	141	60.0	86.4
	Only occasionally useful	24	10.2	96.6
	Don't know	6	2.6	99.1
	Depends	2	.9	100.0
	Total	235	100.0	
Missing		3		
Total		238		

How useful is probation in connecting youth to services

		Frequency	Valid Percent	Cumulative Percent
Valid	Very useful	107	45.1	45.1
	Somewhat useful	116	48.9	94.1
	Only occasionally useful	6	2.5	96.6
	Don't know	7	3.0	99.6
	Depends	1	.4	100.0
	Total	237	100.0	
Missing		1		
Total		238		

However, some judges qualified their support for probation by noting, for example, that it depended on the adequacy of resources that were available to the probation service or the particular probation office. Another judge suggested that it was important for the judge to have a good relationship with the probation officer/office. Nevertheless, it is clear from answers described in the two previous tables that terms of probation are seen by judges as ways of individualizing the disposition in such a way that youths can be both controlled and treated. Unfortunately, I did not include questions concerning the use that judges made of specific conditions of probation to accomplish these goals.

Community service.

Only about 9% of the respondents indicated that it "frequently" happened that they would have liked to assign community service but did not do so because there were not adequate or appropriate jobs for the youths.[39] No significant provincial or regional variation existed.

[39] Question G4.

Are there cases where judge would like CSO but no work is available?

		Frequency	Valid Percent	Cumulative Percent
Valid	Yes, frequently	21	9.0	9.0
	Yes, occasionally	60	25.6	34.6
	Yes, rarely	34	14.5	49.1
	No	119	50.9	100.0
	Total	234	100.0	
Missing		4		
Total		238		

Various obstacles to community service were noted by judges, including the following:

- opposition from municipal unions and problems with workers' compensation boards;
- difficulty in placing those who have committed an act of violence;
- difficulty of parents in rural areas to transport youths to their work;
- the problems of placing very young youths.

As noted earlier, many judges do not routinely get information about the administration of their decisions. As shown in the table below[40], most judges do not know the type of community service which youths actually do.

Does judge know actual type of work being performed on a CSO?

		Frequency	Valid Percent	Cumulative Percent
Valid	Always, almost always	4	1.7	1.7
	Most of the time	17	7.2	8.9
	About half	3	1.3	10.2
	Occasionally	39	16.5	26.7
	Almost never	72	30.5	57.2
	Never	101	42.8	100.0
	Total	236	100.0	
Missing		2		
Total		238		

Large regional differences existed regarding whether judges reported being routinely informed about whether a youth successfully completed community service.[41] Most

[40] Question G3. The results for the "smallest community" in which the judge sits (for those who sit in 2 or more communities, only) (Question G3A) did not differ from the "largest community" for these same "multi-site" judges. Consequently, the data are not shown. However, it is worth noting that the multi-site judges who did tend to know the type of community service which youths were doing in the largest community were also more likely to be aware of what was occurring in their smallest community.

[41] Question E11.

judges outside of Quebec indicated that they are not routinely informed about whether a youth successfully completed a community service order.

Is judge routinely informed whether youth completed community work?

			Routinely informed about whether youth completed CSO?		
			Yes	No	Total
Region	Atlantic	Count	11	19	30
		% within Region	36.7%	63.3%	100.0%
	Quebec	Count	13	11	24
		% within Region	54.2%	45.8%	100.0%
	Ontario	Count	17	51	68
		% within Region	25.0%	75.0%	100.0%
	Prairies	Count	6	49	55
		% within Region	10.9%	89.1%	100.0%
	BC	Count	7	46	53
		% within Region	13.2%	86.8%	100.0%
	Territories	Count	2	2	4
		% within Region	50.0%	50.0%	100.0%
Total		Count	56	178	234
		% within Region	23.9%	76.1%	100.0%

Excluding the territories, Chi-Square = 23.52, df=4, $p < .001$.

Most judges think "most, all, or almost all" of their community service orders are carried out.[42] The proportion believing that only "half or fewer" of these orders are being carried out was highest in B.C. and the prairies. Two comments from judges help put these findings in context. One judge emphasized the distinction between the belief that community service is completed and its actual completion, suggesting that this discrepancy should be remembered. Another noted he/she assumes that the community service has been completed unless the youth is charged with failure to comply with a disposition. It was not clear whether this judge would necessarily hear the case if the youth were charged with failure to comply with the probation order. This judge also assumes – correctly or incorrectly – that everyone who does not complete community service would be charged.

In contrast, one judge commented that he receives a report on *all* community service orders, and that because the youths know this, they complete their ordered community work. Similarly, one judge noted that a system exists in his jurisdiction whereby he can monitor progress (or compliance), thereby helping to ensure compliance. Another judge indicated that youths are routinely required to return to court for reviews. However, it

[42] Question E10.

would seem that many judges rely on breaches or new charges as the means of finding out about failures. In such circumstances, successes do not draw anyone's attention.

Judges' views on whether youth completes community service work

			Judges' views on whether youth completes community service successfully			
			All/Almost all	Most	Half or fewer or don't know	Total
Region	Atlantic	Count	7	19	4	30
		Row percent	23.3%	63.3%	13.3%	100.0%
	Quebec	Count	9	15		24
		Row percent	37.5%	62.5%		100.0%
	Ontario	Count	23	29	16	68
		Row percent	33.8%	42.6%	23.5%	100.0%
	Prairies	Count	9	28	18	55
		Row percent	16.4%	50.9%	32.7%	100.0%
	BC	Count	9	25	19	53
		Row percent	17.0%	47.2%	35.8%	100.0%
	Territories	Count	1	1	2	4
		Row percent	25.0%	25.0%	50.0%	100.0%
Total		Count	58	117	59	234
		Row percent	24.8%	50.0%	25.2%	100.0%

Excluding the territories, Chi-Square = 20.92, df=8, p<.01

Most (89%) judges indicated that they are interested in being informed about whether youths complete their community service.[43] This is particularly true for those judges who already indicated that they were routinely informed about the completion of the youth's community service.

Routinely informed about whether youth completed CSO? * Does judge want to know whether youth successfully completed CSO?

			Does judge want to know whether youth successfully completed CSO?			
			Definitely yes	Probably yes	No	Total
Routinely informed about whether youth completed CSO?	Yes	Count	49	4	1	54
		Row percents	90.7%	7.4%	1.9%	100.0%
	No	Count	94	62	25	181
		Row percents	51.9%	34.3%	13.8%	100.0%
Total		Count	143	66	26	235
		Row percents	60.9%	28.1%	11.1%	100.0%

Chi-Square = 26.345, df=2, p<.01

[43] Question E12.

The comments from judges reflected the overall support for a mechanism by which feedback is given concerning the success of the youth in carrying out the disposition. Several judges noted that the reliance on re-appearance in court assumes that the same judge would hear the breach (or new charge) which is not necessarily the case. Other judges suggested that a statistical report would be as helpful (or more helpful, perhaps) as individual case information. In contrast, another judge felt that information about the value (to the youth or the community) would be more important.

Very few judges require that victims be informed of the completion of a community service order related to "their" case.[44] No provincial or regional variation appeared to exist in the responses to this question.

Does judge ever ask youths to inform victims about completed CSO?

		Frequency	Valid Percent	Cumulative Percent
Valid	Always, almost always	2	.8	.8
	Most of the time	2	.8	1.7
	About half	1	.4	2.1
	Occasionally	19	8.0	10.1
	Almost never	27	11.4	21.5
	Never	186	78.5	100.0
	Total	237	100.0	
Missing		1		
Total		238		

A number of judges mentioned that if this were to be done, it needed to be done through the probation officer. Some suggested that this could be done in conjunction with an apology.

The use of custody at sentencing.

Each judge was asked to consider the frequency with which 10 different factors might be "a relevant factor (alone or in combination with other factors) in [the judge's] decision to impose custody."[45] Clearly, a great deal of variation existed with regard to the relevance of these factors to decisions to sentence youths to custody. The factors are listed in (descending) order of their (mean) relevance.

[44] Question G5.

[45] Question D4.

		For how many cases where you have imposed custody was this a relevant factor?					
	Mean relevance 1=Almost no, no cases 5=All, almost all cases	All/ almost all	Most	About half	A few	Almost none/ None	Total
Serious offence required custody	4.17	48%	35%	6%	11%	1%	100% (235)
Extensive criminal record	4.09	33%	47%	15%	5%	--	100% (235)
Youth likely to commit another offence	3.64	26%	37%	17%	14%	6%	100% (232)
Youth "out of control"	3.17	14%	28%	25%	27%	6%	100% (235)
Youth had failed to comply with previous non-custodial sentence	3.05	17%	26%	18%	26%	14%	100% (235)
Youth had not learned to stop offending from previous non-custodial sentences	3.03	12%	25%	25%	30%	9%	100% (234)
Probation officer indicated non-custodial sentence inappropriate	2.96	14%	29%	12%	33%	13%	100% (235)
Youth not taking court seriously	2.43	8%	17%	11%	36%	27%	100% (236)
Poor home or living conditions required change	2.41	7%	15%	15%	35%	27%	100% (234)
Need for program only available in custody	2.10	3%	13%	9%	38%	36%	100% (234)

Clearly, almost every one of these ten factors was seen by some judges as being relevant for all or almost all cases which ended in custody. At the same time, each of these ten factors was perceived by some judges as being relevant in almost none or none of the cases in which custody was imposed.

What do these results mean? Let us look at one factor: "The youth had successfully completed non-custodial sentences in the past but had clearly not learned from that experience and was continuing to commit offences." Over a third of the judges (37%) indicated that this was relevant for "most, almost all, or all" cases that they sent to custody. Another third (39%) indicated that they considered this factor only in a "few, almost none, or none" of the cases sent to custody. Clearly, little consensus exists surrounding the factors which should be considered in determining custody. The difference, of course, between the YOA and the YCJA is that in the former, no requirement of consensus exists. However, in the YCJA, the law clearly states how different factors should be considered.

Some of the factors listed by judges as being relevant to cases receiving custodial dispositions might be seen as reflecting a "welfare" orientation:

- the youth was in need of a program that was only available in custody;
- the youth was "out of control" and needed a custodial sentence to break the current cycle of behaviour;
- the youth's home (and/or parents) or living conditions were such that there was a need to get him or her into a more stable environment.

These factors were combined such that a high number indicates a greater tendency to use custody for welfare reasons. This "scale" ranged from 1 (in "almost none or none" of the cases in which the judge imposed custody were each of these three factors a relevant concern) to 13 (in "all or almost all" of the cases in which the judge imposed custody, all three of these factors were relevant). The most important finding is that judges were distributed across the full range of possibilities (i.e., scores ranging from 1 to 13). Second, regional differences existed, with judges from the territories, Atlantic provinces and Quebec most likely to use custody for welfare reasons, and judges from Ontario and British Columbia least likely to do so.

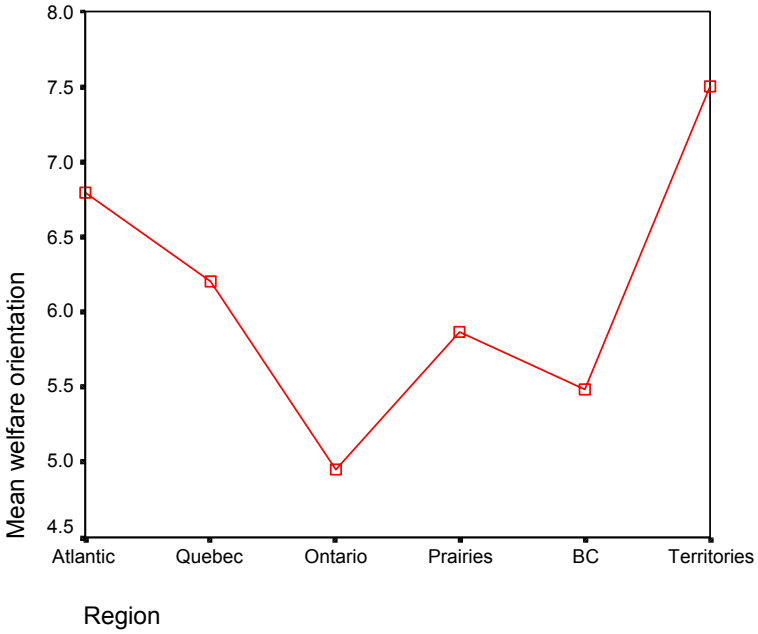
It should be remembered that these questions, and, consequently, this scale measure the frequency with which judges used welfare principles in determining a custodial sentence. It is not a measure of "importance" *per se* since, for some judges, the principles may be irrelevant for some cases, but crucial in others. Hence, a judge who indicated that welfare concerns were relevant in "about half" of the cases may well give very significant weight to the importance of welfare concerns in this half of the cases.

Welfare orientation at sentencing

Welfare orientation at sentencing, 3 questions pooled-- high = welfare orientation

	N	Mean	Minimum	Maximum
Atlantic	30	6.8000	2.00	13.00
Quebec	24	6.2083	2.00	13.00
Ontario	65	4.9538	1.00	12.00
Prairies	54	5.8704	1.00	13.00
BC	52	5.4808	1.00	12.00
Territories	4	7.5000	5.00	11.00
Total	229	5.7074	1.00	13.00

$F(5, 233) = 2.44$, $p<.05$
Excluding the territories, $F(4,220) = 2.64$, $p<.01$



Earlier in this report, it was noted that "rehabilitation" was rated as the factor which was most important in the sentencing of two of the three types of offenders described in the questions. Not surprisingly, moderate correlations existed between the importance of rehabilitation in the sentencing of one type of offender and each of the others (correlation coefficients of .59, .28, and .34, all $p<.01$).

However, it is interesting that no significant correlations were found between the judges' reports of the frequency of their use of custody for rehabilitation purposes and their rated importance of rehabilitation in sentencing (correlation coefficients of .03, -.06, and -.09; all not significant). In other words, those judges who were most likely to indicate that rehabilitation was an important factor in determining *sentences* were not necessarily the ones who were most likely to use *custody* for rehabilitative purposes. Hence, these two factors – the importance of rehabilitation, generally, and the use of custody as a rehabilitative measure – appear to be independent of each other.

Short terms of custody.

Many cases exist in which youths receive short terms of custody (e.g., 60 days or less). Correctional workers sometimes express concern about these sentences, in part, because they are seen as being long enough to disrupt a youth's life, but too short to provide any meaningful programming in the institution. Nevertheless, they are a popular disposition. Across Canada, 35% of the secure custody dispositions and 28% of the open custody dispositions are for less than one month. An additional 42% of the secure custody

dispositions and 49% of the open custody dispositions are for a period of one month up to and including 3 months.[46]

In order to obtain information regarding the reason(s) behind the handing down of these sentences, we asked judges to indicate the importance of each of nine different factors in the decision to hand down a short period of time in custody.

Importance of various factors in the decision to hand down a short custodial disposition (n=238)							
Importance of:	1=not at all important	2	3	4	5=very important	Total	Mean rating
Offence seriousness	4%	8%	10%	27%	52%	100%	4.14
Failure of non-custodial dispositions to stop offending	6%	7%	19%	42%	26%	100%	3.76
Short sharp shocks	7%	10%	20%	33%	30%	100%	3.69
Longer time in custody would interfere with productive activities (e.g., school)	6%	10%	28%	34%	22%	100%	3.56
Youth had spent substantial time in pretrial detention	13%	11%	15%	36%	24%	100%	3.46
Probation says non-custody is not appropriate	15%	24%	31%	24%	7%	100%	2.84
Importance of deterring others	24%	30%	23%	15%	8%	100%	2.53
Social conditions in youth's life made move sensible	26%	23%	28%	19%	4%	100%	2.52
Nothing else was available	50%	21%	13%	8%	7%	100%	2.01

This table shows two important things. First, and with respect to each of the nine factors, there were some judges (in fact, a minimum of nine judges) who indicated that each factor was "not at all important" and some judges (also at least nine judges) who indicated that this same factor was "very important." Obviously, judges are handing down short custodial dispositions for quite different reasons. Second, it is clear that some reasons were more important, on average, than others.

The most important factor in the decision to hand down a short custodial disposition was qualitatively different from the second and third most important factors. The most important factor was the need -- because of the seriousness of the offence -- to place the youth in custody. The second and third most important factors were both "future" oriented: the judges indicated their belief in the rehabilitative impact of sentences by giving relatively high ratings to the reason "The youth had been given non-custodial sentences in the past and did not stop offending" and by also endorsing the importance of "short sharp shocks."

The next set of two tables examines the average ratings for each factor in each jurisdiction. This set of tables demonstrates that significant variation exists across jurisdictions in the relative importance of the various factors.[47] This is important

[46] Canadian Centre for Justice Statistics, Statistics Canada. Youth Court Data Tables, 1998-99. Ottawa: May 2000.

[47] Analyses of variance were computed for the five provincial regions only (ignoring the territories) as well as for five provincial regions and the territories. The results were the same: there was a significant effect of the "reasons" for the short sentences (some reasons were more important than others) as well as a significant interaction with region (or the five regions and the territories). The interaction indicates that the

because it means that judges, in different regions, have different "theories" regarding the situation in which a short custodial disposition is appropriate. Given the absence of national standards and the lack of clear principles of sentencing in the YOA, it is not surprising that regional differences exist. The details of this table are not, perhaps, as important as the major finding: this specific type of disposition (short custodial terms) is apparently seen as serving different functions in different parts of the country.

pattern of results across "reasons for short sentences" varies with the region. Note that the means in this table (for provinces and territories combined) may vary slightly from the means in the previous table since the tables dividing respondents by province/territory do not include those judges who did not indicate their province.

Mean importance of various factors in the decision to impose short custodial dispostions (1=Not at all important; 5=Very important) -- Part I

	Region	Mean	Std. Deviation	N
Short custodial sentences: importance of offence seriousness	Atlantic	4.1000	.9595	30
	Quebec	3.9524	1.0235	21
	Ontario	4.4909	.9204	55
	Prairies	3.7391	1.4210	46
	BC	4.2292	.9728	48
	Territories	4.0000	1.4142	4
	Total	4.1373	1.1101	204
Short custodial sentences: importance of nothing else available	Atlantic	2.0667	1.2847	30
	Quebec	2.9524	1.6272	21
	Ontario	1.5455	.9779	55
	Prairies	1.7174	1.0886	46
	BC	2.1667	1.2434	48
	Territories	2.2500	.9574	4
	Total	1.9657	1.2492	204
Short custodial sentences: importance of probation says non-cust not appropriate	Atlantic	2.8000	1.0954	30
	Quebec	3.3810	.8646	21
	Ontario	2.5091	1.1201	55
	Prairies	2.6304	1.2357	46
	BC	3.0833	1.0686	48
	Territories	2.7500	.9574	4
	Total	2.8088	1.1307	204
Short custodial sentences: importance of need for change	Atlantic	2.8000	1.0954	30
	Quebec	2.3810	1.2440	21
	Ontario	2.6000	1.2561	55
	Prairies	2.2609	1.1438	46
	BC	2.4375	1.1091	48
	Territories	2.0000	.8165	4
	Total	2.4804	1.1680	204
Short custodial sentences: importance of short sharp shock	Atlantic	3.4667	1.1958	30
	Quebec	4.1905	.7496	21
	Ontario	3.4545	1.3446	55
	Prairies	3.8696	1.2402	46
	BC	3.7083	1.0510	48
	Territories	3.7500	1.8930	4
	Total	3.6912	1.2025	204

Mean importance of various factors in the decision to impose short custodial dispositions (1=Not at all important; 5= Very important) -- Part II

	Region	Mean	Std. Deviation	N
Short custodial sentences: importance of deterring others	Atlantic	2.3333	1.1547	30
	Quebec	2.3810	.8646	21
	Ontario	2.4727	1.3858	55
	Prairies	2.5217	1.2951	46
	BC	2.5625	1.2012	48
	Territories	2.2500	.5000	4
	Total	2.4706	1.2214	204
Short custodial sentences: importance of failure of non-cust to stop youth offending	Atlantic	3.8333	.9499	30
	Quebec	4.3810	.5896	21
	Ontario	3.6909	1.2152	55
	Prairies	3.5000	1.2953	46
	BC	3.7500	1.0211	48
	Territories	3.7500	.9574	4
	Total	3.7549	1.1136	204
Short custodial sentences: importance of pretrial detention time	Atlantic	2.7667	1.3566	30
	Quebec	3.4762	1.1670	21
	Ontario	3.7091	1.3006	55
	Prairies	3.5870	1.3094	46
	BC	3.3125	1.3234	48
	Territories	4.0000	.8165	4
	Total	3.4314	1.3206	204
Short custodial sentences: importance of not interfering with school etc	Atlantic	3.3333	1.2130	30
	Quebec	3.6667	1.3166	21
	Ontario	3.8000	1.0784	55
	Prairies	3.2174	1.2634	46
	BC	3.6458	.9338	48
	Territories	3.5000	1.0000	4
	Total	3.5441	1.1460	204

Main effect of "factors" $F(8,1584) = 39.28$ $p<.01$ (Also significant excluding territories)
Interaction: Factors x Region, $F(40,1584) = 2.158$, $p<.01$ (Also significant excluding territories)

The range of different explanations for short custodial sentences is, of course, broader than the nine factors that were offered to judges in the question. Judges also noted that short custodial sentences were sometimes the result of joint submissions. Others commented that short sentences were sometimes imposed (as consecutive sentences) in cases of escape. Judges also gave specific examples of situations in which this type of sentence was given for rehabilitative or welfare purposes: to detoxify the youth, to break the pattern for an "out of control" youth, to provide the youth with the experience of

custody but to avoid extended contact with other youths in trouble. Aside from anything else, it appears that some judges have come to believe in the effectiveness of a short sharp shock. One judge reported that a psychiatrist had informed him that a five day sentence would "shock" the youth, but not allow the youth to acclimatize to the institutional setting. Another explanation offered was that a short sentence constituted, for some youths, a better way of holding them accountable because they would be likely to breach a probation order (and, consequently, receive a much longer period of time in custody).

Judges' views on the administration of the sentence.

One of the potential issues for judges is their loss of control over the case once a youth leaves their courts. Not only do they have little power to ensure that their decisions are executed, but they also do not necessarily find out the form in which their orders are carried out. A number of questions were asked about this problem of "feedback" (some of which were discussed earlier in the context of community service orders).

As can be seen in the following table, judges varied in their confidence that the rehabilitative programs which they had ordered as parts of probation orders[48] would be provided in a timely fashion. Although some variation was found across jurisdictions, the differences were not significant. In most provinces/territories, variation existed, with some judges indicating that the program would be provided in a timely fashion in most cases and some judges indicating that timely delivery could only be expected in a few cases. About one in six judges indicated that they did not know.

Proportion of cases where judge expects a non-custodial rehabilitation program to be provided timely fashion

		Frequency	Valid Percent	Cumulative Percent
Valid	All, almost all	21	8.9	8.9
	Most	74	31.2	40.1
	About half	54	22.8	62.9
	A few	26	11.0	73.8
	Almost none, none	21	8.9	82.7
	Don't know	40	16.9	99.6
	Never order	1	.4	100.0
	Total	237	100.0	
Missing		1		
Total		238		

Judges were also asked[49] to indicate the proportion of cases in which they ordered rehabilitative programs as part of a custodial disposition and were confident that the

[48] Question E6.

[49] Question E7

program would be provided during the period of custody. Again, a good deal of variability existed within each jurisdiction. However, the variability among jurisdictions was not statistically significant.

Proportion of cases where judge expects that a custodial rehabilitation program will actually be provided

		Frequency	Valid Percent	Cumulative Percent
Valid	All, almost all	24	10.2	10.2
	Most	78	33.2	43.4
	About half	28	11.9	55.3
	A few	27	11.5	66.8
	Almost none, none	18	7.7	74.5
	Don't know	43	18.3	92.8
	Never recommend	17	7.2	100.0
	Total	235	100.0	
Missing		3		
Total		238		

Reviews.

The frequency of reviews of custodial dispositions of six months or more appears to vary enormously across judges.

Proportion of 6+ month sentences with review

		Frequency	Valid Percent	Cumulative Percent
Valid	All, almost all	34	14.3	14.3
	Most	53	22.3	36.6
	About half	32	13.4	50.0
	A few	61	25.6	75.6
	Almost none, none	25	10.5	86.1
	Don't know	33	13.9	100.0
	Total	238	100.0	

Looking only at those judges who were able to make an estimate,[50] it would appear that, at least as reported by judges, the proportion of long sentences subjected to reviews varied considerably across regions. Reviews appeared to take place most frequently in Atlantic Canada and the territories and least frequently in Quebec. It should also be emphasized that several judges indicated that they, themselves, set review dates for such youths at the time of sentencing.

[50] The proportion indicating that they did not know did not vary significantly across jurisdictions.

Judge's estimate of the proportion of custodial dispositions of 6 months or more that are reviewed.

			Reviewed		
			Half or more	Few, almost none, none	Total
Region	Atlantic	Count	22	7	29
		Row percent	75.9%	24.1%	100.0%
	Quebec	Count	6	15	21
		Row percent	28.6%	71.4%	100.0%
	Ontario	Count	37	22	59
		Row percent	62.7%	37.3%	100.0%
	Prairies	Count	22	20	42
		Row percent	52.4%	47.6%	100.0%
	BC	Count	26	21	47
		Row percent	55.3%	44.7%	100.0%
	Territories	Count	4		4
		Row percent	100.0%		100.0%
Total		Count	117	85	202
		Row percent	57.9%	42.1%	100.0%

Excluding the territories, Chi-square = 12.34, df=4, p<.02

Some variation across provinces was found with respect to the perception that it was important for the judge who sentenced an offender to be the same judge who hears the review. (Approximately five percent of judges indicated that they thought it would be better for an independent judge to do the review.)

			Importance of sentencing judge doing the review		
			Important or very important	Not very, or not at all important	Total
Province	NF	Count	1	1	2
		% within Province	50.0%	50.0%	100.0%
	PE	Count		1	1
		% within Province		100.0%	100.0%
	NS	Count	10	6	16
		% within Province	62.5%	37.5%	100.0%
	NB	Count	6	3	9
		% within Province	66.7%	33.3%	100.0%
	QC	Count	19	5	24
		% within Province	79.2%	20.8%	100.0%
	ON	Count	59	5	64
		% within Province	92.2%	7.8%	100.0%
	MN	Count	12	3	15
		% within Province	80.0%	20.0%	100.0%
	SK	Count	7	8	15
		% within Province	46.7%	53.3%	100.0%
	AB	Count	16	5	21
		% within Province	76.2%	23.8%	100.0%
	BC	Count	43	8	51
		% within Province	84.3%	15.7%	100.0%
	YK	Count	1		1
		% within Province	100.0%		100.0%
	NW	Count	2		2
		% within Province	100.0%		100.0%
Total		Count	176	45	221
		% within Province	79.6%	20.4%	100.0%

			Importance of sentencing judge doing the review		
			Important or very important	Not very, or not at all important	Total
Region	Atlantic	Count	17	11	28
		% within Region	60.7%	39.3%	100.0%
	Quebec	Count	19	5	24
		% within Region	79.2%	20.8%	100.0%
	Ontario	Count	59	5	64
		% within Region	92.2%	7.8%	100.0%
	Prairies	Count	35	16	51
		% within Region	68.6%	31.4%	100.0%
	BC	Count	43	8	51
		% within Region	84.3%	15.7%	100.0%
	Territories	Count	3		3
		% within Region	100.0%		100.0%
Total		Count	176	45	221
		% within Region	79.6%	20.4%	100.0%

Excluding the territories, Chi-Square = 16.72, df=4, p<.01 (1 cell E=4.95)

As can be seen in this table, Ontario judges were most likely to see it as important that the sentencing judge do the review. Atlantic Canada judges were least likely to see it as important. In their comments, several judges indicated that this procedure constitutes a mechanism by which judges are given feedback regarding the progress of the youth. One judge noted that the happiest day for a youth court judge occurs when the judge can end a custody order because the youth has progressed sufficiently.

Transfers to adult court.

Judges were asked to indicate the number of transfer hearings that they have heard in the last five years.[51]

Number of transfer hearings judge reported hearing in the past five years			
Number of hearings reported in the previous five years	Number of judges reporting this number	Percent	Cumulative percent
None	119	50.6%	50.6%
1	40	17.0%	67.7%
2	27	11.5%	79.1%
3	18	7.7%	86.8%
4	9	3.8%	90.6%
5	9	3.8%	94.5%
6	3	1.3%	95.7%
7	1	0.4%	96.2%
9	2	0.9%	97.0%
10 or more	7	3.0%	100%
Total respondents	235	100%	--

About half of the judges had presided over no transfer hearings in the previous five years. Another 45% had presided over an average of approximately one or fewer per year in the last five years.[52] Therefore, very few of the 235 respondents indicated that they often heard transfer applications.

Not surprisingly, the "success" of the transfer hearings is varied (given the low numbers of hearings that were reported to have taken place). Of those 116 judges who heard at least one case, the average percent of cases reported by them as actually having been transferred was about 60% (median=60%, mean =58%).

[51] Question I3. Judges were asked not to consider cases where the transfer was "by consent." During the pretesting of the questionnaire, it had been pointed out that a certain number of cases were transferred to adult court without opposition. Examples included cases in which an 18 year old was facing charges allegedly committed when the youth was both an adult and a youth. We attempted to exclude these cases from consideration.

[52] This refers to those who indicated 1 through 5 transfer hearings in the previous 5 years.

Community involvement: Youth justice committees.

Judges were asked about "youth justice committees" – an institution that is mentioned in the YOA, but whose existence and operation is thought to vary considerably across the country.[53]

	Is there a youth justice committee?			
Community:	Yes	No	Don't know	Total (n)
Largest or only community in which judge sits?	36%	45%	20%	100% (238)
Smallest community (for judges sitting in two or more communities)	24%	48%	29%	100% (136)

Youth Justice Committees seem to be more present in the three prairie provinces than in other regions. However, a number of judges indicated that the use of the expression "being associated with" the court in reference to the committee could be deceptive, since the association was very loose.

Is there a youth justice committee associated with your court?

			Youth justice committee?			
			Yes	No	Don't know	Total
Region	Atlantic	Count	8	17	5	30
		% within Region	26.7%	56.7%	16.7%	100.0%
	Quebec	Count	2	14	8	24
		% within Region	8.3%	58.3%	33.3%	100.0%
	Ontario	Count	12	35	21	68
		% within Region	17.6%	51.5%	30.9%	100.0%
	Prairies	Count	33	18	4	55
		% within Region	60.0%	32.7%	7.3%	100.0%
	BC	Count	24	21	8	53
		% within Region	45.3%	39.6%	15.1%	100.0%
	Territories	Count	3	1		4
		% within Region	75.0%	25.0%		100.0%
Total		Count	82	106	46	234
		% within Region	35.0%	45.3%	19.7%	100.0%

Excluding the territories, Chi-Square = 39.15, df=8, p<.01 (1 low E = 4.8)

[53] Questions relating to youth justice committees are J1 through J2B.

Most judges indicated that the youth justice committee was at least somewhat useful.

	How useful is the youth justice committee?				
Community:	Very useful	Somewhat useful	Slightly useful	Not at all useful	Total (n)
Largest or only community in which judge sits	38%	35%	14%	13%	100% (155)
Smallest community (for judges sitting in two or more communities)	60%	24%	9%	6%	100% (33)

Most of the judges who signaled the existence of a youth justice committee in their community indicated at least one function which it served. The table below lists five different functions of the youth justice committee and shows the percentage of judges who felt that each was being served by the committee associated with their court.

Youth Justice Committees: Proportion of judges who indicate that each of the following functions apply to the committee associated with their court		
Function:	Only or largest community	Smallest community
Assisting with alternative measures and other pre-trial options	69%	97%
Providing information to the community about youth justice issues	46%	50%
Helping to develop non-custodial sentencing options	46%	69%
Assisting in "conferences" involving offenders and victims	50%	72%
Providing judges with information about non-custodial options that are available	33%	47%
N on which these percentages are based	83	32

Implementing the Youth Criminal Justice Act

Reducing the number of cases to court.

It is clear that most judges – particularly outside of Quebec – believe that many cases could be dealt with "just as adequately or more adequately" outside of the formal court structure. Reducing the number of cases coming to youth court is an explicit purpose of the YCJA. Judges' views of the cases before them would appear to support the legitimacy of this goal. Many judges indicated that they felt that a substantial number of

cases could be dealt with just as adequately or more adequately outside of the formal court system.

Estimating the actual number of cases which judges thought could be dealt with as adequately or more adequately outside of the court can be done. However, the results should be interpreted as being *an indication* of the seriousness of the problem rather than a case-by-case assessment.

Judges answered this question on a five-point scale. Using rough estimates of the numerical meaning of each scale point[54], the average percentage of cases that judges in each province or territory thought could be dealt with as adequately or more adequately outside the court was computed. The translation of these percentage estimates into numbers was straightforward given that we know how many cases are brought to court in each jurisdiction.

Taking the judges' responses at face value (as translated above), the respondents to this survey estimated that 35,874 of the 106,665 cases which were brought to court in 1998-99 (the most recent data available) could have been dealt with as adequately or more adequately outside of the court. This represents 33.6% of the cases.

These findings suggest that it will be important, in the early days of the YCJA, to monitor court intake. Under the YCJA, police officers are required to consider non-court alternatives. If the number (or type of case) going to court does not change, clearly a need exists to address the problem. Among other things, judges might be encouraged to ask police officers (and/or others) about cases that the judge felt would have been best dealt with outside of the court system. The judge does not have any power to order that a case be dealt with elsewhere. Nevertheless, by asking for an explanation, the judge might uncover reasons that could be addressed by others.

Part of the problem, in judges' eyes, is the lack of adequate alternative measures. Clearly, this is administratively outside of the responsibility of the judge. However, judges may be able to find ways of expressing concerns about this "administration of justice" matter either to those in court or to community groups (e.g., youth justice committees).

In any case, from the perspective of the judges, many cases now before the youth courts should not be there. Other decision makers in the various jurisdictions might wish to consider how best to address this problem.

Detention before trial.

It appears that in only a minority of cases in which young people are being detained is the issue of a "responsible person" raised in court. The exceptional jurisdiction appears to be British Columbia where approximately three quarters of respondents indicated that, in at least half of the cases in which a youth was detained prior to trial, the issue of finding a

[54] Labels were changed into numerical values as follows: all/almost all = 90%; most = 75%; about half =50%; a few = 10%; almost none, none = 2%.

"responsible person" with whom the youth could stay was raised. The fact that it is typically raised in B.C. suggests that it could be done elsewhere. The new act requires the judge to raise the issue if it has not already been discussed. Clearly, the issue of searching for a "responsible person" for the youth is not being brought up in court at the moment. Those who are responsible for bail hearings – often Justices of the Peace, in many jurisdictions – need to be made aware of the new section. At a minimum, the data support the value of the modification of this section in the new Act.

The YCJA explicitly forbids the detention of a youth as "a substitute for appropriate child protection, mental health, or other social measures" (Section 29(1)). Accomplishing this will, it seems, be a challenge for the youth justice system in most regions other than Quebec. It is not that detention is being used largely for this purpose. Nevertheless, outside of Quebec, about a third of the respondents indicated that for "half or more" of the youths who were detained, "the detention [was] necessary only because the young person had no adequate place to stay, or for some other child welfare reason."[55] Clearly, detention is, in part, a "child welfare" decision in many cases.

It is interesting that detention is much less likely to be used for this purpose in Quebec. One explanation is that child protection legislation may have been invoked instead of criminal legislation in cases in which the goal was detention for welfare, as opposed to criminal law, purposes. However, in this area, and perhaps others (e.g., reducing the number of cases going into the youth criminal justice system), the challenge of implementation may be considerably less in Quebec since the judges appear to be already acting in a manner that is consistent with the new legislation.

The performance of others.

About a quarter of the judges across the country (44% in Ontario) indicated that in only half or fewer of the cases they hear in youth court does "the defence counsel (or duty counsel) appear to be well prepared for the case and well informed about the youth justice system (e.g., the YOA, disposition choices, etc.)" (Question C1). Crown counsel were seen to be more likely to be prepared, perhaps because they are less likely to be "one shot" players. The YCJA represents a dramatic shift from the YOA in the manner in which certain things – sentencing, for example – are carried out.

If ill-informed and/or ill-prepared defence counsel currently exist, this poses a challenge for those responsible for ensuring that the new act is implemented within the spirit in which it was written. Clearly, counsel – defence counsel in particular – need to be educated about the new provisions in the YCJA. The problems that the YCJA is designed to address will be less likely to be resolved if counsel are unaware of the law and have not prepared their cases in light of the new Act.

Close to 40% of the respondents indicated that half or fewer of the sentencing submissions from Crown and defence were helpful. Once again, this is disturbing.

[55] Question B2.

Unless performance were to improve, judges would be left almost entirely on their own to determine the most appropriate sentence under the YCJA. Pre-sentence reports, which generally were seen as quite helpful, can provide some help. However, pre-sentence reports are unlikely to be ordered in many cases in which information would be helpful but custody is not being contemplated.

The YCJA requires the judge not only to give a proportionate sentence, but to attempt to give a sentence (within the limits defined by proportionality) that is most likely to rehabilitate and reintegrate the young person. It would seem that the judge should be able to depend on counsel to make useful suggestions regarding the most effective way(s) of fulfilling this requirement of the sentencing process. Presently, many judges are questioning the usefulness of the information which they receive. These findings underline the importance of making efforts to help educate defence (and Crown) counsel about the new Act. Counsel clearly need to know what they can do to ensure that the most appropriate sentences are considered in a legitimate manner by the Court.

Sentencing principles and practice.

Under the YCJA, judges are clearly expected to be using a different set of sentencing principles from those available to them under the YOA. When one looks at the overall relative importance attributed to the various factors under the YOA, it would appear that the challenge will be to increase the importance of proportionality and to decrease the importance of individual deterrence and the "protection of the public." Judges would appear to be acting on a relatively "wide open" model of "fitting the sentence to the youth" according to the sentencing theory which appears (to that particular judge) to be appropriate for that specific individual.

The YCJA explicitly mandates a much more prescriptive model in which the individualization of the sentence occurs within the constraint of proportionality. This does not appear to be the way in which judges presently sentence.

The factors that judges indicate are currently being used in determining whether a custodial sentence is appropriate are also at variance with the new legislation. The likelihood of future offending, for example, is, for more than half of the judges, a determinant in all or most cases. Under the YCJA, in which judges are no longer seen as having primary responsibility to prevent crime, education efforts must clearly focus on ensuring that judges understand the fact that sentencing is to be determined by a more structured set of principles than the present menu of purposes.

Social welfare reasons were also mentioned as being relevant by several judges in determining custodial sentences even though section 24 (1.1)(a) of the YOA would appear to preclude using custody as a substitute for appropriate child welfare purposes. Once again, these factors are deemed to be inappropriate as a reason to impose custody under the new YCJA. Clearly, judges are, under the YOA, *considering* what they see as the "best interests of the child" in determining the sentence. Under the YCJA, the rehabilitative and reintegrative function of the sentence is constrained by the over-riding responsibility to hand down a proportionate sentence.

The YCJA requires a focus on the particular offence before the court in determining the sentence. Thus, it follows that the fact that a non-custodial sentence has been given prior to this offence clearly does not preclude its use again. Section 39(4) of the YCJA explicitly states that non-custodial sanctions can be used more than once. In addition, the YCJA indicates that in determining whether a reasonable alternative to custody exists, the compliance with previous non-custodial sanctions may be seen as evidence that compliance is likely to occur again. However, more than half of the respondents under the YOA saw the failure of non-custodial dispositions to stop offending as a relatively important factor in the decision to hand down a short custodial disposition.

The need for a "short sharp shock" was also seen by a large number of judges as being very important or fairly important. Again, this factor is more or less irrelevant under the YCJA. In order to accomplish the goal of reducing the use of custody, judges will have to internalize these new norms regarding that which constitutes an appropriate sentence.

Administrative and community issues in sentencing.

Many judges, particularly those outside of Quebec, indicated that there was an inadequate range of sanctions available to them. Although provinces appear to be required to provide adequate resources to implement one sanction (custody), they do not seem to be required to provide adequate choices on any of the other sanctions listed in the legislation. Programs for specific types of youths were also mentioned by many judges as being in short supply.

Most judges indicated that issues of public opinion were raised by the Crown or others at least occasionally in their court. It would appear that the mention of public opinion was associated with calling attention to the "prevalence" of a particular type of offence in the community. Although the question was not asked directly, one might assume that these two notions were mentioned in a manner suggesting that public opinion required the judge to respond to the perceived or presumed increased prevalence of a particular crime in the community. If such statements are made, it is interesting to note that hard evidence is seldom provided of the increased prevalence (or actual prevalence, increased or not) of the offence. Second, when such statements are made, there is an implicit assumption that the judge is well placed to "fix" the problem. This latter assumption is patently false. Nevertheless, those judges who were most likely to hear, in their courts, about public opinion and/or the prevalence of a crime were slightly more likely to "consider" the impact of public opinion in their decisions. Not surprisingly, those judges who were most likely to indicate that they take prevalence into account were also the same judges who were most likely to rate "general deterrence" as an important factor in determining a sentence. Once again, these findings underline the importance of informing judges of the research demonstrating the inability of judges to reduce crime through harsher sentences.

Probation is the most prevalent disposition under the YOA. Although I know of no data on this issue, informal discussions with various people involved in the youth justice system would suggest that probation services in most locations are unable to provide the kind of help and surveillance that many would like. Part of the problem may be that the

length of probation terms appear to be longer than they might be otherwise because of the difficulty in connecting youths with appropriate programs in a timely fashion. Therefore, a more "efficient" (or parsimonious) use of probation services might reduce probation loads to more meaningful levels.

Conclusion.

The most obvious simple conclusion that can be drawn from the results of this survey is that youth court judges appear to work in quite different "youth justice environments" and respond in a considerably varied fashion to the cases that are before them. On almost every question, there were judges who answered at each end of a continuum – whether the question pertained to the usefulness of sentence submissions from counsel, the adequacy of choices of sanctions, or the apparent likelihood of a relatively long custodial sentence being reviewed.

Judges vary on whether they think that large numbers of cases that come before them could be dealt with just as adequately outside of the youth justice system. To some extent, this relates to their views about the adequacy of outside programs (e.g., alternative measures). However, it should be remembered that large numbers of judges – particularly those outside of Quebec – are not confident that the "youth court experience" is beneficial to youths.

The inter-connectedness of the youth justice (criminal law) system and child welfare concerns was manifested repeatedly in the judges' responses. Many judges, particularly those outside of Quebec, saw detention before trial as necessary for child welfare reasons. The youth's well-being was also a consideration for many judges in sentencing, generally, and in the handing down of short sentences, in particular. About a quarter of the judges indicated that the range of sanctions available to them was inadequate.

More than half of the judges indicated that "public opinion" is mentioned at least occasionally by the Crown attorney or others. Similarly, the prevalence of crime in the community is also frequently raised in the courtrooms of almost a third of the respondents. "Prevalence" is reported to be raised "occasionally" in the courtrooms of an additional 57% of the responding judges. The raising of these issues (public opinion and prevalence of youth crime) is particularly interesting for two reasons. First, the mention of "prevalence" and "public opinion" seems to co-vary. Second, research suggests that there is, in fact, very little that judges can do to affect the prevalence of crime in the community in which they sit. Judges who hear a great deal of talk about the "prevalence" of crime tend to indicate that they take "prevalence" into account. Taking prevalence into account, it would appear, is related to the importance that judges place on "general deterrence" in the sentencing of youths: those who indicate that they "always or usually" consider the prevalence of youth crime in the community put more importance on general deterrence at sentencing.

Considerable variation existed across judges regarding the usefulness of Court of Appeal decisions in helping guide the sentencing decision. Approximately half of the judges indicated that they found Court of Appeal judgements to be "very" or "somewhat"

helpful. Quebec judges were most likely to see their appeals court in a favourable light on this dimension. However, Courts of Appeal were not seen as terribly helpful to many other youth court judges. In this context, it should be little surprise that both within and across provinces and territories, these judges vary dramatically in their approach to youth court cases.

As with other responses, judges varied with respect to the importance which they attributed to various factors in the sentencing process. In deciding on custody, for example, offence seriousness and criminal record were the two most important factors. However, welfare concerns were also relevant for many judges. Over a third of judges indicated that a youth being "out of control" was a relevant factor in the decision to send a youth to custody in "most, almost all, or all" cases. An inadequate home or poor living conditions was also seen by over a third of judges as a relevant factor in at least half of the cases in which custody was imposed by them.

So what do these findings show? As we have repeatedly emphasized, judges vary in their approach to decision making in youth court. However, as these same judges frequently stressed, this variation is a reflection of the degree to which the youths, themselves, vary. What can be said about this variation? One problem – some might say it is a strength – of the YOA is that no one can be said to be "wrong." If a judge holds a belief in the efficacy of "short sharp [custodial] shocks", that judge cannot be found to be wrong by other judges who do not believe that short sharp shocks have any beneficial impact.

In the context of a discussion of evidence of disparity of approach and outcome for similar adult court cases, one judge once told me that if two judges approached the same case in different ways and arrived at quite different conclusions (or sentences for an offender) that we should consider the possibility that "maybe both judges were correct." That is, certainly, one way of approaching justice generally, or youth justice, in particular.

Another way would be to develop policy regarding that which can realistically be accomplished within the system and to design a justice system so as to maximize the likelihood of achieving the goals of the system. One advantage of first identifying the realistic goals of a youth justice system is that one has the opportunity of knowing whether one is moving closer to, or further from, those goals. Some might argue that the choice of whether to have realistic goals, and given these realistic goals, what they might be, should be matters of public policy.

Survey of Youth Court Judges
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Please check the alternative that best captures your answer to each question. If you have any comments on any question, they can be written anywhere on the questionnaire or on a separate sheet. Thank you very much for your cooperation.

A1) Think about the cases you deal with in youth court. How many of these cases do you think could have been dealt with just as adequately (or more adequately) outside of the youth court (e.g., informally, by "diversion", or by use of alternative measures if they had been available)?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know

A2) Do you think that there are adequate alternative measures or other "non-court" ("diversion") measures in your community for youths who have committed offences? (If you sit in more than one community, please indicate your answer for the largest community in which you hear cases.)
___ Definitely yes ___ Probably yes
___ Probably not ___ Definitely not
___ Don't know

A2a) If you sit in more than one community, do you think that there are adequate alternative measures or other "non-court" ("diversion") measures for youths who have committed offences in the smallest community in which you hear cases? (Ignore this question if you normally hear youth court cases in only one community.)
___ Definitely yes ___ Probably yes
___ Probably not ___ Definitely not
___ Don't know

B1) Think about the cases where it was decided to detain a youth in custody prior to his or her trial. For how many of these youth was the issue of the availability of an appropriate "responsible person" who could supervise the youth (under Section 7.1 of the *YOA*) raised in court?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know

B2) Think about the cases where a youth has been detained prior to his or her trial. For how many of these youth was the detention necessary only because the young person had no adequate place to stay, or for some other child welfare reason?
___ All/Almost all ___ Most ___ About half
___A few ___ Almost none/None
___ Don't know

C1) In how many of the cases that you hear in youth court does the defence counsel (or duty counsel) appear to be well prepared for the case and well informed about the youth justice system (e.g., the YOA, disposition choices, etc.)?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know

C2) In how many of the cases that you hear in youth court does the Crown Attorney appear to be well prepared for the case and well informed about the youth justice system (e.g., the YOA, disposition choices, etc.)?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know

D1) How important is each of the following in your determination of the sentence under the *Young Offenders Act* for a moderately serious violent offence (such as an assault causing bodily harm)?
Please use a scale where 1= "Not at all important" and 5 = "very important."
___ Denunciation
___ General deterrence
___ Deterring this young person
___ Proportionality (handing down a sentence where the severity of the sentence reflects the seriousness of the offence)
___ Rehabilitating this young person
___ Incapacitation (ensuring that this young person is separated from society)
___ "Protection of the public"

D2) How important is each of the following in your determination of the sentence under the *Young Offenders Act* for a property offence such as break-and-enter of a business establishment?
Please use a scale where 1= "Not at all important" and 5 = "very important."
___ Denunciation
___ General deterrence
___ Deterring this young person
___ Proportionality (handing down a sentence where the severity of the sentence reflects the seriousness of the offence)
___ Rehabilitating this young person
___ Incapacitation (ensuring that this young person is separated from society)
___ "Protection of the public"

D3) How important is each of the following in your determination of the sentence under the *Young Offenders Act* for an administration of justice offence such as "failure to appear" or "failure to comply with a disposition"?
Please use a scale where 1= "Not at all important" and 5 = "very important."
___ Denunciation
___ General deterrence
___ Deterring this young person
___ Proportionality (handing down a sentence where the severity of the sentence reflects the seriousness of the offence)
___ Rehabilitating this young person
___ Incapacitation (ensuring that this young person is separated from society).
___ "Protection of the public"

D4) Please think back over the cases where you have imposed custody in the past year. For how many of these cases was each of the following a relevant factor (alone or in combination with other factors) in your decision to impose custody?

The seriousness of the offence required a custodial sentence.
___ All/Almost all ___ Most __ About half
___ A few ___ Almost none/None

The youth had an extensive criminal record.
___ All/Almost all ___ Most __ About half
___ A few ___ Almost none/None

The youth appeared to be likely to commit another offence.
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

The youth was in need of a program that was only available in custody.
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

The youth was "out of control" and needed a custodial sentence to break the current cycle of behaviour.
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

The youth's home (and/or parents) or living conditions were such that there was a need to get him or her into a more stable environment.
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

The probation officer had indicated that the youth was not appropriate for a non-custodial sentence.
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

The youth appeared not to be taking the court proceeding seriously.
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

The youth had successfully completed non-custodial sentences in the past but had clearly not learned from that experience and was continuing to commit offences.
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

The youth had failed to comply with at least one non-custodial sentence.
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

E1) In how many cases do you receive joint submissions from defence and crown counsel?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

E2) Think about the cases where you receive joint submissions. In how many of these cases are you satisfied with the joint submission?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

E3) Where there is not a joint submission, in how many cases do you find the submissions on sentences **from the defence** to be helpful to you in determining how to sentence the young person?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

E4) Where there is not a joint submission, in how many cases do you find the submissions on sentences **from the Crown** to be helpful to you in determining how to sentence the young person?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

E5) In how many of the cases where you have ordered a predisposition report have you found the report to be helpful?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None

E6) Think about the cases where you have ordered some form of **non-custodial** "rehabilitative program" (e.g., as part of a **probation order**). In how many of these cases are you confident that the rehabilitative program would be provided in a timely fashion?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know
___ I never order non-custodial "rehabilitative programs."

E7) Think about the cases where you have made a recommendation for some form of "rehabilitative program" as part of a **custodial disposition.** In how many of these cases were you confident that the rehabilitative program would be provided during the period of custody?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know
___ I never recommend "rehabilitative programs" as part of a custodial disposition.

E8) Are there any particular types of youth for whom you often find it particularly difficult to find an appropriate rehabilitative program?
___ No ___ Yes. If yes, please specify what type(s) of youth:

E9) Which of the following describe the manner in which you determine the length of a probation order? (Check all that apply)
___ It is more or less a standard length.
___ It depends on the seriousness of the offence.
___ It depends on how long it will take to connect the young person with services or other programs.
___ Other (please specify)

E10) Think about the cases in the past year where you have ordered a young person to perform community service. In how many of these cases <u>do you believe</u> the young person successfully completed the community service?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know

E11) Are you routinely informed about whether a youth successfully completed the community service?
____ Yes ____ No

E12) Would you be interested in being informed of whether youths successfully complete their community service?
___ Definitely yes ___ Probably yes
___ Probably not ___ Definitely not

F1) Generally speaking, do you believe that you have an adequate range of choices of sanctions (under 20(1) of the YOA) available to you at sentencing? (If you sit in more than one community, please indicate your answer for the court in the <u>largest community</u> in which you hear cases):
___ Definitely yes ___ Probably yes
___ Probably not ___ Definitely not

F1a) If you sit in more than one community, do you have an adequate range of choices of sanctions available to you in the smallest community in which you hear cases? (Ignore this question if you normally hear youth court cases in only one community.)
___ Definitely yes ___ Probably yes
___ Probably not ___ Definitely not

F2) For how many of those cases where you felt a mental health assessment could be useful were you able to get one in a timely fashion?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ I have never seen the need for having a mental health assessment be done on a young person.

F3) How helpful do you find decisions of your provincial Court of Appeal to be when deciding what sentence to hand down in a particular case?
___ Very helpful ___ Somewhat helpful
___ Rarely helpful ___ Never helpful

G1) How useful do you believe sentences of probation to be in controlling the behaviour of young persons?
___ Very useful ___ Somewhat useful
___ Only occasionally useful ___ Never useful
___ Don't know

G2) How useful do you believe a sentence of probation to be in connecting a youth with programs and services relevant to the youth's rehabilitation?
___ Very useful ___ Somewhat useful
___ Only occasionally useful ___ Never useful
___ Don't know

G3) In your jurisdiction, when you assign a community service order to a young person, do you know what kind of work the youth will actually be assigned to do? (If you sit in more than one community, please indicate your answer for the court in the **largest** community in which you hear cases):
___ Always/Almost always ___ Most of the time
___ About half the time ___ Occasionally
___ Almost never ___ Never

G3a) If you sit in more than one community, do you know what kind of work the youth will actually be assigned to in the **smallest** community in which you hear cases? (Ignore this question if you normally hear youth court cases in only one community.)
___ Always/Almost always ___ Most of the time
___ About half the time ___ Occasionally
___ Almost never ___ Never

G4) Are there young people to whom you would like to assign community service but cannot because there are not adequate or appropriate jobs for the youth?
___ Yes, frequently ___ Yes, occasionally
___ Yes, rarely ___ No

G5) Do you ever ask youths themselves to ensure that victims are informed (directly or indirectly) that a community sanction which was imposed has been completed?
___ Always/Almost always ___ Most of the time
___ About half the time ___ Occasionally
___ Almost never ___ Never

G6) There appear to be many relatively short sentences of custody under the *YOA*. What are the main reasons that *you* hand down relatively short sentences (e.g., 60 days or less) to a youth? Please indicate how important each of the following is in your decisions to impose custodial sentences of 60 days or less.
Please use a scale where 1= "Not at all important" and 5 = "very important."
___ The seriousness of the offence required a custodial sentence.
___ No other sanctions available in the community.
___Probation officer indicated that non-custodial sanctions are not appropriate for this offender.
___ There were social conditions in the youth's life (or the youth's family) that made it sensible to get the young person into a new environment.
___ The youth would be deterred from offending in the future by a "short sharp shock."
___ A short custodial sentence might deter other young people.
___ The youth had been given non-custodial sentences in the past and did not stop offending.
___ The youth has spent a substantial amount of time in pre-trial detention.
___ A longer custodial sentence would interfere with productive activities (e.g., school, work).
___ Other reasons (please specify).

H1) For how many of the youth whom you deal with do you think that the overall experience in youth court has a beneficial impact on the youth?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know

I1) Think about the custodial sentences of 6 months or more that you have handed down. In how many of these cases would you estimate that there has been a review of the custodial sentence?
___ All/Almost all ___ Most ___ About half
___ A few ___ Almost none/None
___ Don't know

I2) In some jurisdictions, it is presumed that the youth court judge who sentences an offender will do the review if one is required. How important do you think it is that the same judge who sentenced a young offender should normally do the review?
___ Very important ___ Important
___ Not very important ___ Not at all important
___ It would be better for an independent judge to do the review

I3) How many hearings would you estimate you have conducted in the past <u>five years</u> relating to the possibility of transferring a youth to adult court? (Do not count cases where the transfer is by consent of both parties.)
_____ (number)

I4) In approximately how many of these cases was the youth actually transferred to adult court?
_____ (number)

J1) Is there a youth justice committee associated with your court? [If you sit in more than one community, please indicate your answers to this set of questions (Questions J1, J1a, J1b) for the court in the **largest** community in which you hear cases]:
___ Yes ___ No ___ I don't know

J1a) If yes, what functions does it serve? (Please check those that apply)
___ Assisting with alternative measures and other pre-trial options
___ Providing information to the community about youth justice issues
___ Helping to develop non-custodial sentencing options
___ Assisting in "conferences" involving offenders and victims
___ Providing judges with information about non-custodial options that are available
___ Other (please specify)
___ It is not clear to me what purpose it serves

J1b) If there is a youth justice committee associated with your court, how useful do you find it to be?
___ Very useful ___ Somewhat useful
___ Slightly useful ___ Not at all useful

J2) If you sit in more than one community, is there a youth justice committee associated with your court in the **smallest** community in which you hear cases? (Ignore this question and Questions J2a and J2b if you normally hear youth court cases in only one community.)
___ Yes ___ No ___ I don't know

J2a) If yes, what functions does it serve? (Please check those that apply)
___ Assisting with alternative measures and other pre-trial options
___ Providing information to the community about youth justice issues
___ Helping to develop non-custodial sentencing options
___ Assisting in "conferences" involving offenders and victims
___ Providing judges with information about non-custodial options that are available
___ Other (please specify)
___ It is not clear to me what purpose it serves

J2b) If there is a youth justice committee associated with this court, how useful do you find it to be?
___ Very useful ___ Somewhat useful
___ Slightly useful ___ Not at all useful

K1) Do crown attorneys (or others) in court ever mention "public opinion" or public views about what should happen to a young person?
___ Yes, frequently ___ Yes, occasionally
___ Yes, but only rarely ___ No, never

K2) Do you ever consider the impact that a decision (e.g., a sentencing decision) might have on public opinion?
___ Yes, frequently ___ Yes, occasionally
___ Yes, but only rarely ___ No, never

K3) Is the "prevalence" of a particular type of offence in the community ever raised by the Crown (or others) in your court?
___ Yes, frequently ___ Yes, occasionally
___ Yes, but only rarely ___ No, never

K4) When sentencing a young person, how often do you take into account the prevalence of youth crime (or the prevalence of a particular type of youth crime) in the community?
___ Always/Almost always ___ Usually
___ Occasionally ___ Almost never
___ Never

L1) Do you think youth crime is increasing, decreasing, or staying about the same <u>in the community where you are a judge</u>? (If you sit in more than one community, please indicate your answer for the <u>largest</u> community in which you hear cases.)
___ Increasing ___ Staying about the same
___ Decreasing ___ Don't know

L1a) If you sit in more than one community, do you think youth crime is increasing, decreasing, or staying about the same in the <u>smallest</u> community in which you hear cases? (Ignore this question if you normally hear youth court cases in only one community.)
___ Increasing ___ Staying about the same
___ Decreasing ___ Don't know

L2) Compared to 5 years ago, are you now seeing more, fewer, or about the same number of <u>serious</u> cases?
___ More now ____ About the same
___ Fewer now
___ Did not hear YOA cases 5 years ago

L3) Compared to 5 years ago, are you seeing more, fewer, or about the same number of <u>minor</u> cases?
___ More now ____ About the same
___ Fewer now
___ Did not hear YOA cases 5 years ago

<u>Background information</u>

Province:

Gender: ___ Male ___ Female

Year you became a judge: _____

Year you first heard youth court cases: _____

Do you also hear adult criminal cases as part of your regular work?
___ Yes ___ No

Approximately how many days a month do you hear *Young Offenders Act* cases?
____ days
____ YOA cases are mixed in with adult criminal cases in my normal docket. I would typically hear at least one YOA case on _____ (specify number) days in a month.

How large a community do you regularly sit in (check **all** that apply):
___ Large metropolitan area (population 500,000+)
___ City/metropolitan area with a population of approximately 250,000 – 499,999
___ City/metropolitan area with a population of approximately 100,000 – 249,999
___ Smaller centre (population 25,000 to 99,999)
___ Smaller community (population under 25,000)
___ Aboriginal (First Nations)/Inuit Community or Reserve

I would appreciate any comments you might have about the issues raised in this questionnaire.
If you have any questions, please contact me. Completed questionnaires should be returned to me:
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