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**COMMUNITY ALTERNATIVES AND YOUTH JUSTICE:
NEEDS, INTERESTS, AND OBSTACLES**

by

KIM SCHRADER, B.A. (Hons.)

**A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of
Master of Arts**

Department of Law

**Carleton University
Ottawa, Ontario
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Community Alternatives and Youth Justice: Needs, Interests, and Obstacles

**submitted by Kim Schrader, B.A. (Hons.) St. Mary's University
in partial fulfilment of the requirements for
the degree of Master of Arts**

A handwritten signature in black ink, appearing to read "Julia B. Smith", written over a horizontal line.

Thesis Supervisor

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Chair, Department of Law

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September 23, 1994**

ABSTRACT

Ten years after its inception, the Young Offenders Act (YOA) continues to be reviewed extensively. The legislation attempts to balance the goals of societal protection consistent with a law and order approach, with the needs of youth, a consideration of the welfare approach. Considerable research exists which assesses the extent to which the crime control model has been prevalent. This thesis provides an examination of Section 4, of the YOA (alternative measures) as an indicator of measures aimed at meeting youth needs. The findings indicate that alternative measures programs exist, however, the future for the programs is uncertain due to the adoption of a law and order approach consistent with changes in the role of the state.

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CHAPTER 1

Introduction:

The Canadian youth justice system has been subjected to and continues to endure much criticism over its treatment of young people. The Juvenile Delinquents Act (JDA) of 1908 and the Young Offenders Act (YOA) of 1984, have formed the basis of the youth justice system in Canada. Historical events¹ have affected the implementation and interpretation of the underlying philosophy of both pieces of legislation. The implementation of the YOA in particular has resulted in ongoing debates about the nature of juvenile justice in Canada. Ten years after its inception, critics continue to disagree about the legislation.

Much of the controversy surrounding youth justice in Canada can be expressed in terms of a desire to devise a strategy which recognizes the need to protect society from illegal behaviour, while simultaneously respecting the special needs of young people who come in conflict with the law. Within the area of youth justice, there are differing opinions as to what would constitute an appropriate consequence for young people who come in conflict with the law; an important objective being to determine a meaningful consequence for illegal behaviour that respects the ideal of "least possible interference" in the young person's life. This objective must be recognized while simultaneously respecting

¹With respect to the implementation of the JDA, there have been economic and social influences resulting from the Industrial Revolution. In addition, the role of social reformers in the creation of child welfare legislation was pivotal. The changes introduced with the legislation of the YOA, reflected the short-comings of the previous youth justice legislation.

the concerns of the victim and society as a whole. It requires a commitment to recognizing the need for public protection and safety, while at the same time, respecting the rights and needs of young people.

The State and Children in Canadian History:

Considerable insight into these issues can be gained by reviewing perceptions of childhood in Canadian history, and in particular, in the relationship between the state and youth in Canada prior to the development of a separate system of justice for youth. Children have been especially dependent on and vulnerable to state intervention. Within the context of child welfare and juvenile justice, children historically, have been relegated to an inferior or junior status, in relation to both their parents and state (welfare and juvenile justice) officials. The degree of state intervention as it pertains to children, has been affected by the combination of welfare and crime control objectives under juvenile justice policy. Over the relatively short history of the youth welfare and justice systems in Canada, children have experienced both the positive and negative consequences of state intervention. While advances have been made in the areas of child protection and welfare legislation, children have also been defined by adults as dependents, delinquents or as victims of abuse or neglect, as necessary to justify various degrees and types of state intervention. The children involved were rarely consulted, thus making them objects of intervention rather than active participants.

Elements of youth criminality and delinquency were difficult to separate

from other social problems such as youth poverty, that existed at the turn of the century. Often the social conditions that lead to the involvement in criminal activity were defined as either elements of or even more significantly, as catalysts of the problem of delinquency. The role that moral reformers played in the development of "remedies" to the problem of youth delinquency requires careful examination to provide an accurate view of type of intervention that was characteristic of the changes taking place during this time period. The identification of juvenile delinquency as a social problem is difficult to isolate from the different types of state intervention that were occurring at the turn of the century. The involvement of the state in restricting the participation of youth in the labour force, essentially worked to create and solidify the concept of juvenile delinquency. While various forms of intervention characterized the nature of the relationship between the state and youth, the state's commitment to social programs at that time was considered part of a progressive reform movement, intended to improve social conditions and provide "equal life chances" (Marshall 1973).

Historically, the role of the state in the development of social policy has reflected a pattern of increasing intervention into civil society. For example, as the twentieth century progressed, the state became increasingly involved in education, employment and health. The relationship between the state and civil society is particularly evident in the treatment of youth. The role of the state in regulating the lives of children can be seen in the legislation affecting the areas of work, school, protection and welfare. In these areas, state activity has resulted in laws which

permit extensive intervention into the lives of young people. Unlike their adult counterparts, children and youth have been regarded as dependents subject to the protection of the state.

The paradoxical nature of the welfare state is obvious here. While the state is involved in the creation of programs/social policies which are aimed at reducing social inequalities, more involvement by the state in the lives of individuals is a requirement. It is only in hindsight that it is possible to evaluate the actions of the state as highly interventionist. Conflicting ideas about the nature and role of the state, generally revolve around notions of individual freedom and responsibility. These ideas parallel issues raised in the implementation of past and recent juvenile justice legislation. It is to an examination of this dynamic that we now turn.

The Juvenile Delinquents Act:

The nature of the relationship between youth and the state can be clearly seen in the events leading up to the implementation of the JDA. The creation of a separate justice system for youth and the approach to youth by the state resulting from this legislation created a legacy which is still affecting the state's response to young people. The JDA epitomized a 'parens patriae' philosophy which emphasized the dependent status of children, and indicated that the state was to approximate the role of a parent in providing help and guidance (Schwartz 1991). The legislation of the JDA exemplifies the manner in which the state

treated children and youth. The JDA is clearly legislation which existed under a welfare or needs-oriented model (Coffin 1991; West 1984, 1991; Bala 1988)..

The JDA came under scrutiny in the 1960s and 1970s. The debates surrounding the legislation provided the rationale for changes to be made to address concerns about the nature of the JDA. The lack of due process and youth rights, along with increased individual responsibility and accountability, were primary concerns that became the focus for the new legislation of the YOA (Griffiths and Verdun-Jones 1989). These debates corresponded with more general concerns about the nature and role of the state which arose at the time. Dramatic changes in the youth justice system occurred as a result of the implementation of the YOA. Given the parallels that exist between developments in the welfare state and the creation of juvenile justice policy at the turn of the century, an important question to consider is: Do recent changes in youth justice legislation reflect developments in the welfare state? To gain insight on this question, it is necessary to examine one of the most crucial circumstances affecting the role of the state in the twentieth century, the "fiscal crisis".

The Fiscal Crisis:

An analysis of recent changes affecting the role of the state, beginning with the "fiscal crisis" of the state in the early 1970s, provided the rationale for a reconsideration of the state's role in civil society. The 'fiscal crisis' of the state (O'Connor 1973) was the term which O'Connor applied to the situation that arose

as a result of the state's inability to continue to meet demands for social welfare expenditure. As the welfare state expanded, the cost of maintaining social welfare programs increased accordingly. It became increasingly difficult for the state in most Western nations to meet the level of demands placed on it. These circumstances required a change in the nature and role of the state.

Given the nature of the crisis, and the growing inability of the state to meet its obligations, the state's role could be affected in two ways. The first of these two major remedies that were considered, advocated a return to a free market economy with emphasis placed on individual responsibility. The second major proposal emphasized a return to the Keynesian strategy of stimulating economic activity through high levels of state expenditure. An endorsement or commitment to state involvement would indicate a continued expansion of the state's role in the provision of social welfare. This remedy would require an active role on the part of the state in fulfilling social needs (Hart, Caputo and Perry 1991, 1992).

At the beginning of the twentieth century, state intervention was accepted because the welfare state was seen as an apparatus for promoting social justice. Beginning in the 1960s, critics began to question the role of the state in two ways. Firstly, there was criticism concerning the amount of state intervention into the lives of individuals (Austin and Krisberg 1981; Cohen 1985, 1987). This included the criticisms of the consequences of increasing bureaucratization, clientelization and regulation. These types of concerns are part of a critique of the modern welfare state (Habermas 1989; Preuss 1988; Ewald 1989). Secondly, criticisms

existed which centred on the need to return to individual responsibility and accountability and a free market economy (Hatt, Caputo and Perry 1991, 1992).

Changes in the role of the state are exemplified in the area of youth justice reform. An examination of the events leading up to the creation of a separate system of youth justice demonstrates that the state took an active role in regulating the lives of children early this century. This is reflected in various types of state intervention aimed at youth needs fulfilment. The question still remains, as to whether or not the legislation of the YOA is consistent with recent changes in the nature and role of the state.

The Young Offenders Act/Theoretical Models:

The YOA has attempted to remedy some of the problems associated with the JDA. This is reflected in its combining the various goals including ensuring procedural safeguards, acknowledging youths' rights, acknowledging the "special needs" of young people, ensuring the protection of society, while simultaneously recognizing the role of the community in 'preventing' and 'controlling' crime (Reid-MacNevan 1991; 19).

Susan Reid-MacNevan (1991) identifies the models that are represented in the current legislation as follows: 1) crime control, 2) welfare, 3) justice and 4) community-change. The crime control model espouses the idea that society requires increased protection against criminal activity. According to proponents of this model, young persons who commit offenses must be held accountable for their

actions. The idea that young people require guidance, assistance and recognition of their special needs is the basis of the welfare model. This model extends the philosophy of the JDA. The justice model emphasizes due process in the youth justice system and advocates upholding the rights of youth in conflict with the law. The justice model respects the premise of minimal interference while emphasizing the rights of individuals. In the community-change model, emphasis is placed on the role of the community in achieving a more equitable society through long-term societal change (Reid-MacNevan 1991).

The YOA contains elements of all four models. This has serious implications for young offenders. The Act does not provide guidance as to which objective is to take priority. The lack of priority in its principles, contributes to the lack of clarity surrounding the implementation of the YOA and leaves it open to criticism (Bala 1988).

The various goals apparent in the Declaration of Principles of the YOA coexist on a theoretical level by claiming that the legislation is based on a balance between youth needs and the protection of society (Caputo 1987, 1991). These two objectives represent a crucial part of the legislation. While the rights of the individual must be respected, the remnants of the welfare state approach means that the fulfilment of individual needs must be considered. The idea of a balance between the needs of youth and the protection of society formed the basis of the compromise behind the adoption of the YOA. As noted above, this balance is laid out in the Declaration of Principles, the guiding philosophy of the Act (See

Appendix A). The degree to which this balance is achieved, however, remains a crucial issue!

The development of the YOA, like the JDA, involved careful consideration of the "competing interests of youth, the larger society and the professionals entrusted to 'care' for and 'control' youth who came under their jurisdiction" (Reid-MacNevan 1991; 19). As Trepanier (1989), Bala (1988) and Bala and Kirvan (1991) point out, the needs of youth and protecting society will always have potentially conflicting objectives when contained within juvenile justice policy. These conflicting objectives are evident in the philosophies underlying the welfare and crime control models, respectively. The crime control model is seen as consistent with the protection of society, whereas the welfare model emphasizes the special needs of youth (Trepanier 1989; 37). Young people are considered to have special needs in the area of criminal justice, in the sense that they may not understand the consequences of their actions. Proponents of a child welfare model are concerned with upholding provisions which consider the needs of the youth paramount. The crime control model, conversely, requires the individual to accept responsibility regardless of circumstances such as age. These issues are the cause of much debate, and exist as diametrically opposed theoretical concerns in the area of youth justice philosophy.

Balance or Conflict?

Upon closer examination of the guiding principles of the YOA, it becomes

clear that the objectives contain elements of the four models of juvenile justice which are in conflict. While the YOA proposes to take into consideration the needs of the young person, it is usually only done so, provided it is "not inconsistent with the protection of society" (See Section 3(1)b, d.). This lack of priority in the principles of the act is cause for concern. Nevertheless, it was precisely because of the ambiguity, and flexibility of the guiding principles of the YOA, that the legislation was accepted.

There was something in the legislation for everyone; the provision for accountability measures along with the demand for increased societal protection, corresponded with the concerns of the law and order lobby. The child welfare lobby supported the provision of measures advocating the recognition of childrens' needs and the child's reduced capacity to realize the consequences of his/her actions. The civil libertarian lobby pushed for the acknowledgement of childrens' rights and due process, and minimal interference in the youth justice system, given the criticisms of the former legislation in this respect. And finally, the new legislation advocated the inclusion of the community and parents in matters of youth justice. The ambiguity of the YOA meant that the legislation could be interpreted to reflect the different lobby groups interests. The range that can be derived from the Declaration of Principles in the YOA makes the possibility of a balance questionable. What has happened upon the Act's implementation requires examination.

Crime Control Dominance:

Some researchers have speculated that what we are witnessing with the implementation of the YOA, is not a "balance", but the dominance of the crime control model (Havemann 1986, 1989; Reid-MacNevan 1991; Caputo 1987, 1991). Despite the efforts made to ensure that youths' special needs are taken into account in justice processing, there is evidence which suggests that the YOA is more punitive than the JDA, as reflected in increasing custodial dispositions (Doob and Meen 1993, Markwart and Corrado 1989). The use of incarceration for young people as a consequence for criminal behaviour exists as an indicator of the crime control model, in that it represents a commitment to the protection of society. An increase in the use of incarceration as a means of punishment in this sense, indicates the dominance of the crime control or law and order model. If the needs of youth are considered above all else, theoretically, this would represent the welfare approach. With the implementation of the YOA, and with the increased emphasis on individual responsibility and accountability, the nature of the balance is leaning toward the side of crime control.

The nature of the balance between the needs of youth and the protection of society exists on a theoretical level, and in this sense may be considered in light of debates around the role of the state. The role the state assumes with regard to juvenile justice policy may represent a commitment to the recognition of youth needs, and according to the recent legislation, it does so, by balancing the special needs of youth with the perhaps greater public interest of safe communities. Just

how stable is the balance? Does the move to more crime control-oriented state policy reflect developments in the welfare state?

When examining the theoretical debates which arise out of the current youth justice legislation there are similarities which exist that parallel developments in the welfare state. While the JDA was concerned with the needs of youth and took an interventionist stance characteristic of the welfare model, it has been suggested that the YOA, due to its embracing of the justice model reflects a law and order state. This is because the justice model exists on the same level as the crime control model, in that it is both exclusionary and punishment-oriented. An elaboration of the four primary theoretical models will be provided in Chapter 3.

Paul Havemann (1986) describes the justice model as an extension of the crime control model which while it reflects liberal notions, is more accurately perceived of as rhetoric covering more neo-conservative tendencies. The nature of the guiding philosophy of the YOA, combined with the evidence which points to the adoption of a law and order approach to youth justice has been explained by some observers in terms of an ideological shift to the "new-right" or neo-conservatism².

The circumstances which arose as a result of the fiscal crisis of the state,

²Neo-conservatism is defined by Hatt, Caputo and Perry (1992; p. 258) as a "political philosophy and practice characterized by monetarist economic and fiscal policies, an emphasis on traditional moral values associated with fundamentalist religious beliefs, the sanctity of the family, and individual responsibility. This is reflected in a call for "less" government, a dismantling of the Keynesian welfare state policies and a reversion to a free market economy".

according to this analysis, have influenced the nature and role of the state. The idea of increased responsibility in the YOA corresponds with the goals that are consistent with a law and order approach espoused by neo-conservatists. The pressure to adopt measures which reflect individual responsibility have resulted in an increased use of custodial dispositions under the YOA (Havemann 1987, 1989; Markwart and Corrado 1989; Doob and Meen 1993).

Although research on the YOA has shown an increased reliance on custodial dispositions (Markwart and Corrado 1989; Doob and Meen 1993), questions remain about whether, or to what extent this represents a move towards a crime control or law and order approach. Reid-MacNevan (1991; 32) suggests that in the day-to-day implementation of the YOA, there will be an increased reliance on the crime control model, that

formal court proceedings, fines, probation and custodial dispositions will take precedence over more welfare-oriented proceedings.

This thesis assesses the implementation of Section 4 of the YOA, to determine the extent to which the legislation has balanced the often competing interests of society, with the special needs of youth. Section 4 allows for the use of alternative measures, based in the community as a means for meeting youth needs. The nature and extent of alternative measures dispositions will provide some indication whether the sought for balance in the YOA has been achieved.

Despite the implementation of new legislation to address the shortcomings of the JDA, the Young Offenders Act has been criticized on several levels. The

YOA has prompted a re-emergence of the theoretical issues of the status of "parens patriae" or welfare state intervention characteristic of the treatment of youth under the JDA. These concerns are reflected in the more specific issues of the inferior status of youth in relation to adults, as well as the systematic maintenance of youth's dependent status. Extensive state intervention which characterized the treatment of youth under the JDA is connected to the issues of youth dependency and inferiority, for youth were denied certain adult rights under this legislation.

Youth Needs

Theoretically, the YOA is based on a balance between the protection of society and the recognition of youth needs. This thesis assesses the nature of this balance in relation to broader developments in the welfare state. Evidence about the predominance of the crime control model in the YOA is available (Hä amann 1987, 1989; Caputo 1987, 1991). There is considerable statistical information for example, that shows that incarceration rates for young persons are higher for that they were with the JDA. This is an indication of measures aimed at the protection of society (Markwart and Corrado 1989; Doob and Meen 1993). Little research has examined the extent to which the YOA has been used to meet youth needs. There has been some research conducted in the area of mental health treatment which exists as one type of need fulfilment (See Leschied et. al. 1991; 173-229). This type of need satisfaction however, raises the critical issues

of consent to treatment and the rights of the individual. To conduct psychiatric evaluations which may uncover a young person's social history related to their involvement in criminal activity, consent must be granted by the young person. Alternative measures programs conversely, reflect the goals of minimal interference with individual freedom and the rights of the young person.

Alternative Measures:

There are other possibilities that exist within the YOA, which provide an opportunity to meet the needs of young people. Section 4 of the YOA for example, provides for the implementation of alternative measures, or programs that respect the principles of community involvement and least interference. Section (d) of the Declaration of Principles states the following:

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

Section 4 (1) of the YOA describes the conditions necessary for a youth to be considered for alternative measures:

(1) Alternative measures may be used to deal with a young person alleged to have committed an offence instead of judicial proceedings under this Act only if

(a) the measures are part of a program of alternative measures authorized by the Attorney General or his delegate or authorized by a person or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;

(b) the person who is considering whether to use such measures is satisfied that they would be appropriate, having regard to the needs of the young person and the interests of society;

(c)the young person, having been informed of the alternative measures, fully and freely consents to participate therein;

(d)the young person has, before consenting to participate in the alternative measures, been advised of his right to be represented by counsel and been given a reasonable opportunity to consult with counsel;

(e)the young person accepts responsibility for the act or omission that forms the basis of the offence that he is alleged to have committed;

(f)there is, in the opinion of the Attorney General or his agent, sufficient evidence to proceed with the prosecution of the offence; and

(g)the prosecution of the offence is not in any way barred at law.

These two sections of the Declaration of Principles combine to form the basis for an examination of programs aimed at fulfilling the needs side of the balance that exists in the YOA. Alternative measures programs, in particular, exist as an example of a response that is community-based and intended to meet the needs of youth. Alternative measures programs exist as one option available when youth come in conflict with the law. At the opposite end of the spectrum are custodial dispositions. An examination of alternative measures programs is crucial since it allows us to examine the extent to which the youth justice system includes measures aimed at needs. One purpose of this analysis is to provide an assessment of the use of alternative measures programs within the Canadian youth justice system. In addition, the research allows an analysis to be undertaken of whether juvenile justice practices reflect trends in the welfare state.

The attempt made to balance the competing interests of society with the needs of youth within the legislation of the YOA has lead to much speculation

about the nature of the state in recent years. The implementation of alternative measures may reflect an extension of the welfare model associated with the JDA, and genuinely address the needs of youth and the community. On the other hand, what we may be witnessing is the rise of a law and order approach to youth justice, which is indicative of a decline in the availability of programs aimed at need fulfilment. This thesis examines the implementation of alternative measures programs nationally, in light of the debates about the nature and role of the state.

Organization of the Thesis:

In **Chapter 2**, the role and nature of the state will be discussed, including the increased presence of the state in civil society. In order to demonstrate the intrusive nature of the state in the treatment of children, previous legislation enacted which specifically affected the lives of children is examined. This includes an examination of the JDA as an exemplar of the type of state intervention children were subjected to during the late nineteenth and early twentieth century. The chapter concludes with an examination of the current theoretical debates affecting the role of the state and the provision of social welfare.

In **Chapter 3**, the theoretical debates raised in Chapter 2, are examined in the context of the Canadian youth justice system. Current juvenile justice legislation, is assessed against the backdrop of developments in the welfare state. Chapter 3 will also provide a discussion of the implementation of the YOA and the development of a balance between the protection of society and the recognition

of youth needs. The criticisms that originated with the inception of the legislation, and continue to this day are also considered.

Chapter 4 outlines the method used in gathering information about the alternative measures programs that exist across Canada. The criteria which provide the foundation for an evaluation of whether current programs are a reflection of law and order concerns or measures directed at needs fulfilment are specified here.

An analysis of the data gathered as a result of interviews with key informants in each province is presented in **Chapter 5**. This chapter presents a summary of the findings of the evaluation of the programs available across Canada. A typology is developed to assist this analysis, and provides an overview of the types of programs and their main goal(s). A discussion of the provincial procedures with regard to alternative measures is provided in Appendix D. This presents a national perspective of the implementation of Section 4, of the YOA. Provincial concerns and commentary concerning the nature of the alternative measures programs, gathered through interviews are also included in this chapter.

In **Chapter 6**, the theoretical considerations concerning the role and nature of the state that informed this thesis are considered in relation to the implementation of the YOA. Possibilities for informal responses to young people based in the community are considered here. Possibilities for achieving substantive justice through participatory, communicative processes, or the search for the dialogical community are also explored.

CHAPTER 2: THE ROLE OF THE STATE

Historically, there have been two ideologies which have determined the degree of state involvement or action in both civil society and the economy. These are laissez-faire, and welfare liberalism (Christian and Campbell; 1990). Laissez-faire was the philosophy which endorsed minimal action on the part of the state to influence developments in either civil society or the economy. After the Depression of the 1930s, however, and the influence of Keynesian economics, we have witnessed a rise in welfare liberalism. Welfare liberalism reflects the belief that in order to maximize individual liberty, the state had to take an active role in all areas of civil society. This included politics, the economy, and the social sphere. While evident in the early part of this century, the idea of a welfare state developed and gained momentum after World War Two. The provision for family allowances (1944), was a visible expression of this new role for the state (Christian and Campbell 1990).

The early expression of the welfare state was visible in state initiatives characteristic of late nineteenth, and early twentieth century in Canada. The type of state intervention which occurred during this time represents the beginnings of the modern welfare state. The interventionist nature of the Canadian state is clearly exemplified in the legislation pertaining to the treatment of children.

Childhood in Canadian History: The Relationship Between the State and Children

The identification of youth as a social problem in Canada, has a relatively concise history with clearly traceable roots. It is necessary to examine the nature of the status of youth in relation to the state from both a current and historical perspective in order to understand that in a youth's status, is the notion of "denied adulthood" (West 1991; Gaffield and West 1978). "Denied adulthood" indicates that children are attributed a subordinate position in society, which often appears in the form of "...institutionalized...legalized, oppression (that) is mystifyingly justified by claims to be in the interests of the oppressed" (Gaffield and West 1978; 11). The concept of "denied adulthood" implies a denial of the right to participate in matters that may be considered to be "adult" in nature. This is significant when considered in light of the type of treatment children have received historically. An examination of the response of the state to young people at the turn of the century, shows that youth were the focus of more forms of social control and surveillance.

The idea of childhood, as a period distinct and separate from adulthood, did not exist in medieval society. By the age of seven, children were well integrated into all aspects of adult life, including work and leisure activities. By today's standards this depicts a rather brief and sudden transition. The concept of childhood was not acknowledged as a distinct generational category (Aries 1962)³.

We should note that "...children were not considered to be especially vulnerable

³While Aries (1962) provides an account of childhood in European society, it is still applicable to this analysis given that our ancestors are traditionally of European descent.

or in need of special attention" (Aries 1962; 23).

Owen Carrigan's (1991) research pertaining to delinquency, crime and punishment in Canadian history describes the utility of children in Canadian pioneer society. According to Carrigan, it was not uncommon for a family to rely on the children for purely economic reasons, in contributing to the family's overall 'economy'. They participated in the making of cloth, in farming activities and were hired as servants. As Carrigan (1991) notes, "(b)ecause children were so important and numerous in pioneer society, they enjoyed a certain status and were given a considerable degree of freedom, especially as they grew older" (Carrigan 1991; 202). Due to their gaining adult 'status' at a relatively young age, they were subjected to the same treatment and consideration as adults before the law;

the law held them potentially accountable for their actions, and they were treated with the characteristic severity of traditional peasant society. In a political world where few had many rights, they were not noticeably inferior (Gaffield and West 1978; 4).

This is significant when compared with the inter-generational dichotomy that exists between adults and youth in today's society. It is also important to realize that before the JDA was enacted in 1908, the concept of 'juvenile delinquency' as it is known today, along with the legal connotations that accompany the term, was not recognized; crime committed by youth was simply that, crime committed by youth (West 1991). No distinction was made between offenses committed by youth and adult crimes. They were dealt with in the same manner (Carrigan 1991; 400-401).

Many factors contributed to the construction of 'juvenile delinquency' as a

social problem. The creation of the concept of juvenile delinquency, provided the rationale for the separate treatment of youth from adult criminals. The presence of many different 'types' of youth, including newly landed immigrants, natives, "problem" children of British and French aristocracy, combined to produce a situation where the potential for delinquent behaviour was accentuated. A public fear increased as a result of the "questionable" backgrounds of youth in general, for moral reformers linked the potential for delinquent behaviour with what was different or unknown. This concern focussed attention on all young persons as possible delinquents. The fear, which at times escalated to a "moral panic", did not reflect any tangible threat of involvement in illegal acts on the part of youth. As is suggested in the term "moral panic", the leaders in such a movement are usually "upstanding" citizens (Becker 1989). And it is precisely this reason why the situation of moral panic did affect and influence the treatment of youth.

Two developments that were greatly influenced by the motives and concerns of "moral entrepreneurs" (Becker 1989) were the implementation of compulsory school legislation and factory act legislation which occurred in the late 19th century. The primary catalyst affecting the nature of the relationships within families was the Industrial Revolution. Vast economic and social changes including urbanization, industrialization combined with immigration and the fear of 'dangerous classes' merged and generated a considerable array of concerns. Each event requires elaboration and discussion.

The Industrial Revolution (1750-1825) transformed the life of children and

their parents and greatly affected the structure of families and the relationships within them. A rapidly changing economy, increasingly dependent on a large labouring population, resulted in changes in the institution of the family (Griffiths and Verdun-Jones 1989). Both the youth and adults of working-class families "...joined...in the great immigration from country farms to city factories, sharing their new monetary independence and industrial drudgery" (West 1991; 25).

The independence allotted to youthful workers was not to last. Various interests acted to have legislation implemented to restrict and prevent children from entering the labour force. While business interests took advantage of the cheap labour children provided, labour leaders and reformers were concerned with the use of child labour. In 1884, child labour was restricted in Ontario under The Factory Act. While presenting a veneer of humanitarian concern, this legislation reflected adult concerns and interests related to job security. Restrictions placed on child labour contributed significantly to the creation of the "youth" problem.

As West (1991; 26) points out:

[D]uring early industrialization, children were grossly exploited for low wages, their partial humanitarian exclusion from the labour market had by the end of the nineteenth century made them an expendable surplus population, a nuisance about which something had to be done. Burgeoning slum areas, the enforced idleness resulting from the passage of anti-child-labour legislation,...and fears of impending social disorder through epidemics and street crime focused attention on the working-class youth.

Toward the end of the nineteenth century, increases in population, especially the arrival of immigrants lead to speculation about the backgrounds of youth in

Canada. There was a mixing of many 'types' of youth, immigrants, natives, problem children of French and British aristocracy, which had the effect of accentuating the potential for delinquent behaviour. This was of course purely speculative, and did not reflect any real threat of involvement in illegal acts on the part of youth. The social construction of delinquency was both convenient and advantageous for adults. It provided the justification for removing children from the workforce. However, it also contributed to the creation of a new criminal 'type' -- the delinquent.

Speculation about the backgrounds of pioneer youth prompted the emergence of compulsory school attendance legislation. This was seen as a method for dealing with the 'growing problem' of crime and delinquency among idle youths. Compulsory school attendance legislation was passed in Ontario in 1871. As Peikoff and Brickey (1991; 46) point out, "(m)ass education was promoted as a panacea on the grounds that criminality was directly connected to ignorance and illiteracy". Again, there was a combination of economic and philanthropic motives behind this legislation (West 1991; Valverde 1991). The school was seen as the perfect solution, as an institution that could not only educate but affect and socialize all children by teaching standard moral principles (Peikoff and Brickey 1991; 47-50).

When examining the past role of children and their contribution to the economy of the family, it is significant to realize that

the tension and mutual distrust between children and educational systems that are now characteristic of our society

developed from the attempt to re-assign children to a status of secondary importance in schools after the basis of their equal status had been undercut by a changed economic structure. The rights of children were traditionally founded on their valued labour contribution and, as this was undermined by the onset of industrial capitalism and the separation of place of work from the home, these rights were consequently dissipated (Gaffield and West 1978; 5).

These changes marked the time when "...`childhood' emerged as a separate status, and children were viewed as different from adults" (Griffiths and Verdun-Jones 1989; 5). The child's role took on a new meaning, one characterized by dependency; children who refused to be subordinate were more likely to be labelled as juvenile delinquents. If children acted as if they had rights or challenged authority structures, they were looked upon as delinquents.

At the beginning of the twentieth century, juvenile delinquency could include just about anything, ranging from idleness, to "incurability" (Sutherland 1976; 104). The terms used in categorizing criminal activity were not only vague in their definition but often overlapped, which contributed to the piecemeal justice afforded to youth. Children who behaved in an independent manner were targeted. Compulsory school attendance, combined with restrictions in the labour market, were the crucial elements necessary in making children dependent (Houston 1982).

Compulsory education, became the vehicle for exerting informal, indirect control over youth, not to mention in some cases increasing surveillance over entire families. A link was established between juvenile delinquency and the lack

of school attendance. Certain types of behaviour were said to be encouraged and precipitated by specific conditions existing in the social world. As a result the socialization function of the family came under great scrutiny to the point where "certain social characteristics came to be seen as 'risk factors' for future delinquency" (Griffiths and Verdun-Jones 1989; 501).

Possible risk factors leading to delinquent activity consisted of the type of family the youth came from, for example, broken homes, single-parent families, or homes of "vice" and poverty⁴. The social construction of juvenile delinquency strengthened the notion of the ideal family and the function it served in preserving the integrity of the family.

The middle class idea of the 'good' family, was imposed upon families of the late nineteenth century. Poverty-stricken, and/or single-parent families were seen as having children in need of supervision. Families and children such as these were said to be in "moral danger" (West 1991; 28). Children from urban sectors who had to work to support their working-class families were often categorized much like a juvenile delinquent by moral reformers. Behaviour that was considered deviant or nonconformist within the school environment became subject to additional constraints outside those imposed on adults and similarly outside those governing the school. New measures were created to deal specifically with these 'different', 'deviant', 'delinquent' youths.

The emergence of Industrial/Training Schools (1871 in Ontario) further

⁴See works by J.J. Kelso and the Annual Reports of Neglected and Abandoned Children, also House of Commons Debates...

reflected the idea that reformation through education was the key to solving the child-delinquency 'problem'. Youth who were deemed to be dependent, neglected, or abandoned were placed in Industrial Schools under the guise of humanitarianism. The Industrial Schools Act, amended in 1884, had the primary function of "... (teaching) neglected and destitute children useful skills (in addition to) the values of discipline and middle-class morality" (Peikoff and Brickey 1991; 50-51). These young people were however, subjected to very erratic and unsystematic 'justice', not just in how they came to be committed, but also concerning the length of stay within the institution.

Upon the parent's request, a child could be admitted to an Industrial School for an unspecified period of time. No provision was made to deal with the conditions for the youth's release (Griffiths and Verdun-Jones 1989; Bala and Kirvan 1991). In keeping with the motto of acting in the child's best interests, associated with the recently formed 'child-savers' movement, the child would be free to go, when the "...correctional officials felt that rehabilitation had been effected" (Bala and Kirvan 1991; 72). Children could become wards of the state up to age twenty-one, if it was felt that it was in their best interest. The idea that reformation through training schools was a more plausible concept than punishment became a popular one, and accomplished the goal of getting children off the streets (Morris and Giller 1980; 4).

Certain types of families (poor, immigrant, and unconventional single parents) were more readily identified as being susceptible to criminal activity, by

supposed "experts", or moral crusaders who, it could be argued, were more concerned with retaining, upholding and even regulating morality (Valverde 1991; West 1991). A 'moral dimension of reform' developed. It was not only street crime that was of concern, but any type of activity that was outside the moral norm became the business of the public (Houston 1982). For example, the concept of a truly 'moral' family was so ingrained in the opinions of the day, that recently formed

Children's Aid societies felt they were justified in coercing all parents to conform to their notions. When a family situation became so unsatisfactory that it could not be rehabilitated, they argued, the state was entirely justified in taking the children and placing them with another family (Sutherland 1976; 18).

The influence the development of Children's Aid Societies (CAS) had on the treatment of youth in late nineteenth, early twentieth century Canada was considerable. A detailed analysis of the work and attitudes of J.J. Kelso, the founder of the agency and key figure in the 'child-saving' movement, is crucial in order to better understand the social context in which juvenile delinquency was constructed. Entrenched in the aims and objectives of the Children's Aid Society are several themes, some of which are: rescue, protection, education, citizenship, morality, remedy, and prevention. In the opening comments of the Second Report of Work Under the Children's Protection Act 1894 (Ontario Legislative Assembly 1895; 1), J.J. Kelso states:

(t)hroughout the civilized world greater attention is given to-day than ever before to the protection and care of neglected

and dependent children, and Ontario is not behindhand in its efforts to ameliorate the condition of this important class. To insure good home influences and environment so that every boy and girl may grow up to honest and industrious citizenship is the great aim towards which this movement tends, and in his policy is to be found every principle of true humanity and economy. With the advance of civilization the tide of criminality had been steadily rising, and careful analysis has proved that much of the crime, pauperism and vice that curses the world has been due to the neglect of child-training in the homes of vice and drunkenness. The remedy for this baneful condition of things does not necessarily lie in the absolute removal of children from their natural protectors, but is largely to be found in a strong public sentiment insisting on the home life being elevated to a standard that will ensure for every child a fair chance to attain to self-reliant and self-respecting citizenship.

At first glance, these objectives appear mostly positive. After all, the establishment of an agency that is designed to look out for the interests of those children who are unable to do so themselves seems both practical and humanitarian. Although not quite as obvious, there are negative aspects of intervention contained within this philosophy of 'child-saving'. There are notions of upholding middle-class values, or maintaining the status quo, as well as promoting economic interests of creating and sustaining a valuable future workforce, contained in the above statements. These goals reflect concerns other than humanitarianism (Bullen 1991).

The statistics given on behalf of the CAS for the year 1894, give a breakdown of the types of complaints received from members of communities in Ontario. There were 20 complaints received for "cruelty", 15 for "deserted children" and 105 for "immoral home surroundings". The justification for such an

organization as the CAS, according to Kelso, stems from it's ability to "...protect and care for the neglected child,...(as well as) their influence in preventing neglect and bringing about **right social conditions**" to combat the 'problem' of delinquency (Eighteenth Annual Report of Neglected and Dependent Children 1911; 19) (emphasis added).

The words of J.J. Kelso of the CAS, reflect not only the common sentiment of reformers in justifying the need for such an organization, but also a distorted and exaggerated explanation of delinquency:

(s)mall children neglected grow into law breakers by the simplest rule of evolution. Then by a legal procedure that is beyond their comprehension, these young offenders are easily confirmed in wrong-doing, and become the habitual criminals that war against Society for the rest of their natural life. Should there not be at least the same complete organization for saving the neglected child that now exists for the arrest and imprisonment of the finished product (Sixteenth Annual Report of Neglected And Dependent Children of Ontario 1909; 19)!

Members of the CAS believed that by "...advocating and labouring for the emancipation of childhood from vice, ignorance, and injustice of every kind, many serious evils are averted and normal home life are maintained" (Sixteenth Annual Report of Neglected and Dependent Children of Ontario 1909; 19). These "serious evils" affecting "normal home life", despite humanitarian intention , reflect the middle-class morality of the reformers advocating such a report. A child's status as either abused or neglected was directly affected by and hinged upon this kind of subjective judgement. While the CAS was actively involved in the recognition

of youth needs, the potential negative consequences of intervention by the CAS, when unwarranted became increasingly possible.

This forms the context within which the notion of "parens patriae" was applied. It grew out of the social, economic and moral forces of the time. Parens patriae is a philosophy that insists that children are in need of protection. It assumes that children are immature and vulnerable and hence incapable of taking care of themselves. According to this approach, adults should act in the best interests of children and promote their welfare (Leon 1978; Morris and Giller 1980). This was particularly true for judges. As Morris and Giller note,

[W]hile the courts recognised the status of childhood as a legal phenomenon, the children concerned did not become legal subjects in their own right. They were merely the 'objects' of intervention. It was the judiciary rather than the child that was the arbiter of what was in the 'welfare of the child' (Morris and Giller 1980; 2).

The 'parens patriae' philosophy was directed haphazardly to addressing the quality of the child's life, but in reality reflected adult interests. This represents one interpretation of parens patriae, put forward by one group of researchers (See Gaffield and West 1978; Morris and Giller 1980; West 1991; Schwartz 1991). What was considered to be in the child's best interests was often re-directed toward settling a custody issue between parents rather than considering the possible abuse or neglect that the child endured in the familial relationship. The legal status of children was looked at as being one of dependence; by categorizing children as being dependent in both the "...need for protection and...control, the

law could place children in juridical no man's land subject to the intervention of others" (Morris and Giller 1980; 2-3).

The Children's Protection Act of 1893 encouraged an active role by Children's Aid Societies in determining those youth who were thought to be in a state of neglect, abuse or dependency. Any child who was fourteen years old or younger could be picked up by a Children's Aid Society worker if they were found in any of the following situation:

- (1)...begging...or thieving in any street, thoroughfare, tavern or place of public resort or sleeping at night in the open air;
 - (2)...wandering about at late hours and not having any home or settled place of abode, or proper guardianship;
 - (3)...associating or dwelling with a thief, drunkard or vagrant, or who by reason of the neglect or drunkenness or other vices of the parents is suffered to be growing up without salutary parental control and education, or in circumstance exposing such child to an idle and dissolute life;
 - (4)...(being) found in any house of ill-fame, or in company of a reputed prostitute;
 - (5)...(being) found destitute, being an orphan or having a surviving parent who is undergoing imprisonment for crime
- (Ontario Legislative Assembly, Neglected and Dependent Children of Ontario 1893; 5).

The fact that the family situation, or environment was deemed to be unhealthy, or unsuitable, by the 'child-savers'⁵ provided the justification for intervention by the state, regardless of what the child had done. And while any concerned community member could be part of the association of child-savers, the majority of leaders had prominent and affluent backgrounds. They were politicians, judges, and doctors (Valverde 1991). It was irrelevant to distinguish whether the child was

⁵Child-savers could be any self-appointed community member who was "concerned" about the "problems" of youth in their community.

a victim of abuse or neglect, or had actually done something illegal for "...the distinction between 'neglected' and 'criminal' in effect translated as 'potentially' vs. 'actually' criminal" (West 1991; 30).

Possible intervention by the state, parents, welfare agencies, and educational institutes was not uncommon due to the nature of children's dependent status. This left children open or susceptible to the watchful eyes of adults acting on behalf of youth who supposedly knew what was best for the youth involved. The ideas of 'parens patriae', acting in the best interests of the youth, and the dependent status of young persons, in general, provided the background for the establishment of a separate juvenile justice system, distinct from that of adults, and in a sense, "...legally entrenched the inferior status of the young" (West 1978; 6). The child-savers' crusade for reform allowed for speculation on the needs of youth, and presented the opportunity for these needs to be addressed differently than those of adults. The creation of youth courts allowed for and "...formulated the evolving subordinate position of children as needing separation from adults and adult-activities, made previous informal activities legal, and provided wide scope of enforcement" (West 1991; 32). In keeping with the theory of increased social control and regulation, it can be argued that the 'child-savers' fought for the establishment of a separate court to deal with youth crime, in order to "...impose sanctions on premature independence and behaviour unbecoming to youth" (Quoted in Sutherland 1976; 141).

Typical of the view held by reformers in the late 1800s, concerning the

'problem' of youth, was the idea that

(the delinquent) is a little stunted man already--he knows much and a great deal too much of what is called life--he can take care of his own immediate interests. He is self-reliant, he has so long directed and misdirected his own actions and has so little trust in those about him, he submits to no control and asks for no protection. He has consequently much to unlearn--he has to be turned again into a child" (Morris and Giller 1980; 4).

This depiction of the delinquent youth is related to the concept of "denied adulthood" and parallels the suggestion of Sutherland (1976; 141) who proposes that the Juvenile Delinquents Act (1908) had the indirect goal of "trying to make a 'child into what a child should be'".

The Juvenile Delinquents Act of 1908:

At the beginning of the twentieth century, the concept of a separate system of justice for children, was ingrained in the minds of the 'child-savers'; the combination of their interests and motives, along with the increasing concern with the escalation of crime in the country, provided a catalyst for the creation and implementation of the JDA (Griffiths and Verdun-Jones 1989; Morris and Giller 1980). There was a need for legislation that reflected the changing times. It was recognized that the adult/child distinction was no longer sufficient as the criterion that separated the capacity to commit an illegal act. The realization came that there was a transitional stage between the two spheres, that of adolescence.

Jean Trepanier (1991) provides a historical/discourse analysis of the

influential events and debates occurring prior to the implementation of the JDA. It can be argued that the JDA was endorsed and legalized by Members of Parliament as a result of the convergence of two concerns: identifying the causes of delinquency and the protection of youth. Trepanier systematically addresses what were seen as the causes of delinquency, as identified by those in Parliament. He then analyzes the strategies that were proposed by the Parliamentarians to minimize delinquent behaviour. Significantly, some of the ideas brought forward to the Parliamentarians were those of J.J. Kelso. Kelso's influence in the development of a strategy to combat the perceived rise in juvenile delinquency was irrefutable. The strategies for reducing delinquency included: criminalizing the actions (or lack of actions) of 'neglectful' parents, the development of probation, insisting on separate holding facilities for youth, and the renunciation of the principles of proportionate and determinant sentencing.

Kelso played a pivotal role in the development of a juvenile justice system which recognized the needs of youth. And while the system which ensued was intended to consider the "best interests of the youth", it began a legacy of welfare intervention which is still apparent today. In fact, the roots of the current dilemma over juvenile justice can be traced to the paternalistic approach found in the JDA. In this legislation, the interests of society are pitted against the needs of the youth.

Section 20 (5) of the JDA reflects the Parliamentarian's concern for simultaneously protecting the interests of youth and society. It says that "the action taken shall in every case, be that which the court is of the opinion is for the

child's own good and the best interests of the community require" (Juvenile Delinquents Act R.S.C. 160 Section 20 (5)). Consistent with the orientation of the child-saving movement, the JDA was "... founded upon a philosophy that emphasised the virtues of a 'child welfare' rather than a 'criminal' response to the deviant behaviour of children and youth" (Coffin 1991; 33). Section 38 of the Juvenile Delinquents Act provides a concise indication of the act's orientation. It states:

This act shall be liberally construed in order that its purposes may be carried out, namely, that the care and the custody and the discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected, misguided child, and one needing aid, encouragement, help and assistance.

That children are considered to be 'misguided' and 'misdirected', rather than criminal is significant, especially when combined with the words 'aid', 'help' and 'assistance'. Together, the concepts contained in Section 38 of the JDA support the notion that youth are incapable of acting in their own best interest, and are in need of protection. Equally problematic to the relegation of youth to a dependent status, is Section 17 (2) of the JDA which states the following:

No adjudication or other action of a juvenile court with respect to a child shall be quashed or set aside because of any informality or irregularity where it appeared that the disposition of the case was in the best interests of the child.

This section clearly demonstrates the potential for the abuse of a juvenile's rights.

What can be done "in the best interests of the child" can include just about anything, and can be relied upon to justify any absence of procedure in dealing with youth. In a sense, anything can be justified so long as it is done with the best interests of the child in mind. Obviously, young persons had few rights under the JDA. Crucial to the understanding of the problematic nature of the youth's status as one of dependency and subordination is recognizing that by denying youth an adult status in exchange for protection of their interests, the problems within the juvenile justice system are compounded. As Leon (1978; 36) states:

the imposition of a dependent status on children has meant that children have been denied, or have relinquished certain substantive rights and procedural safeguards in order to expedite their special treatment.

The dependent position allotted to youth permits certain benefits to be realized. For example, the inability to form criminal intent would diminish the child's responsibility for a serious crime. But along with the benefits, considerable drawbacks arise from this dependency. No distinction is made for those youth in need of protection. It is assumed all children need assistance, help or aid. Whether a child needs or requires protection, to what extent that protection is justified and who does the protection is glossed over, as if unimportant or irrelevant (Leon 1978).

This lack of due process in the legislation demonstrates the extent to which youth could be subjected to increased social control, regulation, and surveillance under the JDA. This can be seen in hindsight when examining the effect that both the Children's Protection Act and the Juvenile Delinquents Act had in relation to

youth in conflict with the law, as well as neglected, dependent, or abandoned children. These Acts legitimized the extension of powers of intervention to include children from different socio-economic, and ethnic backgrounds, including those who were in no real sense criminal.

The existence of status offenses (ie. truancy and curfew laws) under the JDA, were the source of much inequality, and epitomize the nature of the intervention and measures aimed at controlling youth. Young persons could be brought into the scope of the juvenile justice system for engaging in acts of "...sexual immorality or any similar form of vice" (Bala and Kirvan 1991; 72). The courts, in dealing with juveniles under the JDA, were characterized by highly irregular and unsystematic procedures. Judges and other court officials had access to evidence that would affect the lawfulness and impartiality of the offender's trial. Judges were permitted to utilize what was supposed to be confidential material about the youth before and during the hearing, which could be relied upon to establish guilt. This directly violates the "innocent until proven guilty" premise which provided the foundation of the adult justice system. It was possible for the prosecutor to prevent the defence from viewing or using information that could be beneficial to the case of their client. Courts for juveniles were not public and hence any objections to the absence of due process by the public would be impossible. Courts for juveniles, under the JDA, did not incorporate the due process rights of youths that are essential to justice and fairness before the law (West 1978). This meant that juveniles were susceptible

to "...administrative arbitrariness (which)...subsequently allowed much of [the JDA's] humanitarian potential to be undermined in its implementation" (West 1991; 33).

Various critics of the JDA pointed out its shortcomings in the absence of due process in juvenile justice. There was also an awareness that much of the JDA was undefined and unclear. This served to increase the control over youth. These issues were raised by several groups of reformers who called for changes in the existing juvenile justice legislation. The criticism of the JDA and its apparent inability to reduce delinquency created the conditions for changes to be made to Canada's juvenile justice system.

No substantial objections were made concerning the nature of the JDA until the 1960s. However, at this time, there was considerable speculation about the nature and the role of the state. An examination of legislation affecting the treatment of youth over the last century has shown that we have maintained a perception of youth as vulnerable and in constant need of protection. The negative consequences of the intentions of the child-savers, no matter how benevolent, can be seen as increasing the scope of enforcement and social control exercised over youth. In the following section these developments are examined against the backdrop of broader changes taking place in the nature and role of the state.

Crisis in the Welfare State:

The post World War Two era witnessed an increase in state intervention coinciding with the expansion of the modern welfare state. The adoption and maintenance of Keynesian economic strategies after World War Two were geared toward circumventing problems of unemployment or "depression conditions". This meant the state had an "...active role in the organization of employment and investment and in the provision of social welfare" (Brodie 1988; 221). The enlargement of the welfare state, including an increase in the role of the state, has lead to several developments.

When examining the events arising out of welfare state initiatives affecting social policy, it is becoming increasingly apparent that what we call the 'welfare state' is in a situation of crisis. What is becoming even more clear, however, is the types of crises the welfare state is in. Not only are there problems in terms of economics or the cost of maintaining the welfare state, another problem is emerging. This problem is expressed in terms of a paradox inherent in the logic of the welfare state (Preuss 1988).

In the first instance, the welfare state is considered to be an apparatus responsible for realizing the ideals of social justice and substantive equality; yet, as the welfare state expands, we have witnessed increasing bureaucratization, the creation of 'clients' who are not only subjected to expanded social control which has tended to cause increased dependence on the system (Preuss 1988; 155; Habermas 1989; Cohen 1985). And as the welfare state continues to evolve in

this manner, one point of view accounts for it by suggesting that there is a trend toward a neo-conservative or an exceptional state, reflected in the adoption of law and order politics (Havemann 1986; 225 Hatt, et. al 1991, 1992; Caputo 1991).

The recognition of extended and increased state control through welfare state initiatives represents a significant concern. This concern may be considered in relation to the fiscal crisis of the state, and the criticisms concerning the nature and role of the state in the provision of social welfare.

What is known as the "fiscal crisis" came to the forefront during the 1970's (O'Connor 1973). At the same time, as the cost of welfare state initiatives escalated, criticisms of the amount of state intervention into people's lives also began to emerge. While the programs that the state provided such as education, health and welfare were still very much in demand, the negative consequences of state involvement were problematic for many critics (Cohen 1985, 1987; Austin and Krisberg 1981; Habermas 1989; Preuss 1988; Handler 1987, 1990). State intervention can be both beneficial and have negative consequences for individuals. State funded welfare initiatives may be advocated because of their potential to redistribute income and power (Doern and Phidd 1983; 364). On the other hand, critics of state intervention note the tendency of such programs to increase dependency and further subject individuals to increased surveillance and social control (Cohen 1985; Austin and Krisberg 1981; Handler 1990).

The relationship between dependent individuals and the state is complicated by virtue of the fact that disadvantaged groups are excluded from participating in

the very organizations that, to some extent, exert control over their lives. Dependent people are "clientelized," or made to be the passive objects of intervention, rather than subjects, who are able to discuss and have input into the decision-making processes and programming of state organizations (Handler 1987; 1055). In order to circumvent negative consequences of excessive state intervention, critics of these types of initiatives have looked to the community for a solution.

The move to the community was a natural extension of ideas generated during 1960's and 1970's. During this period, a new ideal of 'empowerment' was envisioned, and groups of well-meaning reformers set out to devise programs that would help reduce state control over subordinate groups (Cohen 1985). Empowering groups, that is, giving them the resources to develop some sense of autonomy, and personal control over their lives, could potentially counter feelings of alienation, and powerlessness. The creation of programs which embraced the ideals of participation and empowerment, was part of an expansive plan to combat the social problems maintained by structural inequalities. Allowing all groups in society some input into decision-making processes, would help to equalize participation in the community (Austin and Krisberg 1981).

One social problem which has continued to pervade social policy development historically, is crime and delinquent behaviour. In the area of criminal justice, the concerns expressed by critics of state intervention were expressed as a series of destructuring movements. Some of these ideas included diversion,

decarceration, due process, decriminalization, deterrence, and just desserts (Austin and Krisberg 1981). The idea of diversion was basically a reaction against the unanticipated consequences of the welfare state. It represented an attempt to reduce the amount of state/social control exerted over individuals. The reaction consisted primarily of two groups: 1) due process/rights groups, proponents of the justice model, and 2) radical non-intervention groups concerned with the effects of labelling. Both left and right critics were basically in agreement that something had to be done. While some common ground existed, the reasons for their concern was quite different (Caputo; 1991)

Initiatives which advocated a removal of the state were part of a series of "destructuring movements", which consisted of various components. As Stanley Cohen (1985; 31) notes, there were several types of movements, each of which represented a movement away from a formalized institution or way of thought. According to Cohen (1985) there are four such movements. They include a shift away from 1. the state, 2. the expert, 3. the institution, and 4. the mind.

The shift away from the state was expressed in the adoption of various 'reform strategies' (Austin and Krisberg 1981), aimed at either removing or transferring state control to community agencies. The "buzz-words" associated with this movement were: decentralization, deformatization, decriminalization, diversion and non-intervention (Cohen 1985; 31).

The move away from the expert represented an attack on increasing professionalization and the proliferation of specialized knowledge bases, especially

those which involved the treatment of deviant behaviour. This movement therefore, called for a decrease in medicalization, and legalization including an assault on the psychiatric profession.

The third movement, the movement away from the institution was an initiative that represented a commitment to 'community control', and decarceration as opposed to incarceration in state institutions. This was coupled with the fourth and final movement the movement away from the mind, which indicated a "back to justice" mentality, and represented "...an impatience with ideologies of individualized treatment or rehabilitation based on psychological inner states models and a call to reverse the positivist victory and to focus instead on body rather than mind, on act, rather than actor" (Cohen 1985; p.31). It is not difficult to envision how these destructuring movements combined to generate a strategy which centred around community involvement as the solution to the oppressive objectives and ideologies of the former period.

In retrospect, the humanitarian ideals of the child-savers, as epitomized by state intervention under the JDA, are valuable and positive to the extent that they are designed to take the best interests of the child into account. However, much caution is needed to avoid the possible "unintended consequences" of increased state intervention and social control over youth, which could follow from even humanitarian positions (Cohen 1985). Programs aimed at reformation can often have unintended consequences. As Austin and Krisberg (1981) have noted, previous attempts have back-fired, making the criminal justice system not only

more control oriented, but also subjecting more groups of people to different kinds of control.

During the 1980's, there was much disillusionment with the deconstructing movement efforts away from formal institutions. It was realized that the programs were not working to empower people, but instead added new controls or transferred control to different agencies. In addition, concern was raised about the ability of dependent persons to engage in meaningful participation within their communities.

While it may be possible to encourage the active participation and dialogue of children in matters which impact on their lives, there will always be the problem of assessing or determining a child's ability to know what is in his/her best interest.

Some person, either the child's parent/guardian, or a state official, will always be required to interpret what are considered to be the needs of the youth, as we have seen in the JDA.

Despite the fractured nature of adult interests generally, most adults have the capacity to voice their concerns and lay claim to their rights as citizens. The concept of the "legal personality of groups" is applicable in this sense. Ewald (1989; 54) discusses the problems arising out of a group's inability to "act legally".

However, there are the problems

of the definition of the interests they are fitted to defend, the problem of their representivity, of their capacity to express the group's interests, and finally the problem of their normative power both over their members and over those they are held to represent (Ewald 1989; 54).

It is not difficult to see how these problems would be reflected in the legal personality of children. Not only do children have their interests defined for them, (as in the politics of need interpretation) (Fraser 1989) they must also grapple with the notion of reduced, or diminished capacity. Doyal and Gough (1991; 298) recognize this problem indirectly:

Individuals are not always the best judges of their own needs, either because of poor education and lack of relevant expertise or because their ability to differentiate between needs and wants has been distorted by a range of external influences.

What could be more true of children? Children may not always be able to assess what is in their best interest (and this is precisely what adults rely on to retain control). However, while there may be problems of **underdeveloped** capacity on the part of the youth in certain situations, this should not be used as a reason to exclude, entirely, a possible coalition addressing the interpretation of children's needs, involving children, for children. There is no reason why the interpretation of needs must continue to be adult-dominated or monological (Fraser 1989).

With the child-adult relationship, there is always a natural power advantage which is readily accepted and recognized. Trust is a major factor affecting this relationship, but how should we expect the power relationship to change when children break the law? It must be recognized that for the majority of youth who come into conflict with the law, it is only a phase. Social policy should not be driven solely on the basis of the perceived threat of escalating youth violence.

Another power relationship that affects the lives of young offenders is the

one between them and juvenile justice officials. This may reflect a situation where the client, that is the young person, is not participating voluntarily. How is it possible to increase choice? In a sense, these youth are in state institutions because they require help, in one form or another.

Organizations retain considerable power merely by the way they carry out their operations. For example, the kinds of information that are gathered as well as the manner in which it is obtained and processed can affect the range of alternatives that are available to the clients under an agency's control. Furthermore, goals are dictated to clients by the agency since the agency is in control of key resources (Handler 1990). What complicates the analysis further, is that there are essentially two clients of the criminal justice system, the actual offender and society. Trying to satisfy the interests of both groups is very difficult. Furthermore, while organizational goals revolve around the interests of the organization, the offenders and the public, they are determined by pre-defined objectives set on the organization "maximizing its own resources while minimizing costs" (Handler 1990; 29).

Handler's discussion of the "moral component of agencies" is especially significant with respect to young offenders, and neglected or abused children from so-called "dysfunctional" families, as the clients to which certain services are to be rendered. Handler (1987; 1053) comments:

The organization's pattern of intervention is crucially shaped by the staff's moral evaluation of the client.

Intervention has often been justified on humanitarian grounds. When one

evaluates the circumstances leading to intervention any discrepancy in the findings can be explained by divergent moral interpretations. Actions taken on moral assessments are often combined with the desire to rehabilitate or change the person. This demonstrates the power of agencies to transform interests into the need for therapeutic services, as in the JAT (Juridical-Administrative-Therapeutic) state-apparatus (Fraser, 1989).

Nancy Fraser (1989; 146) discusses the concept of "the politics of need interpretation" which can illuminate the mechanisms that are relied upon when constructing or defining people's needs in order to achieve a certain end. The politics of need interpretation

could expose the processes by which welfare (and criminal justice) practices construct (children and children's needs) according to specific-and, in principle, contestable-interpretations, even as they lend those interpretations an aura of facticity that discourages contestation (Fraser 1989; 146).

Fraser's discussion of the "JAT state-apparatus" is particularly significant to youth who have come in contact with the welfare and/or criminal justice systems (Fraser 1989; 154). According to Fraser (1989), the interpretation of needs is a political process that ends up being transformed into juridical, administrative, or therapeutic concerns, hiding the politics, or depoliticizing the situation. According to Fraser (1989; 154), the JAT when defining needs, accentuates administrative mechanisms and is both exclusionary and monological. In order to manage the growing number of state funded social welfare programs, there is a tendency for the state to become more bureaucratic, and as a result, exclude more people from participating

in the process. Because the state is responsible for the effective administration and maintenance of social programs, there is a need to reduce the number of people involved for the sake of efficiency. It is in this sense that the actions of the state, in defining needs, are monological, or depict one voice. This is opposed to the ideal situation of creating a system of need interpretation which is both inclusionary and dialogical. Dialogical, participatory processes would include input from both the state and the individuals affected by programs or social welfare policies.

Children's interests historically, have been manipulated to conform to legal, administrative or therapeutic interests. Often interests are interpreted in order to promote and augment the need for professional services, and serve to entrench expert need discourses (Fraser 1989; 171).

While intervention may be necessary, as in the case of a neglected or abused youth, caution must be exercised. Protecting a youth through good intentions, may be what is needed, but it could subject certain types of families (single-parent, working-class etc.) to increased forms of social control and surveillance (Valverde 1991).

Equally problematic, is the "staff's moral evaluation of the client" (Handler 1987; 1053). A so-called "moral evaluation" attempts to determine answers to the following questions:

Is the client responsible for her (sic) condition and is the client amenable to change? Is the client morally capable of making decisions? Is the client a subject or an object (Handler 1990; 31)?

Any person who comes into conflict with the law will have their moral character evaluated. How does this ultimately affect the treatment they receive? For example, when the client is a young offender, this youth has committed an offense "against society". What does this mean in terms of the services provided? It would not be surprising to see the community be less than understanding. How is it possible to encourage active participation when the community response is apt to be a hostile one? This question is particularly relevant at a time when the YOA is being subjected to increased public scrutiny, including a call for increased penalties for young offenders. Again, it is easy to see that these debates arise from the conflicting nature of state intervention. While something must often be done, in many cases the cure is far worse than the harm being remedied!

Summary:

In this chapter, we have reviewed the role of the state in the treatment of children as an exemplar of the type of state intervention that was characteristic of late nineteenth century Canada. Legislation that was particularly influential in regulating the conduct of youth was examined. The Factory Act, Compulsory School Attendance and the Youth Protection Act were discussed as legislation which over time, provided the rationale for the implementation of the JDA in 1908. This discussion was then located in the context of the expanding role of the welfare state and the criticisms associated with this development. In particular, the paradoxical nature of state intervention was discussed in terms of state sponsored

child welfare and juvenile justice activities. While seeking to respond to the needs of youth, the possibility exists for increased control and intrusion into the lives of young people.

Chapter 3 extends the discussion of how the philosophy and the nature of the JDA reflects a pattern of intervention by the state. The crisis in youth justice which occurred with the shift from the JDA to the YOA in the early 1980s is also considered in light of debates and crises in the welfare state.

CHAPTER THREE: THE STATE AND JUVENILE JUSTICE

Crisis in Youth Justice:

The Young Offenders Act (1984):

The implementation of the YOA in 1984 was a response to what were considered inadequacies of the JDA. Critics of the JDA thought that the legislation overemphasized the dependency of youth, following the doctrine of "parens patriae". Other concerns arose out of the lack of due process, and the arbitrariness with which youths were processed through the system. Given these criticisms, it is not surprising to see that there are several important differences between the two Acts. Although the YOA continues to recognize the reduced capacity of youth to realize the full extent of their actions, it requires that they take responsibility for what they have done.

The principles of the YOA promote the goals of responsibility, accountability, the protection of society while simultaneously considering the special needs of youth. The renewed emphasis on the responsibility of the young offender is expressed to society, to the victim and finally to themselves (Archambault 1986; 45). And while these appear to be positive changes, some researchers have suggested that the YOA has been more punitive than the JDA (Caputo 1989; Havemann 1986; Markwart and Corrado 1989; Doob and Meen 1993; Leschied and Jaffe 1991).

The positive aspects of the YOA can be seen in the emphasis it places on the role of the community in the administration of justice, and the commitment

given to mending the relations between the offender, the victim, and society. However, some critics have suggested that the commitment to programs which involve the community may not be strong. Instead, the implementation of the YOA has resulted in an increased reliance on the formal justice system and traditional methods of punishment (Markwart and Corrado 1989; Doob and Meen 1993).

The shift from the JDA to the YOA represents a shift in philosophy. With the latter, we have seen the introduction of individual accountability, stemming from the belief that crimes are the result of individual choice. This contrasts with the previous philosophy underlying the JDA. The JDA recognized environmental influences, a youth's dependency, and familial responsibility in its explanation of criminal activity (Havemann 1986). Paul Havemann (1986; 226) describes this shift as "...the demise of a rehabilitative, child-saving ethos and the rise of a retributive, child-blaming approach...". The introduction of responsibility and accountability in the YOA contrasts with the protection-oriented JDA⁶.

In order to better explain the nature of this shift, it is necessary to outline the section in the YOA which lays out its guiding principles. The section of the Young Offenders Act which contain the "Declaration of Principle" is presented below. A category heading has been assigned to each of the main principles to help define the main objective in each section (Havemann 1986; 232-233).

⁶While the YOA does not dismiss entirely the needs of the youth, in terms of protection etc., it is evident that the focus is on taking responsibility for one's action. See Guiding Principles, next page and in Appendix A.

The category headings we have assigned appear in bold type.⁶

Young Offenders Act, Declaration of Principle:

Section 3.(1) It is hereby recognized and declared that

Responsibility-Accountability:

(a) while young people should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offenses should nonetheless bear responsibility for their contraventions;

Protection of Society:

(b) society must, although it has the responsibility to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour;

Special Needs:

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

Alternative Measures:

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

Due Process Rights:

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

Least Interference:

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

⁶Additional heading names have been created for Section (b), (f) and (g) as they did not exist in Havemann (1986).

Right to be informed:

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

Parental Responsibility:

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

Section 3 (2): This Act shall be liberally construed to the end that young persons will be dealt with in accordance with the principles set out in subsection (1).

Several critics of the YOA have suggested that the legislation more accurately reflects a crime control, or law and order orientation (Havemann 1986, 1989; Caputo 1991; Reid-MacNevan 1991). This is indicated by the increase in the number of youths incarcerated (Markwart and Corrado 1989; 13; Doob and Meen 1993), and a re-emergence of the retributive mentality reminiscent of classicist criminology. Havemann (1989) explains the adoption of the justice model in the current legislation of the YOA in terms of the combining of a liberal desire for justice which has shifted from the welfare notion of communal responsibility to one of individual accountability. The justice model's appeal lies in it's representation of an "ideological compromise of liberal rhetoric and law and order practice" (Havemann 1989; 3). The justice model's view of what is acceptable revolves around a belief that youth crime results from individual evil and lack of discipline. Havemann (1989; 5) clarifies this shift:

In Canada the conjuncture of which the YOA was a product was one in which the fiscal crisis of the welfare state made

the maintenance of the treatment, welfare and rights apparatus untenable while ideological support for an explicitly retributive apparatus consisting of exceptional powers of control over youth has had to be generated through conjuring up a moral panic on the spectre of youth as a new dangerous class.

Youth, in effect, have become a problem for the 'crisis-racked welfare state' (Havemann 1986; 225), in terms of providing education and employment. This situation is reminiscent of the attitude prior to the turn of the century, which indicated that youth were a problem about which something had to be done. If you recall, the next step in the process was the establishment of a separate youth justice system to deal with this new class of potential and actual criminals.

Like the JDA, the YOA stipulates the necessity of a separate youth system, to account for the differences between youth and adults. As indicated in the Declaration of Principles, the YOA reflects several types of juvenile justice perspectives, including crime control, due process or justice model, community change and welfare approaches⁷. A potential problem in the YOA is attempting to balance the fulfilment of youth needs while simultaneously securing public safety. If the needs of youth are paramount in the implementation of the legislation, then the welfare model can be considered dominant. On the other hand, if the protection of society is paramount, then the law and order model is dominant. Much concern has been centred around achieving a balance between these two diverging objectives. While conflict arises between the welfare and

⁷See introduction p. 6.

crime control models, predominantly, an examination of the justice and community-change models is vital to understand changes in the role of the welfare state.

On the political spectrum, the community-change model represents the far left, followed by the welfare and justice models while crime control occupies the far right position. The relevance of the political spectrum, and the division of the themes into models can be further categorized by examining the degree of intervention, and the orientation of each model (See Table 1 below).

Table 1: Theoretical Models And Degree Of State Intervention

POLITICAL SPECTRUM		
Degree of Intervention	<u>Left</u>	<u>Right</u>
<u>Interventionist</u>	Welfare	Crime Control
<u>Non-Interventionist</u>	Community Change	Justice
	<u>Needs-Oriented</u>	<u>Punishment-Oriented</u>

ORIENTATION

The creation and implementation of criminal justice policy requires the careful consideration of numerous interests. As depicted in Table 1 above, there are several models, each with an accompanying lobby group which maintain opposite views about youth justice.

The four models above can be subsumed into two broader categories. A welfare approach combines elements of the welfare and community-change models. A law and order approach combines elements of the justice and crime control models. The welfare and community-change models are aligned on the "left" and reflect the satisfaction of youth needs. The justice and crime control models are aligned on the "right" and reflect an approach that emphasizes individual responsibility, rights, and discipline. Aligning the models in such a manner helps us to consider these categories in light of trends or occurrences in the welfare state. The previous discussion of the Juvenile Delinquents Act and the events leading up to its implementation, demonstrated how the welfare state paternalism of the Act was consistent with initiatives of the time. The existence of alternative measures programs in the YOA, represents an extension of the welfare model in the current legislation. It reflects a concern with the needs of youth and the community. On the other hand, the importance of alternative measures programs can be measured when fiscal pressures mount on the state. Under conditions of restraint, funds for welfare programs such as alternative measures may be most susceptible to budgetary reductions. In this sense, alternative measures programs must compete with the objectives of the law and order lobby. As noted above, crime control approaches appeal to the public during times of uncertainty.

The crime control model not only is interventionist in nature, it is exclusionary and punishment-oriented. While the community change model

requires intervention in terms of needs assessment, it is necessarily interventionist because it is inclusionary. Nevertheless, the crime control model is often relied upon for it takes considerably less time to sentence a youth to a custodial disposition than to assess and subsequently deal with the underlying social problems behind a youth's involvement in criminal activity. If the crime control/ law and order model is becoming more prevalent it is directly related to the

amount of flexibility, creativity, and time required to implement and develop community change and welfare-oriented dispositions, with crime-control and justice alternatives being much more expeditious with respect to human resources (Reid-MacNevan 1991; 32).

This discussion demonstrates the conflict which arises between the various models underlying the juvenile justice system.

Although it is impossible to account for the many diverse interests present in a given community, it is not unreasonable to suggest that citizens in general are concerned with maintaining peace, order, security and therefore have vested interests in the prevention of crime. In this sense, society can be considered a client of services that the criminal justice system provides.

The priority given to the needs and interests of society is reflected in the increased reliance on the law and order approach. The law and order approach combines the ideals of the justice and crime control models and justifies increased incarceration rates by claiming it provides the greatest good for the greatest number. This is reflected in terms of community safety and protection. This sentiment is accompanied by the perception that the law and order approach

provides the most efficient and just method of dealing with crime and criminal offenders.

The dispositions that are considered to be community-based alternatives stress the interaction between the offender and the community, and can be effective in addressing the interests of both. Unfortunately, in times of fiscal restraint and public uncertainty, these programs may not receive the support needed to remain operative.

The "fiscal crisis" of the state in the early 1970s provided the opportunity for a reconsideration of the state's role in civil society. The crisis can be explained in terms of increasing fiscal pressures placed on the state to maintain social welfare programs. Increased budgetary pressures, however made the existing level of welfare state initiatives difficult. Fiscal restraint, has therefore, resulted in change in the role of the state, the overall movement representing a redistribution of state spending on welfare programs.

This trend has been experienced in all facets of the greater social spheres and institutions, including the creation of criminal justice policy. In the area of juvenile justice, critics have noted the ascendancy of a law and order approach including the elements of increased personal responsibility and the protection of society. To what extent, however, has the YOA achieved the balance it espouses in the Declaration of Principles, between increased responsibility and fulfilling youth needs? In order to ascertain the degree to which youth needs have been met in the implementation of the YOA, it is necessary to examine provisions that are

directed at youth needs fulfilment. To date, there has been little research on this subject. However, alternative measures is one provision which can be examined to determine the extent to which the YOA meets youth needs.

Summary:

In this chapter, we have examined the YOA in light of the theoretical debates arising from the guiding principles of the legislation. The crisis in youth justice was expressed in terms of the struggle between social welfare and law and order approaches. The resolution of this crisis in the YOA was an attempt to create a balance between the fulfilment of youth needs and the protection of society. The nature and feasibility of such a balance was considered in light of debates surrounding the development of the welfare state.

In order to test the theoretical models described in Chapter 3, it is necessary to look specifically at what the YOA provides in terms of options and programs for youth in conflict with the law. In Chapter 4, the various responses by the provinces to Section 4 of the YOA are examined. This section provides for alternative measures programs. Before the actual programs operating in each province are discussed, it is necessary to describe the method utilized in gathering information to generate a national perspective on alternative measures programs. Data was collected in order to determine the nature of the programs, and whether alternative measures in Canada reflect a welfare or law and order approach.

CHAPTER 4: METHODOLOGY

Introduction:

The main objective of this thesis is to conduct an analysis of the implementation of Section 4 of the YOA, to determine the extent to which alternative measures programs are being utilized and progressed. An examination of alternative measures programs across Canada provides the necessary information to assess the nature of the 'balance' between meeting youth needs and the protection of society, as set out in the Declaration of Principles.

The provision for alternative measures in the YOA represents a continued commitment to youth needs. Section 3(1)d, gives the option of 'taking no measures' or 'taking measures other than judicial proceedings' provided it is not 'inconsistent' with the protection of society. This commitment is reminiscent of the ideals of the welfare model underlying the JDA. However, the interests of the community are also considered. Section 3 (1)f, indicates that the principle of least possible interference into the lives of the young person and their family is to be respected if this is consistent with the protection of society. Alternative measures programs provide the opportunity to address youth needs in ways that traditional court processing cannot. Alternative measures programs ideally allow for participation on the part of the victim and the youth, and they involve the community. Traditionally, youth needs have been considered in youth justice because of the perception of diminished capacity to realize both the moral and legal consequences of a certain action (or *doli incapax*) (Griffiths and Verdun-

Jones 1989). Both the YOA and its predecessor the JDA, recognized the difference between a youth's misdeeds and the similar wrong-doings of their adult counterparts (See YOA Section 3 (1)a, c, and JDA sec 38). Alternative measures further the recognition of a youth's needs in this regard. As stated previously, these programs may represent a continued commitment to youth needs; "the rationale of these initiatives is that early intervention is superior to the reactive nature of the youth court processing" (Griffiths and Verdun-Jones 1989; 518).

The YOA further recognizes (perhaps indirectly) the importance of involving the community. In Section 3 (b) of the YOA it states that

society must, although it has the responsibility to take reasonable measures to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour (Pocket Criminal Code 1990; 617).

The wording of this section may indicate the priority given to the protection of society against criminal behaviour in the Act. Does the acceptance of several diverse principles within the YOA affect the treatment of young offenders? Is it possible for the community to become involved in the prevention of criminal activity? Part of this responsibility can be displayed by increasing the involvement of the community in alternative measures programs designed for youth in conflict with the law. The data gathered will reflect the implementation of alternative measures programs across the country. The actual method utilized in providing a national perspective on the use and implementation of alternative measures programs, will be discussed in the next section.

Data Collection Strategies:

In order to gather data on the types of alternative measures programs available across the country, I consulted the Juristat Service Bulletin (February 1990). This document provided key information regarding the ministries/agencies responsible for the administration of alternative measures programs in each province. Provincial contacts were selected from a list I was given from the Department of Justice in Ottawa, entitled, **Coordinating Committee of Senior Officials (Young Offenders)** (February 1994). Ten provincial contacts were identified based on their position with respect to young offenders and young offender services (See Appendix B for a list of contacts). These contacts were selected to provide a provincial perspective on alternative measures for their province. In some provinces there is more than one agency/ministry which is responsible for the provision for alternative measures.

The implementation of alternative measures programs varies across the country, but usually, "responsibility...is given to a community agency with a paid staff or volunteers, though in some provinces, government social workers or juvenile probation staff are responsible" (Bala 1988; 21). It is for this reason that I looked to the John Howard Society for information. The John Howard Society was selected as a source of information because it is an agency which is recognized as a leader in the provision of alternative measures programs. I was able to determine that the John Howard Society is responsible for the delivery of a considerable number of alternative measures services across the country by

consulting **An Indexed Directory of John Howard Society Programs Across Canada (1992)**. The index provided considerable information concerning program delivery. Those cities which had services for young persons/offenders were selected for inclusion in this study.

The communities with programs offered by John Howard were contacted and interviews were conducted with staff members when possible. Initial contact letters were sent requesting a telephone interview. Written information was also requested about alternative measures programs if it was available. Appendix C contains a list of the information I received from provincial contacts. Each respondent was sent a letter, detailing the objective of the research, and asking them to participate in a telephone interview. A copy of my interview questions was inserted in the initial letter. In all, a copy of this letter was submitted to 10 provincial contacts, and 16 representatives of the John Howard Society in various cities across Canada.

A semi-standardized interview schedule was developed on the basis of the key concepts discussed below. According to Berg (1989; 17), this type of interview involves a series of "predetermined questions" or "special topics", which are asked of each respondent, "...in a systematic and consistent order...". The structure of a semi-standardized interview, however, gives the researcher considerable room to probe for information, as opposed to receiving a standardized response, which may be devoid of unique and valuable data (Berg 1989). Telephone interviews were used as the method of data collection because they are

less costly, and more efficient than personal interviews (Bailey 1982). After allowing sufficient time for the letters to reach their destinations, I began follow-up phone calls to set up convenient times for telephone interviews. This took considerable time, for it was difficult to reach some of the potential respondents. Out of the original 26 contacts made by letter, 17 interviews were conducted, and 3 respondents submitted written responses to the questions. Two of the John Howard contacts, one in Grande Prairie, Alberta and the other in London, Ontario responded but were not able to participate because funding was cut for the alternative measures programs they had initially provided. I was unable to reach a total of 5 respondents, either by letter or by phone⁶. Each interview lasted between 20 and 45 minutes. The original interviews were tape recorded. The taped information was then transcribed onto computer disk.

Before the actual interview questions are discussed, it is necessary to discuss how I determined the criteria by which to assess alternative measures programs. The criteria that were used to assess the nature of the balance between youth needs and the protection of society are reflected in the types of questions I asked the respondents in the telephone interviews. A copy of the interview schedule is presented in Appendix E.

⁶There is a discrepancy of one respondent in the total, which may be accounted for in the interview conducted with Peter Mortimer of the Youth Alternative Society in Halifax, who was referred to me by Fred Honsberger, with regard to alternative measures in NS.

Alternative Measures Assessment Criteria:

The first step in determining whether alternative measures programs reflect either the welfare or law and order models, involved the development of a set of criteria by which to evaluate the programs. If the programs in existence do reflect a commitment to both recognizing and addressing youth needs, we would expect to see the following criteria present in the programs:

1. "Community-based" Programs:

Ideally, this means a commitment for programs which are designed for the community, take place in the community, and are conducted by the community (Christie 1982). The types of criteria which fall under this heading include: community involvement, including the use of volunteers; the use of community-based agencies in the provision of alternative measures programs; and funding of the program.

2. Participatory Processes and Dialogism:

This criterion represents an indication of the degree to which a particular alternative measures program embraces and sustains vital participatory processes and dialogical strategies of inclusion and communication (Handler 1990).

3. Needs and Eligibility:

This criterion reflects the extent to which programs are aimed at fulfilling the specific needs of the young person. The issue of eligibility is particularly relevant, for it influences the types of youth that can participate.

If the implementation of the YOA section on alternative measures represents a welfare model, these indicators will be present to some degree. These criteria were the basis for the development of a series of semi-standardized interview questions with probes. The majority of the probes were unscheduled, and involved repeating the question, or clarifying the response by repeating the answer given by the respondent (Bailey 1982). Each of the above criteria are described in greater detail below. It is difficult to identify categories that are mutually

exclusive, since some of them refer to similar processes. However, each category reflects a unique element consistent with welfare model principles⁹.

1. "Community-based" programs:

Community-based programs are beneficial because they allow for communication between the victim and the offender, and provide a legitimate site for substantive justice in individual cases (Bala 1988). The success of community-based initiatives depends considerably on the community's awareness of, input into, and commitment to the programs (Griffiths and Verdun-Jones 1989). To experience a degree of success with alternative measures, it is imperative that the community respects the principles of minimal interference, the desire for preventative programs, and participates effectively in and supports the provision for alternative measures programs (Archambault 1986). However, the participation of the community in matters of criminal justice is not traditionally a common occurrence in the adversarial system of justice (with the exception of juries).

One characteristic of the law and order model (encompassing both the crime control and justice models) is the reliance on the formal justice system to resolve disputes. In this sense, alternative measures programs, if they are truly "community" alternatives, should recognize the need for strategies which transfer control from the formal system to the community.

⁹Data that was gathered on the basis of these criteria reflects the implementation of alternative measures programs. The results are indicative of the implementation of the program, rather than an indication of the impact on youth needs fulfillment, or victim and societal satisfaction.

According to Christie (1982), conflict is a necessary part of societal change. If conflicts are repressed or simply managed, it provides a temporary solution, but doesn't resolve the problem. He argues that our conflicts have been taken away from us, as general members of the communities in which we live, and have been transformed into commodities, or property of some kind. The conflicts are taken over by, and become the property of some outside authority or expert; lawyers are the example that he uses to represent a type of expert (Christie 1982).

Similar to the community-change model outlined by Reid-MacNeven (1991), Christie (1982) argues for decentralization of state control that, simply put, would represent:

- 1)control BY the community
- 2)control IN the community
- 3)control FOR the community

This would represent one end of the continuum of possible responses by the state in terms of ideal community responses or types. This ideal type indicates a revocation of the state and government control. It is important that if control does not rest with the community itself, that it remain possible for the community and the youth affected by the programs to communicate their needs and have input into the programs being implemented. Partial control by the community would be located at the midpoint of the continuum, as representing initiatives with partial or quasi-government funding. At the opposite end of the continuum are those programs which invoke community, and all the positive rhetoric that accompanies the term, but are in reality, state controlled projects.

Does the move to community under the YOA represent any of the above ideal types? One hypothesis is that the invoking of community represents the liberal quest for justice, but reflects and works to promote more state oriented goals of law and order (Havemann 1986; 1989). This can be shown in terms of net widening: more people incarcerated, and/or extended social control. This argument can be extended even further to include ideas of legitimation. For example, it is easier for the state to justify cost-spending in areas which reflect public safety than it is to spend money on welfare programs.

The original intent of alternative measures programs was to divert young people away from formal court processing. According to Cohen (1985; 34), the underlying motivation of the diversion movement centred around the "...clogged up and impersonal court system; disenchantment with the formal system; the need to minimize penetration into the formal system; the need for communities to assume responsibility and to mobilize their own resources."

If the existence of alternative measures programs reflects the welfare model, we would expect to see a wide range of programs implemented which address youth needs, and a genuine desire by communities to commit to these programs either in terms financial support, space, equipment or other resources, or through the participation of community volunteers.

Community involvement can be expressed in terms of volunteering. Determining this criteria involves assessing the extent to which the volunteers are involved in the administration of the program. Alternative measures proposes to

involve the community in the criminal justice process, and as a result, should have elements of the community change model present. The characteristics of the community change model are that of least intervention, community input and involvement, and programs that are oriented towards the satisfaction of the needs of the participants. Data that was gathered on the basis of these criteria reflects the implementation of alternative measures programs. The results are indicative of the implementation of the programs, rather than an indication of youth needs fulfilment, or victim or societal satisfaction.

2. Participatory processes:

Participation in an alternative measures program, provides the opportunity for youth to avoid the formal court process. This is consistent with the option of "taking no measures" or "taking measures other than judicial proceedings". This is done provided it is not "inconsistent" with societal protection (Section 3(1) d). How is participation structured in alternative measures programs? Who gets to participate? The effectiveness of alternative measures programs has been expressed in the following way:

(a) a reduction in the number of cases coming before the youth court; (b) a decrease in the costs of the youth justice system; (c) a positive change in the attitude of young offenders; (d) increased victim/community satisfaction with the response to youth crime, and (e) a lowering of the rate of youth crime and recidivism among youth participants (Griffiths and Verdun-Jones 1989; 521).

If the programs available are inclusionary and encourage participation on the part

of the youth and the community, these types of quantitative and qualitative results may be seen. The more qualitative aspects or benefits to substantive participation and inclusion in alternative measures are such things as positive attitude change on behalf of young offenders. Other benefits include increased satisfaction on the part of the victims of crime and the community. These kinds of qualitative issues are difficult to quantify, nevertheless, they are important goals to strive for. While this thesis assesses the implementation rather than the impact of alternative measures, future research should not exclude the possibility of determining the impact of the programs on the community, the victim and the young person.

Additionally, there is the issue of the quality of participation. If the right social conditions are not present, if there are barriers which distort communication, or unequal power relations at work, there will be wide disparity in the quality of participation. In this sense, there is a concern that youth may be participating, but that it is not substantial participation (Handler 1990). To what degree do the programs allow for participation? How are the programs structured?

Measures associated with the crime control perspective, including custody are highly quantitative in nature. Custodial dispositions are handed down with specific sentences. If alternative measures are supposed to be different, and exist as an alternative to formal court processing, we should expect to see programs which are inclusionary, and embrace participatory processes which emphasize communication between the affected parties.

3. Youth Needs and Eligibility:

One of the benefits young people enjoy under the YOA is having the chance to have their needs considered (i.e. youth "require guidance and assistance"). This has an impact in terms of accountability. Needs recognition should be associated with a corresponding decline in the use of custodial dispositions. Criteria for inclusion in alternative measures programs if they are to meet various needs, should be as broad as possible. This would allow more youth to be considered eligible for alternative measures programs. If the number of youth processed through alternative measures is large, then the programs may be working to reduce the number of youth being processed in youth court. This may also be reflected in a decrease in the number of youths incarcerated.

Alternative measures programs are widely used for those youths who are believed to have or perhaps have actually committed an offence. The offence is usually not of a serious nature. The programs that exist as community-based alternatives stress the interaction between the offender and the community. Some measures include: payment to the victim of compensation for loss or damage to property, or due to injury sustained by the victim; a personal or written apology; an essay or crime prevention poster; an order of compensation in-kind or by way of personal service to the victim; community service order (CSO), which indicates a specified amount of work done for the community. The types of measures used in each program are assessed in order to determine which are relied upon the most. In addition, it is important to assess the nature of the measures and the

degree to which they emphasize qualitative over quantitative results of the programs.

If alternative measures programs are aimed at needs fulfilment, we might expect to see a quantitative assessment of the degree of success with the programs, as represented in the number of referrals, and number of youth who successfully complete the program.

Summary:

In this chapter, we have examined the method of data collection with regard to the administration of alternative measures programs across Canada. The method of data collection was a series of semi-standardized telephone interviews, with probes. The interviews were conducted with the overall goal of assessing the types of programs that are available to youth, outside the formal court system. In Chapter 5, the findings of the interviews are discussed. The discussion of the findings will be directed toward answering the original research question. The interviews have generated data which will provide insight into the nature of the balance between youth needs and the protection of society. A review of the data will show whether the programs reflect either a law and order model or a needs-oriented model.

CHAPTER 5: DATA ANALYSIS AND FINDINGS

Introduction:

Each province responds differently to Section 4 of the YOA which delineates the use of non-judicial intervention. The result may be seen in the emphasis placed on both the types of alternative measures programs created and the manner in which they were developed. The data for each province is contained in Appendix D which presents the data gathered from interviews and provincial packages of information when available. This material describes how the provinces differ in process, the determination of the young person's eligibility, and the types of measures that are utilized. Appendix D also provides a detailed analysis of the types of programs available across Canada.

The statistics presented in the provincial profiles are based on information available at the time the interviews took place. The complexity and nature of the information provided for each province was based on information provided during interviews and in packages of information I received in the mail. Some profiles are more complete than others for this reason.

The collection of statistics on the use of alternative measures programs provincially, is at best, a difficult task. During interviews, some respondents commented that the data base on the use of alternative measures is not reliable. This is due to the fact that in some provinces, statistics are not collected centrally. This means that the various agencies which provide alternative measures in a given province produce their own statistics.

Statistics on the use of alternative measures programs vary provincially because of the stage of referral. Those provinces which have post-charge programs have statistics that indicate a higher number of youths appearing before the court, for this is where the disposition of alternative measures is handed down. A further statistical problem occurs with those youth who have come of age after having participated in alternative measures, for if they recidivate, they then become part of the adult system's statistics. There are some similarities between the provinces and the manner in which they proceed with alternative measures programs. Each province must comply with the legislation with respect to several criteria. These criteria, and the parts of the process that are common among all provinces will be discussed first (See Table 2 below).

To facilitate the creation of a national perspective on the implementation of alternative measures, a typology was created. The typology provides categories of measures assigned as part of an alternative measures agreement and makes the analysis of data more straight forward.

In terms of the alternative measures agreements, there are a number of differences in the conditions that are placed on the young person. Each province has their own method of dealing with a youth if the youth partially completes the measures assigned to him/or her. Violations of the agreement, or even participation in alternative measures may or may not affect a youth's future eligibility for the program. The following chart provides an overview of the criteria that must be considered before alternative measures are considered.

Alternative Measures: General Criteria

Table 2: Typical Criteria For Participation In Alternative Measures Programs

The Crown must ensure that:

1. The youth is 12-17 years old
2. Sufficient evidence exists to prosecute
3. Prosecution is not barred at law
4. The offence is one eligible for Alternative Measures
5. The youth is a first-time offender (*)
6. Participation is not inconsistent with the public's interest
7. The youth has been informed of his/her rights (*)

The jurisdiction (or other authorizing agency) ensures that:

1. The youth has not previously been involved in an Alternative Measures program or sufficient time has past since the last participation (*)
2. A suitable program is available
3. The youth is informed of Alternative Measures terms

The youth must:

1. Accept responsibility for the offence
2. Be willing to participate

Note that criteria followed by an asterisk (*) are not standard across jurisdictions¹⁰.

Records detailing a youth's participation in alternative measures are held for a two year period for summary conviction offenses and five years for an indictable offence, unless the youth has committed another offence within that time period. If there have been no other offenses committed, the record of participation in alternative measures will be eliminated (YOA Section 45). This, in itself, suggests a recognition of the need for special considerations when it comes to youth justice

¹⁰Table 2 is taken from the Juristat Service Bulletin (Vol. 10 No. 2, February 1990), and describes the "typical criteria for participation in alternative measures" programs across Canada. Please see Appendix D for the description of each province and a discussion of differences in process.

processing. A young person's previous participation in alternative measures will only be considered if necessary.

Provisions exist under the YOA, in terms of alternative measures programs, but to what extent are they being utilized? This question is difficult to answer for even six years after the YOA's implementation, there were no national statistics on the use of alternative measures programs (Juristat 1990). The lack of statistics can, in part, be accounted for due to the diversity in interpretation and subsequent implementation of Section 4 of the YOA, which outlines the provision for alternative measures across the nation.

Discussion:

Alternative measures programs are part of a response to what was perceived as a need for both accountability and increased participation of the victim and youthful offenders in the youth justice system. Making provisions for the active involvement and consultation of both the youth and the victim in the creation of appropriate alternative measures programs is the first step in addressing the problem of participation (Handler 1987; 1029). Alternative measures programs are seen as beneficial in this respect, for ideally, they exist as meaningful community options outside the formal system. With the implementation of the YOA in 1984, there was a call for increased participation of the public in youth justice matters (YOA, Section 69). A great endorsement for community involvement and alternative measures is stated by Judge Archambault (1986; 51)

as follows:

The overall public interest does not demand that we lock up or use restrictive sanctions with respect to every young person who has gone afoul with the law- surely that would be counterproductive. Rather, we must strive to rehabilitate and reform young offenders within their community and family setting; for there lies the best prospect for effectual and long-term public protection and the effective pursuit of the overall public interest. To this end, all society, the family and the young person must contribute and assume their responsibilities.

Given this positive depiction of community alternatives, the goals and objectives appear reasonable and even obtainable. Yet, upon examination of the programs available across the country, there have been several issues raised which may affect the success and long-term feasibility of community alternatives to formal justice processing. Specifically, there is evidence of the development and preservation of a law and order approach to juvenile justice, even in the presence of measures aimed at youth needs.

The commitment to youth needs can be seen in the provision of alternative measures programs. Some form of alternative measures programs are available in every community across the country. What is at issue then, is not only the quality of the programs and how they are administered, but also the quality of participation in the programs. As Caputo (1987; 136) notes, differences in the administration of federal legislation (YOA) can be accounted for by examining provincial philosophies and budgets. Not only are there discrepancies from province to province, there are discrepancies between communities in the same province. This is not necessarily a negative thing. It is, however, cause for

concern, if funding and resources are the root of the discrepancies.

Discrepancies in the types of measures and the process used can also be seen across the country. In order for alternative measures programs to reflect a welfare approach, it is necessary for them to respect the needs of both the community and the youth. For this reason, any discrepancies which exist nationally should not be considered problematic. There are, however, several important insights that arise when examining how the programs are managed. Specifically, who is in charge of resources? Who retains control over the program(s)? And ultimately, who is participating in the administration of the program? Controversy arises when attempting to determine which agency is most qualified or most appropriate to administer alternative measures programs. In order to better understand the nature of the programs, it is necessary to consider the role of the state in the provision of alternative measures programs. The issues of control and ownership of resources have considerable influence over the manner in which alternative measures programs are carried out.

Some provinces contract out to community agencies, for example, the John Howard Society. Those provinces which contract out to social service agencies include: Nova Scotia, Ontario, Saskatchewan, British Columbia and Alberta. Other provinces utilize Section 69 of the YOA which provides for the creation of Youth Justice Committees. These provinces include: Manitoba, Newfoundland, and New Brunswick. Some provinces do neither and provide alternative measures through the local probation offices located throughout the province. In this

category are the provinces of Prince Edward Island and Quebec (See Table 4). One question is: does this affect the way the programs are administered? Does having a pre-determined agenda, either set or approved by the state, change the objectives and goals associated with alternative measures? How does the combination of different actors/agencies affect the division of power and control over resources? The extent to which a province is willing to relinquish control to the community agencies is another issue. In provinces where there are considerable "community" options available, the degree to which the programs involve the community is an important question.

There are different meanings behind diversion, and what is meant by alternatives to the formal court system. This varies according to the stage in which the youth is referred to the alternative measures program. Some provinces have a procedure which represents the ideals of diversion, other provinces retain some of the court system in the process of alternative measures. This is due to the different provincial interpretations of Section 4, which outlines the functioning and administration of alternative measures programs. It should be noted that this is not necessarily a negative thing. In fact, the variation may represent an effort to develop programs which are suited to the needs of individual communities.

One of the main defining criteria for the administration of alternative measures programs is the stage at which the young person is referred to the program. The possible stages of referral are either pre-charge, post-charge, or a combination of both pre and post-charge. The rationale behind the selection of

a pre or post charge referral in a given province is related to several theoretical issues.

It is true that there has been criticism expressed concerning programs like diversion because of their tendency to extend forms of social control associated with the 'widening of the criminal judicial net' (Austin and Krisberg 1981). Not only is this a problem, but there is also concern that diversion, irrespective of intentions of voluntariness, may not permit much choice for the offender. As West (1984; 211) notes:

The voluntariness of diversion is questionable. A youngster before a diversion committee knows that the alternative to accepting its plan is a return to court, and more than half the arrested youngsters fear that juvenile court appearance will result in their being removed from their home.

Voluntariness is in a sense false, because the people who become involved have no real choice or alternative, they require assistance, and eventually they come to depend on the human service agencies (Handler 1990). One indicator of the dominance of the crime control model, despite its welfare model appearance, would be a widening of the net of social control. Extending the net to include more and different types of youth is characteristic of an extension of the crime control model. The "voluntariness" of diversion can play a part in this, especially when the youth is well aware that if they don't participate in the program, they will be brought up on formal court charges.

Provinces with pre-charge referrals (Newfoundland, Quebec, New Brunswick, Manitoba) have attempted to avoid the theoretical problem of inducing

a confession from the youth, and address the issue of voluntary consent to participate in a program in exchange for the charges being withdrawn. According to this view, if the program is truly voluntary, there should not be the threat of prosecution if the youth does not successfully complete the program.

Post-charge referrals (Ontario) in contrast, address the issues of net-widening and increased social control over youth another way. The thinking here is that the young person has been formally charged with an offence, and is given the opportunity to participate in an alternative measure program in exchange for the withdrawal of the charge. In this case, there has been a charge laid, and there is no possibility of widening the net by including those cases which may have been informally diverted by police. Recognizing the value of police discretion in screening out those cases which do not require further sanctions or action is an effective way to reduce the number of youth appearing before the courts. The provinces that have a combination of both pre and post charge referrals (Nova Scotia, Prince Edward Island, Saskatchewan, Alberta, and British Columbia) may experience both the issues associated with diversion and net-widening (See Table 3 below).

The detailed findings of this study as presented in the provincial profiles, indicate that alternative measures programs have experienced considerable success. All respondents reported success rates above 75%¹¹. Nevertheless, it is important to consider what the degree of success is based on.

¹¹The success rate is an indication of the percentage of youth who satisfactorily completed the program.

TABLE 3¹²: Stage Of Referral To Alternative Measures By Province

Province	Pre-Charge	Post-Charge	Either Pre-or Post
Nova Scotia			X
New Brunswick	X		
Prince Edward Island			X
Newfoundland	X		
Quebec	X		
Ontario		X	
Manitoba	X		
Saskatchewan			X
Alberta			X
British Columbia			X

Rarely, do any provinces accept more serious cases. Rarely, do the provinces consider repeat offenders. The programs accept cases which are easily managed given the time and resources their budgets allow. This could be cause for concern, in that, easily managed cases may be better dealt with through the combination of input and cooperation from the victim, police discretion and/or informal methods of diversion.

Considering the number of cases appearing before the youth court in a given province, (see Markwart and Corrado 1989 and Doob and Meen 1993) there are a considerable number of young people who are excluded from the alternative measures process at the outset. There is considerable variation in the number of

¹²A similar table may be found in the Juristat Service Bulletin from February 1990.

young people who are referred to alternative measures programs provincially as well. While Quebec reports that approximately 45% of young offender cases are referred to alternative measures, in Alberta, alternative measures make up 17% of young offender cases. New Brunswick refers approximately one third of cases to alternative measures, and Saskatchewan in 1991-1992 made referrals to alternative measures in 22.4% of the young offender cases. The statistics for these provinces indicate that considerable numbers of young offender cases are being processed through the formal court system.

For those young people who do get referred to alternative measures there are usually a variety of measures to which they may be assigned for completion of their alternative measures agreement. There are some programs across Canada which include very specific measures that recognize and address youth needs. Due to the variety of programs available across the country, the creation of a typology of alternative measures programs assists in the analysis of the findings. This is described in detail below.

Typology of Alternative Measures:

When designing the measures for the young person, generally each community/province takes into account what the offence was and what is an appropriate consequence for that offence. This usually involves an office interview with the designated individual responsible for supervising the case while the young person is completing the program. This may be a youth case worker from an

outside agency, the John Howard Society for example, or a probation officer working within a certain governmental department. The specific nature of the procedure, and the actual programs in each province will be dealt with separately.

In general, there are some similar alternative measures programs available in each province. The options for the young person are: volunteering for an agency in the community; paying back the victim or community to financially compensate them for any damages; the young person may apologize to the victim either verbally or in writing; the young person may write an essay, or may attend an educational or rehabilitative program, such as anger management. Within this range of options, there are several types of programs, each with a different objective. The following is an examination of the kinds of programs, categorized by the main goal, followed by the types of criteria involved in achieving the desired outcome¹³.

1. Reconciliation/Mediation:

The main defining criteria of reconciliation/mediation types of programs is the inclusion of the victim in the process. Some of the themes present in this type of program are the ideas of repair, making amends, adjustment and settlement. The manner in which these objectives are achieved is also significant. Programs that involve mediation and reconciliation stress communication, harmonizing

¹³It should be noted that categories for objectives are not mutually exclusive. A type of program may not limit itself to one goal. Additional programs that deal specifically with each goal may be developed, but may not fall exclusively under one heading.

interests, mutuality and understanding. Mediation provides an opportunity for both the victim and the young person to express their views regarding the offence and its consequences. Examples of this type of program are programs such as victim-offender mediation, youth justice committees, and neighbourhood accountability boards.

2. Restitutive/Retributive:

In this type of program, the main objective is compensation, or repayment to the victim, whether the victim is an individual member of the community or a corporation. Compensation may be made either monetarily or in terms of labour service. As the name suggests, the objective of these programs is to restore conditions back to the original state. In this sense, the young person, may replace material goods, or repair damages to property. But as the name also indicates, these actions are taken strictly as a punishment for the young person. Examples of this type of program would be a fine, or community service work.

Community service work is included in this category because some victims do not want to (or cannot) participate, but nevertheless the youth must make amends somehow. This is especially common with shoplifting offenses, when the corporation is the victim. The work that the youth does for the community can be seen as work done for the victim. Community service also fits well under this heading because the work done in terms of repayment to the victim of the crime is quantifiable.

2

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NBS 1010a ANSI/ISO #2 EQUIVALENT

PRECISIONSM RESOLUTION TARGETS

3. Educative/Rehabilitative:

Another primary objective of alternative measures programs is to educate the youth about the consequences of his/her actions, not only to themselves, but to the general community. Efforts are taken to address the young person's behaviour by having them participate in a program that is geared toward the particular offence. The purpose of participating in an educative program is connected to the idea of the youth's rehabilitation. The themes apparent in these types of programs are both moral and mental training, and the generation or restoration of self-esteem and reputation. Examples of this type of program are employment and life-skills counselling, anger-management and programs which deal specifically with the offence of shoplifting¹⁴.

The changes in the role of the state in recent years reflect increased individual accountability and can be seen in the context of youth justice. The emphasis on individual responsibility is evident in the guiding principles of the YOA (Section 3(1)a). Even measures aimed at needs, i.e. alternative measures, require that the youth admit responsibility before being accepted into a program.

After reviewing the data in each provincial profile, there is evidence that alternative measures programs exist which attempt to consider the needs of young people.

¹⁴The typology of alternative measures can be used to examine the data presented in Appendix D, or the provincial profiles.

TPOLOGY OF ALTERNATIVE MEASURES:

PROGRAM TYPE	MAIN OBJECTIVE	EXAMPLE¹⁵
RECONCILIATION /MEDIATION	<ul style="list-style-type: none"> -inclusion of victim -themes of repair, amends adjustment, focus on harmonizing interests, mutuality, communication, participation, negotiation 	<ul style="list-style-type: none"> *Victim/Offender Reconciliation (YAS¹⁶, Halifax) (YAB¹⁷, Nanaimo) *Apology (V/W) *Youth Justice Committees (YJC)
RETRIBUTIVE/ RESTITUTIVE	<ul style="list-style-type: none"> -victim compensation -repayment for damages -disciplinary overtones 	<ul style="list-style-type: none"> *Fine *Personal Service *CSW¹⁸
REHABILITATIVE/ EDUCATIONAL	<ul style="list-style-type: none"> -moral and mental retraining -restoration of self-esteem, reputation, -learning and respecting the rights of other individuals 	<ul style="list-style-type: none"> *Anti-Shoplifting (Stop-Lift, SK) *Anti-Theft *Crime Prevention *Anger Mgt. *Life Skills *Employment or Family Counselling *CSW volunteering

¹⁵The specific examples of the type of measure are in brackets, with the location.

¹⁶Youth Alternative Society (YAS)

¹⁷Neighbourhood Accountability Board (NAB)

¹⁸Community Service Work can be considered retributive and disciplinary, as opposed to being reconciliatory, in the sense that there are a specific number of hours that are given out to the youth, which must be completed as part of an alternative measures agreement.

As the typology of alternative measures indicates, programs exist which reflect a commitment to youth needs fulfilment, or in other words, the needs side of the theoretical balance. But determining the nature of the balance, and the degree to which it has been endorsed by justice officials is difficult.

Some provinces have adopted different priorities in the implementation of Section 4 of the YOA. This can be seen not only in the types of programs which have resulted, but also in the administration of the programs themselves. Provincial variation in terms of service delivery already exists due to the different priorities of each provincial ministry responsible for the administration of alternative measures (See Table 4 below).

Table 4 indicates the range of agency involvement in the delivery of alternative measures programs. The table indicates the various responses by the provinces and how the programs have been implemented and/or administered. As Table 4 shows, some provinces contract out to social service agencies for the delivery of alternative measures. Other provinces retain exclusive jurisdiction over the provision of alternative measures programs. Still other provinces utilize Youth Justice Committees in alternative measures program delivery. In the last two situations, the decision to adopt a particular system is consistent with the shift in state policy coinciding with the fiscal crisis of the state. This requires further explanation.

TABLE 4: Administration Of Alternative Measures¹⁹ By Province

Province	Community Agencies	Youth Workers/ Probation Offices	Youth Justice Committees	Service Providers
Nova Scotia	X	X		
New Brunswick		X	X ²⁰	
Prince Edward Island		X		
Newfoundland			X	
Quebec		X		
Ontario	X	X		
Manitoba			X	
Saskatchewan	X	X		X
Alberta		X	X	X
British Columbia	X	X	X ²¹	

That the funding for alternative measures programs is either entirely governmental, or is quasi-governmental, influences the degree to which the community may be involved. Even in the case of Youth Justice Committees, which are made up of community volunteers, the constitution, committee development and objectives must be approved by the appropriate delegate of the Attorney General before the committee will even be recognized. This does not mean that the services provided in terms of alternative measures programs are not useful. It simply means that the original concept of diversion, or a move away

¹⁹Supervisory Agencies is a term used in the Juristat Bulletin, February 1990.

²⁰In NB, the term Alternative Measures Committee (AMC) is used.

²¹In BC, the term Neighbourhood Accountability Board (NAB) is used.

from formal processing, may not be entirely possible.

One of the most salient findings in this study relates to the quality of participation and service delivery. Where there is no specific agency or committee responsible for the delivery of alternative measures, the programs in existence tend to rely on certain types of measures. For example, almost all communities utilize personal and community service work, apologies, and fines. Concern extends from the fact that in most communities, there is a tendency to rely on the second type of measure, while the other two types remain under utilized ²².

Table 5 represents an indication of the extent to which alternative measures have been implemented. The number in each cell is determined by the presence of factors for each type of alternative measure, as determined by the three categories of the typology.

The calculation of the number was defined as follows:

Type of Alternative Measure	Possible Factors
Reconciliation/Mediation:	use of apology (verbal or written) specific mediation program in use use of Youth Justice Committees
Retributive/Restitutive:	use of fines, financial restitution use of community service work personal service/ work for the victim

²²See Table 4 for provincial comparison and implementation data from the typology of alternative measures below.

Rehabilitative/Educational: offence-related program use²³
 family counselling referrals
 use of life-skills programs²⁴

Each province may receive a possible score of 3 points for each alternative measures type. An average factor score was generated as an indication of the number of factors present for each program "type". The average factor score reflects a national perspective on the incidence of a particular program "type".

If all three factors are present in a given province, the value of three was assigned. If any two factors are present, the value of two was assigned. If only one factor is evident, the value of one was assigned.

Table 5 below indicates that there is a high incidence of the second type of measure, the retributive/restitutive type, with an average of 3 factors present for every province. This is an indication of the current nature of the youth justice system in Canada. Despite the legislation of the YOA providing the possibility for the implementation of various different types of alternative measures programs, this research suggests that we are not utilizing the full range of options available. Evidence exists of moderate use of reconciliation/mediation programs, with an average of 2 factors present in each province.

²³This criterion would include the use of anti-shoplifting or anti-theft programs, for example.

²⁴This would include such things as anger-management, and the teaching of employment skills, or programs aimed at improving self-esteem.

TABLE 5: The Incidence Of Alternative Measures Factors Present By Type Of Alternative Measures By Province²⁵.

Province	Reconciliation/Mediation	Rehabilitative/Educational	Retributive/Restitutive
Nova Scotia	2	2	3
New Brunswick	2	1	3
Prince Edward Island	1	1	3
Newfoundland	3	2	3
Quebec	1	1	3
Ontario	2	3	3
Manitoba	3	1	3
Saskatchewan	2	2	3
Alberta	2	1	3
British Columbia	2	1	3

Overall Factors Present By Program Type:

Type of Alternative Measure	Reconciliation/Mediation	Rehabilitative/Educational	Retributive/Restitutive
Average Factors Present	2	1.5	3
Use of Alternative Measure	Moderate	Low	High

These findings indicate the nature of the implementation of alternative

²⁵Refer to Appendix D for specific data on the nature of the programs, as well as where specific programs are located.

programs across Canada. In addition, the rehabilitative/educational programs are relied upon the least of the three possible types of programs, with an average of 1.5 factors present in each province. This may indicate a decline in the welfare model of youth justice.

With the retributive/restitutive program types, emphasis is placed on the quantitative aspect of the programs, that is, how many youth are "processed"; how many hours of community service work are assigned; how much money will be paid in terms of fines etc. These types of issues are more easily managed under the second type of alternative measure. While this type of program exists as one form of alternative measures, it does not contain the objectives of victim-offender reconciliation, or educational programs. This does not, however exclude the possibility of combining the goals of each type when designing an alternative measures agreement for a particular youth. Designing a meaningful and appropriate agreement for a young person would require considerable time and effort on the part of those involved. Given the previous discussion on the changes in the role of the state, it is not difficult to see how creative measures which require time and effort may not be used, if they continue to exist under the control of the state.

While there are programs in existence which contain elements of mediation and rehabilitation, there is a tendency for these kinds of programs to be replaced by ones which are more expedient and efficient when it comes to the deployment of human and monetary resources (Reid-MacNevan 1991)(See Table 4). This is

particularly true in provinces where the administration of alternative measures is exclusively the role of the provincial government. Data collected in this study show that more options exist for troubled youth in urban centres, as opposed to the more rural, smaller centres.

What has happened previously in some provinces, (See New Brunswick Profile) is that in larger centres, there are resources for specific youth officers to deal exclusively with young offender cases. In the more rural areas, individual probation officers may be required to oversee both adult and young offender cases. In Saskatchewan, there is funding in Regina, Saskatoon, and Moosejaw for mediation programs, yet Regina and Saskatoon are the only cities with funding for "Stop-Lift". This highly specific, offence-oriented program has been very successful, yet there are discrepancies in terms of services across the province. This can be explained in terms of budgetary restraint and fiscal pressures.

Unfortunately, in provinces which either contract out or retain exclusive control over the provision of alternative measures, the fiscal realities affecting the state has meant cutbacks in terms of funding for programs, as in the case of London, Ontario, Lethbridge, and Grande Prairie, Alberta. It has also meant that service delivery in rural areas has been affected due to increased work load placed on individual probation officers responsible for the alternative measures cases.

An additional reason behind the common use of the retributive/restitutive types of measures is because victim participation remains inconsistent. There is still a great reluctance on the part of the victim to engage in the communicative

process that some mediation programs provide. Still, some communities have experienced more success with victim involvement than others. During interviews, some respondents commented that it has taken considerable time and effort on the part of youth workers to engage the victims of crime, and the community in the programs they offer. Their time and effort have paid off. Furthermore, some communities have recognized the importance of the mediation process and involve volunteers as surrogate victims when the victim does not wish to participate (See Saskatchewan Profile). This kind of innovation may be what is needed if community programming is to remain a viable option in youth justice. While some provinces continue to utilize the more standard measures that tend to be administered by staff, other provinces have attempted to develop and sustain creative measures which include community involvement through the use of volunteers. This is in addition to the creation of specific programs which deal specifically with the issues of victim-offender mediation and/or offence-specific educative programs.

The use of volunteers is more apparent in community agency-operated alternative measures programs. Although some programs that are administered by a provincial ministry involve volunteers, usually there is no specific task pertaining to alternative measures that they are involved with. Some community agencies, for example the Youth Alternative Society in Halifax, use trained mediators instead of staff members to mediate an alternative measures

agreement²⁶. The extent to which volunteers are used, and the tasks they are trained to perform, varies across the country.

The use of Youth Justice Committees to help in the administration of alternative measures is one means to involve the community directly. The provinces which utilize Youth Justice Committees, have directly involved community members in young offender program delivery. In addition, it is important to realize that the provinces which have developed the option of Youth Justice Committees have tried to manage any fiscal or budgetary restraint, by committing to the creation of these community-based, volunteer-operated, committees. The commitment to the establishment of these committees has enhanced the capability of the community to progress informal methods of youth justice (Griffiths and Verdun-Jones 1989).

The commitment to creative programming, including the discovery of meaningful consequences in individual cases, cannot be ignored. Some provinces/agencies do attempt to address the needs of each particular youth, by designing an agreement with the youth, that is suited to his/her capabilities. The commitment of individual case workers to the concept of alternative measures, whether they work out of a provincial probation office, or a community agency will have an impact on the success of alternative measures. Even the strongest commitment cannot stand up to program cutbacks, and decreased funding. The change in the role of the state may mean all communities will need to develop

²⁶Halifax Mail-Star June 8, 1994; B1

Youth Justice Committees in the future. If the ideals of community participation and informal measures are still desirable, this may be the only remaining option. A strategy that allows communities input and time to discuss an agreement with the youth and optimally the victim is currently the closest thing we have to an alternative to formal court processing. This may be the rationalization for the programs at this stage in the quest for meaningful consequences and reform in youth justice.

Summary:

This chapter has presented the findings of the study on the implementation of alternative measures programs available across Canada. More detailed information regarding the nature of each program, the procedures used in each province, and provincial commentary is contained within Appendix D. The findings of the study indicate that alternative measures exist in three basic types: 1) Reconciliation/Mediation 2) Retributive/Restitutive and 3) Rehabilitative/Educational. The findings also indicate that despite the availability of alternative measures, there is evidence that indicates the ascendancy of a law and order approach. This is reflected in the reliance on the second type of measure, retributive/restitutive, with emphasis placed on the quantitative aspect of the programs. The over-utilization of the second type of measure, can be explained in terms of fiscal pressures. The other two types of programs, while reflecting youth needs fulfilment, require creative programming, time, and financial commitment.

CHAPTER 6: DISCUSSION AND CONCLUSION

This thesis has examined the shift in juvenile justice policy from the JDA to the YOA. A detailed discussion the theoretical debates surrounding the YOA has indicated that we have experienced a shift from a welfare approach to one reflecting an increased emphasis on law and order. This ideological shift experienced in the area of juvenile justice reform is consistent with changes in the nature and role of the state.

The shift to a law and order approach in youth justice, with the implementation of the YOA parallels the state's renewed concern with measures aimed at increased individual responsibility and accountability in the wider social sphere. Changes in the role of the state which corresponded with issues resulting from the fiscal crisis have primarily included decreased spending in social welfare, or the decline of the welfare approach. In its place a model emphasizing law and order concerns has emerged and attained prominence.

In order to demonstrate the nature of the change in youth justice, the implementation of the YOA, in particular, the Declaration of Principles was examined. The various theoretical models present in the guiding principles of the Act contain the goals of crime control (protection of society), justice (due process and rights), welfare (youth needs), and community change (social structure, inequalities). While those objectives co-exist theoretically in the Declaration of Principle, this thesis has examined the nature of the balance, and the extent to which the balance represents a compromise between the recognition of youth

needs and the protection of society.

In order to evaluate the balance, we looked to Section 4, of the YOA, which provides for the implementation of alternative measures programs. Alternative measures is one provision contained in the YOA which has the potential to meet youth needs. Theoretically, alternative measures embraces the ideas of minimal interference, inclusion and participation, and invests faith in the discretionary powers of both police and prosecution.

An examination of the types of alternative measures programs available across the country was conducted. Provincial data was collected in order to examine differences in procedure, programming and service delivery. A typology of alternative measures was developed to assist the analysis. The typology indicates that there are three major types of programs available across the country. The types are as follows: 1)Reconciliation/Mediation 2)Retributive/Restitutive 3)Rehabilitative/Educational.

The findings of this study indicate that the types programs in existence across the nation vary. The typology helps to identify the basic types of programs given this diversity. The study also indicates that alternative measures programs are used to a certain extent. The data presented indicates that approximately one third of young offender cases, on average, are dealt with by way of alternative measures (Also see Juristat 1990). There is evidence that the programs in existence have been successful. This success, however, is with the minor cases which are easily managed.

The findings also indicate that while there are specific programs which fall under each type, the majority of alternative measures agreements contain elements of the second type, or Retributive/Restitutive measures. Some provinces tend to rely on this type of measure because it is an efficient means of applying alternative measures in youth cases. The quantitative aspect of the Restitutive/Retributive type makes it easier to manage cases.

This issue relates directly to the concern that there is little financial support for the creative programming that some of the communities provide. Additionally, there is concern that resources for alternative measure service delivery in rural areas are limited.

The implications of this study for youth justice indicate that we may have the potential for achieving substantive justice in individual cases, through the use of alternative measures programs. The degree to which alternative measures can succeed in this respect, depends considerably on the role of the state and the commitment it has to sustaining creative measures aimed at fulfilling both the needs of youth and society. Do alternative measures programs exist as an option that meets both the needs of youth and society, while avoiding the paradox of increased social control? Joel Handler's approach may provide some insight and direction on this issue.

Future Directions: Dialogism and Alternative Measures

In his 'search for the dialogical community', one of Joel Handler's (1990)

primary concerns centres around the nature of the relationship existing between dependent persons and the state. Handler's discussion of the modern/post-modern search for the elusive dialogical community breaks away from classical liberalism, recognizes the need to discard formalism, the governing of relations by rules (p.6) and positivism. According to Handler (1990; 6):

There are structural barriers in society that systematically distort dialogue and communication, the task is to remove such blocking and distorting barriers.

Handler (1990; 90-91) goes on to clarify that his approach,

...seeks to break down hierarchy, to explicitly introduce values, commitments and institutions into the discourse of action and to create the conditions whereby people talk to each other.

In the area of youth justice, considerable effort has been undertaken in the attempt to generate "community"-based responses to criminal behaviour. Alternative measures programs are one such vehicle which may be used to break down structural barriers to communication. The commitment to programs such as alternative measures represents a commitment to the establishment of a more equitable justice system, where the objective is to produce substantive results in individual cases. Alternative measures provides a way to give or create a meaningful consequence for behaviour that is considered to be inappropriate. The difference is that the consequence is not necessarily more punitive.

We have examined the issue of social control and how it affects relations between citizens and state. In particular, we have examined the relationship between youth and the state, and the subsequent types of intervention that

resulted from their dependent status. Existing relations between dependent persons and the state are complicated and hampered by the unequal balance of power and resources.

According to Handler, certain individuals are disadvantaged, and have difficulty utilizing the legal safeguards available to defend their interests, rendering them powerless (Handler 1990; 4). Handler stresses the importance of "dialogism", which includes "...the central themes of dialogue, conversation, undistorted communication, communal judgement, and the type of rational wooing that can take place when individuals confront each other as equals and participants" (Berstein, in Handler 1987; 1071). Of all the alternative measures programs that are available presently, mediation is the one which best approximates the intent of dialogism. Encouraging open, honest discussion about matters that involve children, with the children who are affected, is imperative. If the goals of mutual trust, cooperation and understanding are to be realized, if only to a certain degree, communication must be a primary aim, and it must be undistorted (Handler 1987; 1091).

By involving the community there is hope that some forms of mutual understanding will develop between youth, the victims of crime and society. With mutual understanding may come trust. The idea of trust, as discussed by Handler (1987; 1089-1090) when:

based on good will, is both constitutive and transformative in that it equalizes power and changes both ideology and practice.

The trust of the community tends to grow gradually as the effects of the program are observed, or better yet "felt". Where trust is hard to find, Handler (1987; 1990) discusses the concept of "reciprocal mutual concrete incentives", which serve to increase the chances of engaging in a "dialogic relationship". Handler (1987; 1990) believes that cooperation is based on these "reciprocal concrete incentives", while trust is based on good will. It would seem logical that our trust is predominantly based on reciprocal, although not as concrete, incentives as well.

A community's trust can be demonstrated by providing support, either through voluntary service working with youth in conflict with the law, or in terms of private funding of a drop in centre for troubled youth, such as Rossbrook House in Winnipeg. In exchange for support and trust, the community is engaging in a type of crime prevention, or reinforcing a sense of community protection, and investing in the future of their youth. The incentive for the community is perhaps an increased feeling of safety, security and protection, not to mention a sense of accountability and empowerment. Crime prevention is a concrete goal to pursue. It is a valuable, and worthwhile incentive for communities, despite the fact that the results may be difficult to measure concretely.

Alternative measures exists as a part of an overall crime prevention strategy where the community can have a vital role. In addition to the role the community can play in the creation and sustaining of informal measures of youth justice, it is necessary to examine the role that justice official have in crime prevention strategies. Prosecutorial and police discretion in the youth justice system, have

often gone unrecognized as solutions to widening the net of social control. Since there is no way to avoid discretion in the system, one objective should be to recognize the potential discretionary practices would have in reducing the phenomenon of net widening. The best defense against widening the net is to trust those with discretion to divert youth informally from the criminal justice system. What needs to be stressed is the importance of "shared decision-making based on mutual respect" (Handler 1990; 19). By entrusting both police and prosecutors with discretionary power, the potential for net-widening can be curbed by the opposite force of informal methods, such as "taking no measures", or "non-judicial methods" (Section 4, YOA)²⁷.

Interestingly, one place Handler sees as a potential location for the dialogic community is in areas where discretion is apparent. According to Handler (1990; 17) discretion "involves the existence of choice, as contrasted with decisions purportedly being dictated by rules". Choice, in order to be a legitimate representation of alternatives, must consider "the interests and needs of the client in relation to public considerations (Handler 1990; 18).

This is directly related to problems apparent in the youth justice system. The law and order approach to youth justice reflects an emphasis on the protection of society. The protection expected by society from illegal behaviour, has resulted in a more punitive response to youth crime. The YOA has introduced retribution

²⁷ While victims of crime are the initial "gatekeepers" of youth involvement in the formal justice system, both the police and prosecution still have a vital role to play in informal methods of diversion.

and accountability measures to 'cope' with what is perceived as an increasing threat to the public. The balance outlined in the YOA with regards to meeting youth needs, however, has not been achieved since the implementation of this legislation. The findings of this study indicate that measures aimed at fulfilling youth needs rely more on restitution and retribution than on rehabilitation and reconciliation.

With the introduction of alternative measures programs in the Young Offenders Act, we have seen an initial commitment to alternative measures programs, as a reflection of the welfare state objectives concerned with youth needs. But as the welfare state continues to expand, and provincial budgets come under severe financial restraint, there are two consequences. Not only are we witnessing funding cuts to the provinces, in addition, funding to community organizations like John Howard, has been cut, and the control over the programs is being transferred back to the provincial government²⁸.

While this does not indicate a complete removal of alternative measures programs, it is significant nevertheless, that control has been removed from the community and placed with the provincial government. The extent to which these programs are considered to be alternatives to the formal system is questionable especially in provinces which are solely responsible for the administration of the programs. True, these provinces may use volunteers in some aspects of the

²⁸This is what occurred in the case of the Lethbridge and Grande Prairie John Howard Society. Also funding was cut for the anger management program offered by the John Howard Society of London.

functioning of the programs, however, as was indicated in several provincial profiles, the degree of community participation varies even when community agencies are involved. If the provincial ministry is the sole provider of the programs, the extent to which the community is involved will be questionable. This may affect the ministry's degree of commitment to engage the community in the justice process.

Dialogism proposes to equalize the moral agency of disadvantaged persons, with the hope of establishing mutual disclosure of interests and needs, while fostering trust and reciprocity (Handler 1987; 1089). Given this goal, it is important to reconsider one of Handler's (1987; 1001) original questions:

Is it possible...to have a dialogical community in a relationship that is, at least initially, characterized by great disparities in power, that is strongly hierarchical, and, for all practical purposes coercive?

In his treatment of reciprocal concrete incentives, Handler (1987; 1091) comments:

If reciprocal concrete incentives are necessary, we may really be talking about instrumental cooperation rather than dialogism.

What does this mean for the possibility of even achieving dialogism in any form?

Handler (1987; 1091) answers this by clarifying the potential of achieving dialogism:

I do not view the ideal speech situation as a place that is finally reached...Rather it is a matter of degree, of gradation, of more or less, of points on a continuum.

Similarly, a viable community alternative to the formal system does not exist currently, but there are programs in place which approximate the dialogic

community (i.e. mediation). The potential for achieving substantive results in terms of alternative measures is conceivable, however, only if programs exist and are operated in the community, by the community. Currently, alternative measures programs exist as state imperatives. When subjected to public pressure concerning the perception of increased violence, it is that much easier to move from a needs-oriented model, to one of law and order. This move is furthered and expedited when the state is under budgetary restraint. In these types of situations, initiatives aimed at recognizing needs appear as secondary considerations to the protection of society.

What often seems to happen during each era of reform is a cycle of inspiration, followed by disillusionment because of unintended results and consequences, followed by the abandonment of the program (Cohen 1987). We have already seen the types of issues that arise when new ideological concepts (diversion) inspire change (destructuring movements), only to the realization that the concept is imperfect (wider, stronger, different nets) (Cohen 1985; Austin and Krisberg 1981). It seems as though, at this stage of reform, we are between the inspiration and disillusionment phases. We are inspired by the idea that the community may have a vital part to play in addressing the problem of youth crime. The entire concept of alternative measures centres around the idea that the internal dynamic of a community may be better suited toward providing accountability measures for youth who come into conflict with the law. Yet, there are issues of control, power and the efficient management of the system of youth

justice

The problem arises when the state invokes the community, while maintaining system objectives, and bureaucratic imperatives. Disillusionment is imminent when the realization comes that the success experienced in alternative measures has been observed by the state as the added benefits of cost-reduction and efficiency. Nevertheless, Cohen (1987) comments that it is imperative that we not lose sight of the original ideas that lead us to the point of reform. What is needed is a 'cautious reaffirmation' of those values. It appears as though our choices for young offenders currently, are limited to either incarceration or alternative measures. There is yet to be an intermediate response for young people who come into conflict with the law.

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APPENDIX A:

Young Offenders Act, Declaration of Principle:

Section 3.(1) It is hereby recognized and declared that

Responsibility Accountability:

(a) while young people should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offenses should nonetheless bear responsibility for their contraventions;

Protection of Society:

(b) society must, although it has the responsibility to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour;

Special Needs:

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

Alternative Measures:

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

Due Process Rights:

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

Least Interference:

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

Right to be informed:

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

Parental Responsibility:

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

**APPENDIX B:
A LIST OF INTERVIEW²⁹ PARTICIPANTS**

Alberta:

Gordon Leigh
Executive Director
John Howard Society of Lethbridge
Interview Dated: May 2, 1994

Dennis Williams
Acting Assistant Director
Young Offender Branch
Correctional Services Division
Department of Justice
Edmonton, Alberta
Interview Dated: May 10, 1994

British Columbia:

Paul Barnett
Executive Director
John Howard Society of North Island
Campbell River, British Columbia
Interview Dated: May 3, 1994

Shoo Brown
Case Worker
Neighbourhood Accountability Board
John Howard Society of Nanaimo
Nanaimo, British Columbia
Interview Dated: May 9, 1994

Alan Markwart
Program Analyst
Youth Services Branch
Ministry of the Solicitor General
Victoria, British Columbia
Interview Dated: May 5, 1994

²⁹Those participants with an asterisk (*) sent pages of information regarding alternative measures available in their province.

Manitoba:

Earl Norlander
Department of Justice
Corrections Division
Winnipeg, Manitoba
Interview Dated: April 28, 1994

Russell Loewen
Director
John Howard Society of Brandon
Brandon, Manitoba
Interview Dated: April 25, 1994

New Brunswick:

Michael Hornyak*
Acting Director of Young Offender Services,
Supervisor of Programs
Correctional Services Division
Fredericton, New Brunswick
Interview Dated: May 4, 1994

Newfoundland and Labrador:

Wanda Penny*
Youth Corrections
Department of Social Services
St. John's, Newfoundland
Interview Dated: May 4, 1994

Nova Scotia:

Fred Honsberger*
Director
Community Corrections
Department of the Solicitor General
Halifax, Nova Scotia
Interview Dated: April 25, 1994

Peter Mortimer*
Executive Director
Youth Alternative Society
Halifax, Nova Scotia
Interview Dated: May 6, 1994

Barb Hatfield*
Y.O.A. Community Development Director
John Howard Society of New Glasgow
New Glasgow, Nova Scotia
Responses were mailed: May 20, 1994

Ontario:

Duncan Gillespie*
Executive Director
John Howard Society of Hamilton Wentworth and District
Hamilton, Ontario
Interview Dated: May 3, 1994

Maureen Murphy*
John Howard Society of County of Waterloo
Kitchener, Ontario
Interview Dated: May 2, 1994

Prince Edward Island:

Carl Doucette*
Provincial Administrator of Community Programs
Department of Justice
Charlottown, PEI
Interview Dated: May 6, 1994

Quebec:

Lucie Rendeau*
Crown Prosecutor (Substitut du Procureur General)
Ministere de la Justice
Direction generales des affaires criminelles et penales
Direction du droit de la jeunesse
Ste-Foy, PQ
Interview Dated: May 3, 1994

Saskatchewan:

Dorothy Banka*
Community Programs
Family and Youth Services Division
Saskatchewan Social Services
Regina, Saskatchewan
Interview Dated: April 28, 1994

Jim Warner*
District Director
Regina John Howard Society
Regina, Saskatchewan
Interview Dated: May 4, 1994

Renee Gavigon*
District Director
Saskatoon John Howard Society
Saskatoon, Saskatchewan
Responses were mailed: May 11, 1994

George Dash*
District Director
John Howard Society of Moosejaw
Moosejaw, Saskatchewan
Responses were mailed: May 2, 1994

APPENDIX C:**DOCUMENT LIST****New Brunswick:**

Annual Report of the Solicitor General 1990-91, 1991-92, and 1992-93.

Newfoundland:

"An Overview of the Alternative Measures Process for Young Offenders in Newfoundland and Labrador." Division of Youth Corrections, Department of Social Services, January 1994.

Nova Scotia:

"Alternative Measures Program", Pamphlet distributed by the John Howard Society, New Glasgow, NS.

"Annual Report, Youth Alternative Society", Spring 1994, No. 22.

"Alternative Measures: An Alternative to Traditional Court Processing", Pamphlet distributed by the Department of the Solicitor General.

"Alternative Measures Program Design", Department of Justice, March 15, 1988.

"Alternative Measures Policy and Procedures", Department of Justice, June 1, 1987.

Ontario:

"The Alternative Measures Program", Pamphlet distributed by the John Howard Society of Hamilton-Wentworth District.

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Prince Edward Island:

"Alternative Measures: Policy and Procedures Guidelines for Prince Edward Island," Department of Justice, Community and Correctional Services Division, Amended April 1987.

Quebec:

"Program of Alternative Measures Authorized by the Minister of Justice and the Minister of Health and Social Services", Government of Quebec, Ministry of Justice and Health and Social Services, January 7, 1994.

Saskatchewan:

"Profile-Saskatchewan", Department of Social Services, 1991-1992.

"Fact Sheet: Alternative Measures", Department of Social Services.

"Annual Report, 1992-1993", John Howard Society of Saskatchewan, Regina Council.

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"Mediation: An Alternative to Court for Victims and Accused Under the Young Offenders Act," Pamphlet distributed by the John Howard Society of Moosejaw, Regina, and Saskatoon.

"Stop-Lift: An Alternative to Court for Young Persons Under the Young Offenders Act", Pamphlet distributed by the Regina John Howard Society.

APPENDIX D:**PROVINCIAL DATA:**

The order of presentation for the provinces has been determined by the manner in which the province administers alternative measures programs. There are three basic types, which reflect the degree of state involvement or direction.

In the first instance, there are provinces where alternative measures programs are exclusively administered by the appropriate government department. The provinces that fall under this category are: Prince Edward Island, and Quebec. Secondly, there are provinces that consult with and provide direction of an organized group of community volunteers, usually known as Youth Justice Committees³⁰. Youth Justice Committees are consulted and used in Manitoba, Newfoundland, Alberta and New Brunswick. Finally, there are provincial governments that contract out to specific community agencies to provide alternative measures services. This occurs in Saskatchewan, British Columbia, Alberta, Ontario, and Nova Scotia. There are ten provincial profiles. Each profile will consist of three elements: a discussion of the province's procedures, programs, and concerns. The material relied upon to complete each provincial summary is a compilation of both written material I received in packages from provincial contacts³¹, and information gathered during telephone interviews. The section on provincial concerns is a discussion of the relevant considerations and concerns

³⁰In New Brunswick, the committee is known as an alternative measures committee.

³¹A list of the packages of information is contained in Appendix C.

that were raised with regard to alternative measures programs during telephone interviews.

PRINCE EDWARD ISLAND: PROFILE

PROCEDURAL DESCRIPTION/PROVINCIAL PROGRAMS:

Referrals to alternative measures programs in the province of Prince Edward Island (PEI) are police-initiated, crown-approved. Alternative measures is a community program provided by the Ministry of Health and Social Services. Provisions for alternative measures are available across the province from local probation offices.

Generally, the police, after the investigation of an alleged offence, will determine the eligibility of the youth for alternative measures. The initial decision not to charge the young person rests with the police, who may then recommend alternative measures. Again it is important to realize that the youth will only be referred to the program if there is sufficient evidence to lay a charge. Police discretion is used to ascertain the nature of the offence and the likelihood of the youth re-offending. When the case appears before the Crown, the criteria for eligibility are reassessed. The Crown then decides whether to approve the case for alternative measures. The program is generally a pre-charge program that permits minor offenses (theft is the most common) not involving violence, to be managed outside the formal court system. In PEI, a youth may only participate once in the alternative measures program. Referrals may be made at the post-charge stage, but in keeping with the original intent of alternative measures under

the YOA, an effort has been made by all justice officials (police, prosecutors, judges) to keep most referrals at the pre-charge stage. The general feeling is that for it to be a true alternative, there should be no charge.

If the youth has referred to alternative measures the case will be forwarded by the Crown to the nearest local probation office. It is the probation officer's responsibility to ensure that the youth has accepted responsibility for his/her actions, and that the youth has been informed of his/her right to consult with, and obtain council. This is determined during an office interview conducted by the probation officer. For the purposes of the interview, the officer will contact the youth and their parents/guardian. The officer will also contact the police and/or victim if it is either appropriate or necessary for the case. When drawing up the alternative measures agreement, victim participation is encouraged. The degree of victim participation varies across the province. One objective of the office interview is to foster participation of the youth in the creation of an agreement between the victim and his or herself. It is the responsibility of the probation officer to

...(design) the alternative measures agreement considering the nature of the offence, the appropriateness of restitution, personal or community services, the special needs of the young person, the availability of community resources, among other factors (PEI Department of Justice, Community and Correctional Services Division; April 1987;p. 4).

If the victim chooses not to participate in the development of the agreement, he/she will nevertheless, be informed as to the nature of the alternative measures agreement and the outcome. If the youth completes the measures successfully,

charges will not be proceeded with. On the other hand, if the program is not completed successfully, the case will be returned back to the Crown for reconsideration. The Crown will decide whether or not to proceed with a charge. Generally, a charge will be laid if the youth breeches the agreement, or fails to complete the measures in a satisfactory manner. Proceeding with a charge in this way, helps to retain the credibility of the program. If the measures are not adequately completed, and there is no consequence for non-completion, it is not sending an appropriate message to the youth.

PROVINCIAL COMMENTARY:

The alternative measures program in PEI has been in effect since 1984-85, and is currently undergoing a formal evaluation. The evaluation will examine such things as recidivism, disparity in referrals, and whether the program is meeting the needs and objectives that were originally intended. There is speculation that any variation across the province in terms of referrals can be accounted for by different attitudes and beliefs held by both police officers and Crown Attorneys surrounding alternative measures. Some police detachments may refer specific (alleged) offenses consistently to alternative measures, whereas other departments or individual officers may charge a youth who has committed a similar offence. It is a police officer's acceptance of alternative measures programs which ultimately determines if the program will be successful or not. The initial decision to refer a young person to alternative measures rests with the police. It is possible that some officers do not recognize the value of the program and instead choose to charge

the youth with an offence.

The province of PEI is looking to expand the role of the community in the provision of alternative measures. While there is some use of volunteers within the ministry, there is no specific use of them in alternative measures. In the future, the province would like to see the development of Youth Justice Committees (see profiles on Manitoba, Newfoundland, and Alberta for a description of Youth Justice Committees) as part of an initiative to involve the community in youth justice.

QUEBEC: PROFILE

PROCEDURAL DESCRIPTION:

Prior to the implementation of the Young Offenders Act in 1984, the province of Quebec had what were termed "voluntary measures", which existed under provincial law. Voluntary measures were essentially part of an initiative that existed under the Youth Protection Act (1977). The rationale behind such measures was to divert the minor incidents from court to leave time for the cases which were the most serious in nature. The legislation was eventually replaced by the Young Offenders Act, however, the provision for diversionary measures was already in place (LeBlanc and Beaumont 1988). This is significant for the purposes of this discussion, for it demonstrates the long tradition of voluntary measures that the province had prior to the implementation of sec 4 of the YOA.

Alternative measures under the YOA in Quebec is a pre-charge program. The police refer cases to the Crown. The Crown will determine whether there is adequate information to proceed with a charge in youth court, and will decide

which offence, if any, has been committed. The province has developed a list of situations or offenses that enable the Crown to lay a charge. The list of offenses/situations covers these types of infractions with respect to the Criminal Code: a) against public order, b) involving firearms and other offensive weapons, c) against the administration of law and justice, d) sexual offenses, public morals and disorderly conduct, e) involving disorderly houses, gaming and betting, f) against the person and reputation, g) against rights of property, and h) wilful and forbidden acts in respect of certain property. The list also contains several sections of the Narcotic Control Act (S.C., 1985) and the Food and Drugs Act (S.C., 1985) that if in question, the Crown may authorize prosecution. If the case brought before the Crown appears on the list, the Crown may directly refer the case to the youth court. If the case does not involve a situation appearing in the list, the Crown must refer the case to the Provincial Director for an evaluation.

Quebec, unlike any other province in the country, has a provision (Section 7) applicable to youth who are aged 12 or 13, which will initially delay the discretion of the Crown to authorize prosecution. A case involving a youth aged 12 or 13 will be referred to the Provincial Director (PD) by the Crown, whether it appears on the offence/situation list. Once a case has been referred to him/her, the Provincial Director will evaluate the case and determine whether it is a case for alternative measures. The Provincial Director's role is to assess the social situation, which involves determining the likelihood of re-offending, and the admission of responsibility from the youth. The FD also must ensure that

evidence exists which indicates prosecution is probable. After completing the evaluation, the Provincial Director has three options. Firstly, the case may be dismissed. Secondly, the case may be referred to alternative measures. And finally, the case may be referred back to the Crown with the recommendation that the matter be dealt with by the youth court.

The types of measures that may be applied as conditions as part of the agreement are similar to those available in all provinces. For example, the youth may be required to work free of charge for the victim, or compensate the victim in terms of financial restitution. The other possible conditions include community service or volunteer work (not to exceed 120 hours), or participation in "...an activity conducive to improving his (her) social skills" (Ministry of Justice and Ministry of Health and Social Services Jan. 1994; p.3).

When developing the alternative measures agreement, the Provincial Director may include any combination of the above conditions. The PD must consider several factors when determining the extent and nature of the alternative measures agreement. For example, the youth's level of maturity, financial situation, and skills/interests will affect the type of measure(s) specified.

It is the responsibility of the Provincial Director to inform the youth of the decision to proceed via alternative measures. The Director must also ensure that the youth is made aware of his/her right to consult with council. The young person, in return for participation in alternative measures, must be accountable for his/her actions, and consent to have the matter dealt with by alternative measures

as opposed to the formal court system.

If the youth does end up before the youth court, it is as a result of three possible situations. Firstly, the youth may have been referred originally by the Crown because the alleged offence does appear on the list of prosecutable offenses. Secondly, the youth may be referred to the court after the evaluation of the Provincial Director. The Director may determine that, upon examination of the circumstances, and after speaking with the youth, that alternative measures is not an appropriate response. Finally, the case may have been referred to alternative measures, however, if the youth did not comply with the terms of the agreement, the case would have been returned to the Crown for prosecution.

In terms of statistics for the province, generally, over the past five years, approximately 75% of the cases are referred to the Provincial Director for an evaluation, the remaining 25% have had charges laid directly to the youth court. Of the 75% of cases evaluated by the PD, charges are laid in 30% of the cases, the remaining 45% are referred to alternative measures. Generally, then, 55% of the cases are heard in youth court, while 45% are dealt with by way of alternative measures. In actuality, however, once the process is complete, 7% of the cases are dismissed by the Crown at the outset, 57% of the cases end up before the youth court, and 36% are managed in alternative measures programs.³²

This is an average statistic for the past five years for the province. The difference in percentages can be accounted for by the fact that some cases have been

³²Does this mean that they have a success rate of 97% ie. 3% of the youth cases were referred back to the court?

considered for alternative measures, but for some reason the case returned to the youth court. The case may end up before the youth court because the evaluation indicated that alternative measures wasn't appropriate, or if the youth did not want to admit responsibility. Seldom does a case return to youth court because of failure to comply with the measures assigned.

Changes were made as recently as January 1994 to assist in the administration of alternative measures programs. Generally, the changes were made in order to address the problem of delays in the referrals to the Provincial Director. The most recent program guidelines authorized by the province's Minister of Justice and the Minister of Health and Social Services clarifies considerably the types of situations and offenses which the Crown may authorize prosecution. This assists in speeding up the referrals to the Provincial Director, and avoids any unnecessary delay in processing the cases. It is too soon to determine how the changes have affected the referral process. One comment made during the interview was that the new guidelines facilitate case processing, which frees up time to concentrate on the more serious cases. In addition, from the Crown prosecutor's point of view, there is more time which can be spent on obtaining better results, of obtaining more protective measures for the community.

ALBERTA: PROFILE

Alberta is one of the provinces which uses a variety of agencies in the provision of alternative measures programs. The province uses community

agencies (for example John Howard³³ and Native Friendship Centres), youth justice committees and probation offices in the provision of alternative measures programs.

PROCEDURAL DESCRIPTION:

Referrals to alternative measures in Alberta may be made at either the pre- or post-charge stage, although the majority of referrals are pre-charge. Alternative measures programs are police-initiated, Crown-approved. After a review by the Crown, the case is referred to the probation office for one further assessment to ensure that all the criteria have been met.

The types of offenses that may be considered for alternative measures are usually of a minor nature, and the young person must have no previous record or involvement in alternative measures programs. Offenses that are not considered eligible for alternative measures include those which involve violence or the threat of violence, Motor Vehicle offenses, and specific violations of the Criminal Code i.e. purgery, property offenses over \$1000. The programs allow most offenses including common assault, and simple possession of marijuana. The Crown still retains discretionary power and may refer cases which are considered to be exceptional to alternative measures.

³³ A recent development affecting the services John Howard provides occurred in September 1993 when the funding was cut for alternative measures programs in Lethbridge and Grande Prairie, Alberta. The provincial government, specifically the Young Offender Branch of Correctional Services (Department of Justice) resumed control over alternative measure programs for the province. For the purposes of the discussion, the program that was in operation in Lethbridge, and the similar program that was available in Grande Prairie will be reviewed.

There are several options available as conditions for the alternative measures agreement. The agreement is to include no more than three of the following conditions: apology, personal or community service (neither of which is to exceed 30 hours), financial compensation of 1000 dollars for a federal offence, or 500 dollars for a provincial offence. In addition one of the conditions may include a referral to counselling service that is made available to the community without a fee. The youth is referred to a counselling service outside the alternative measures program because counselling is usually a long-term undertaking, whereas the alternative measure agreement is usually conducted within a three month time period. Another option involves a victim/young person agreement, which is possible only if the victim wishes to participate and negotiate an agreement with the young person. As beneficial as it may be, not often do the victims wish to participate. There are no statistics available on the amount of victim-participation in terms of the victim/young persons agreement.

Correctional staff handle approximately 60% of the referrals, the remainder of referrals for the province are managed by a combination of the Edmonton Social Services Department, youth justice committees, and contracts given to native service providers. There are 13 youth justice committees in the province, three of which are directly involved in the alternative measures process. The other remaining ten committees act in more of a 'sentencing advisory role'.

Statistics for the province indicate that in 1992-1993 there were 4086 cases referred to alternative measures. Given that the majority of cases (95%) are

referred at the pre-charge stage, these cases are not recorded as cases heard before the youth court. In 1992-1993, there were 19882 cases heard before the youth court for a total of 23968 youth cases. Referrals to alternative measures therefore constitute 17% of young offender cases in the province. The success rate, that is cases which are closed with no violations was 94% for 1992-1993.

Alberta, like the province of British Columbia has the option of using "caution letters", for shoplifting offenses, instead of going through the alternative measures program. Usually referrals for this option involve youth who are low need, low risk youth. Police will submit information in a summary report which will be forwarded to the Probation Office. The decision will then be made as to whether or not the youth will be given a cautionary letter. The parents will be given a copy of the caution letter, where the option is available to contact the probation office, if more intervention is needed.

In 1992-1993 there were 1315 caution letters sent out. While this is only a small portion of the original number of cases heard before court, it is still fulfilling a need, and in cases where there is no further criminal involvement by the young person receiving the letter, it has avoided the menacing concern of net-widening.

In the cases where alternative measures will be used, there are several situations that may arise which would jeopardize the youth's success in completion. Such situations include: denial of responsibility, and failure to reach the initial agreement, failure to comply with the measures assigned. If any of these situations occur, or the case was originally a post-charge case, it will be

referred back to the Crown for review. It is the Crown's decision whether to proceed with a charge.

Until September 1993, in both Lethbridge and Grande Prairie Alberta, the responsibility for alternative measures programs rested with the John Howard Society. The programs that were available originated prior to the implementation of the YOA, and were pilot projects designed to assess the feasibility of Section 4, alternative measures programs. Lethbridge tested a program that considered alternate court dispositions, i.e. community service work, restorations, family and individual counselling. The Grande Prairie model centred around the concept of victim/offender reconciliation. When the projects were evaluated, it was determined that both models were appropriate.

During the time of operation, the program in Lethbridge experienced an 85% success rate. That the funding was cut for programs in Lethbridge and Grande Prairie is significant, for the original concept of alternative measures was to involve the community in aspects of the program's functioning. And while there is still volunteer community participation in the programs while they are managed by Corrections, the effect the change has on the feeling in the community is not easy to determine.

PROVINCIAL COMMENTARY:

Although the alternative measures programs available in Alberta under the Department of Justice, appear successful in that only 6% of the cases are not completed, there is concern about the nature of the success. There is concern,

(and the concern should not be isolated to just Alberta) for the success of a given program may be determined by the selection criteria. On one hand the success of the program may be attributed to the actual program itself, whereas on the other hand, the success may be credited to the types of cases that are managed under the program. It may almost be an artificial success if the program is including cases which would have been diverted prior to the implementation of the YOA. This would be seen as a widening of the net of social control and surveillance over youth.

The majority of referrals to alternative measures programs are for offenses against property, (92%) followed by offenses against the person (6.4%), and the remainder of offenses are other criminal code violations or narcotics offenses. That there is an over-representation in the number of offenses against property may be an indication that the screening process for alternative measures is too restrictive. The province is looking at the possibility of expanding the selection criteria for alternative measures to include second time offenders. Currently, only those youth without a prior record, and without previous involvement in alternative measures may participate.

One other concern of the province, is the low percentage of native youth that are being referred to the alternative measures programs (7%). The numbers are low in comparison to the number of natives that are represented in both custody programs (31%) and other community programs such as probation or community service orders (23%). There are several possible explanations for this

occurrence. It is not necessarily that the referral process is unfair, and that the police are not considering as many native youth for these programs. It is more likely a combination of both the personality of the officer and the suitability of the young person. Another factor which may influence an officer's decision to refer a youth to a program is the degree of remorse and the social circumstances of the youth. If the youth has a wide array of problems, the officer may not recommend him/her for alternative measures. Nevertheless, it is importance to realize the discrepancy in the types and number of referrals for native youth. Cultural differences may have more to do with the number of referrals than is realized. The province has taken steps to deal with this issue, in supporting native service providers in the delivery of alternative measures programs.

The province is looking to expand the criteria to include second time offender in alternative measures. This expansion could be facilitated by improving information sharing between police, schools and parents. There are facets of this issue in all provinces. Information sharing, and communicative practices hinge on the notion of participation and inclusion. These are areas that need to be addressed by the nation.

BRITISH COLUMBIA: PROFILE

PROCEDURAL DESCRIPTION:

Alternative measures programs in the province of British Columbia are

generally referred at the pre-charge stage³⁴. Funding for the programs by the Corrections Branch of the Department of the Attorney General. Any potential charges are reviewed by the Crown Attorney before any information is laid. As with all provinces, there must be adequate evidence to proceed with a charge. The Crown must also determine whether it is in the public interest to proceed. There are three possible phases of decision-making that may be exercised by the Crown.

Firstly, the Crown may distribute a letter of caution to the parents of the youth who has been involved in an incident. This option is not considered part of the formal alternative measures program, it is similar to informal police diversion, where the case is minor, and there has been no previous involvement. There are no statistics kept on the number of cautionary letters sent out to parents, which would indicate how many youth were informally diverted from the youth justice system.

The second option that the Crown may utilize, is a referral to a community agency, such as the John Howard Society. The types of services John Howard provides around the province varies³⁵. The third possibility is for the Crown, after having determined the case eligible for alternative measures, to refer it to the local probation officer. The probation officer will conduct an evaluation of the social

³⁴Rarely are referrals made at the post-charge stage in BC due to the province's adoption of a non-prosecutorial policy. It would not make sense to charge a youth, refer them to alternative measures, and if the youth did not comply with the a.m. agreement, have no recourse. (See Provincial Commentary for further discussion)

³⁵There will be a discussion of each program that John Howard provides with respect to alternative measures under the heading of provincial programs.

situation of the youth, and will ensure the youth has admitted responsibility for the incident. Upon completion of a negotiated agreement, the probation officer will refer the case back to the Crown with a recommendation either for or against alternative measures. The decision rests with the Crown as to where the case will be managed (i.e. through the court, or by the probation office).

British Columbia is the only province in Canada to have a non-prosecutorial policy. The policy applies if the youth has agreed to take part in alternative measures, and fails to complete or comply with the agreement that has been devised. If this should happen, the youth will not be required to face the charge in youth court. There will be a record of the youth's participation in the program, and a notation of the subsequent failure to comply, which will be kept for two years.

PROVINCIAL PROGRAMS:

John Howard Society of North Island:

Victim/Young Offender Reparation Program:

The program offered by the John Howard Society of North Island is offered to first time offenders at the pre-charge stage. The majority of referrals are for crimes against property, primarily shoplifting. The program's emphasis is on the negotiation of an agreement between the youth and the victim, that allows the youth to be accountable to the victim/community. The victim is encouraged to express his/her views with respect to the diversion agreement. The diversion agreement may typically contain community service work, a written or personal

apology, essay, personal service for the victim or financial restitution. The agency may refer the youth to other community agencies if the youth has a high need level. Some referrals are for such things as drug and alcohol programs, independent living, and parent/youth mediation. Decisions are made by diversion counsellors, parents, and teens.

John Howard Society of Nanaimo:

Neighbourhood Accountability Board:

Alternate measures in Nanaimo are initiated with an assessment conducted by the RCMP of the alleged offence/situation. The RCMP initially determine the eligibility of the youth for participation in the program, it will later be confirmed by the Crown Prosecutor. The police must ensure that the youth has accepted responsibility for his/her actions and that he/she be a first time offender. All referrals to the John Howard Society have been Crown-approved. The John Howard alternative measures case worker conducts three scheduled meetings with the young person. The first meeting is essentially an interview where the nature of the offence and the course of action are discussed. The purpose of the interview is to ensure that the youth is taking responsibility for his/her actions. If the youth is intent on pleading "not guilty" the interview is suspended and the matter will be referred back to the Crown. The interview provides the case worker the opportunity to assess the situation, and determine whether the youth would be better to proceed through the youth court. If the youth does accept responsibility, and enters the program voluntarily it is like accepting guilt. The interview process

can involve mediation and counselling, which can be done right out of the office. With drug and alcohol rehabilitation the youth will be referred to an outside agency for assistance.

The second scheduled meeting with the youth, called "The Panel", involves trained community volunteers. Victim-involvement varies. Whether the victim participates or not, they will still be contacted, and made aware of the proceedings, and the results of the meetings of the Neighbourhood Accountability Board. The members of the Neighbourhood Accountability Board attend a meeting with the purpose of developing the young person's reparation agreement.

The third and final meeting is scheduled upon completion of the agreement. Once the youth has completed the terms of the agreement, they will have no criminal record. If the youth does commit another offence within the two year period following participation in alternative measures, he/she will not be considered eligible for the program again. If after the two year period expires, a youth becomes involved in criminal activity, they may be considered as clients for alternative measures. As was mentioned previously, if the youth does not successfully complete the agreement, there will be no action taken to prosecute the youth.³⁶

PROVINCIAL COMMENTARY:

Considerable discussion during interviews centred around the non-prosecution policy that is in existence in the province of British Columbia. It is

³⁶There are approximately 300 referrals to the Neighbourhood Accountability Board in a year.

significant to note that the province recognized the concept of diversion long before the young offenders act implemented the idea of alternative measures³⁷. This is part of the reason behind the decision to maintain a non-prosecutorial policy. The original intent of diversion programs was to provide a true alternative to the formal court system. The problem that arises with alternative measures programs which prosecute a youth who does not complete the program, is the issue of voluntariness. The procedure for participation in alternative measures requires that the youth voluntarily consent to take part. If there is a threat of prosecution if the youth does not take part, the voluntariness of the program is questionable. The controversy is also linked with the inducing of confessions. Some people compare the acknowledgement of responsibility with an admission of guilt. However, there is also another side to this.

In most cases, if there has been some questionable behaviour on the part of the young person, accepting responsibility with the rationale that it will avoid the more serious nature of the court system, is still a viable option. If a "guilty" youth can participate voluntarily and an "innocent" youth can have his/her day in court, it avoids "double jeopardy" because of the non-prosecution policy. If by having the non-prosecution policy it meant that a considerable number of young people were diverted from the formal system, and the recidivism rates did not rise, the policy

³⁷For example, the Neighbourhood Accountability Board in Nanaimo has been in operation since 1979.

would be justifiable³⁸. On the other hand, the non-prosecution policy is criticized for it does not provide a meaningful consequence if the youth does not complete the program. If the province did have a prosecution policy, the alternative measures process would resemble that of the province of Quebec. Quebec's eligibility criteria are very inclusionary (see profile on Quebec). If the Crown in British Columbia knew that there could be a consequence, i.e. prosecution, if the youth did not complete the program, it may affect his/her decision to refer a case to alternative measures. This may allow for more and different cases to be considered for alternative measures, especially for the youth who are considered to be more of a risk.

There is general consensus that the inclusion of different types of offenses is an option that should be considered in the future. The Neighbourhood Accountability Board is considering an expansion of their program to include offenders who have offended more than once, and more serious offenses, like assault for example. The circumstances of a more serious offence or a secondary offence may be examined during the interview stage. If at that point the case is considered too violent in nature, or too serious (ie. for community safety) it will not be considered for alternative measures.

The belief that too many youths are being screened out of the eligibility criteria for alternative measures is an issue that hinges directly on the controversy

³⁸There were no statistics available for the province, at the time of the interviews, for referrals to alternative measures. The province's statistics are collected centrally, however because of the various different agencies responsible for the provision of alternative measures programs, there is some duplication in the statistics.

surrounding the non-prosecutorial policy. It is difficult to propose the loosening up of the criteria for alternative measures when public attitudes are shifting focus to the "get tough on crime" mentality. Media reporting of isolated incidents involving youth violence tend to divest any positive support for provisions under Section 4 of the YOA. In this type of climate, pressure groups advocating crime control oriented policy have an advantage, and preventative programs like alternative measures may find themselves on the chopping block in terms of funding.

There is general consensus on the value of community programs like the Neighbourhood Accountability Board. It is recognized as an agency that not only includes the community in youth justice processing, but also as a direct link to improving community relations. Giving the community an opportunity to become involved in youth justice helps to contain fears and provides a chance to take on responsibility for some of the problems in their community.

MANITOBA: PROFILE

Youth Justice Committees are the major agency responsible for the administration (provision) of alternative measures programs in the province of Manitoba. There are 63 committees across the province, 18 of which are aboriginal. The number of Youth Justice Committees has increased by 23 since 1988 when there was only 40 (Ryant and Heinrich 1988; 97). That there can be a committee in any given community indicates that the committee can recognize the needs and priorities of their own community. The legislation of the Young Offenders Act provides for the option of Youth Justice Committees. Section 69

of the YOA states:

The Attorney General of a province or such other Minister as the Lieutenant Governor in Council of the province may designate, or a delegate thereof, may establish one or more committees of citizens, to be known as youth justice committees, to assist without remuneration in any aspect of the administration of the Act or in any programs or services for young offenders and may specify the method of appointment of committee members and the functions of the committee.

Youth Justice Committees are comprised of community members who have volunteered their time and services to assist in the administration of alternative measures programs. Some expenses are assumed by volunteers and there may be fund raising events, in addition however, the Justice Department looks after some of the expenses. The staff liaison person is a full paid staff member under the Department of Justice. Volunteers go through an orientation, which involves mediation training.

Each committee has its own constitution, which accounts for some of the differences in procedure across the province. The nature of each committee depends on the policies and criteria that is decided upon the group's initial formation. As Ryant and Heinrich (1988; 98) point out

Some committees meet directly with youth, while others maintain a more distant relationship. Some committees routinely include victim-offender mediation as part of the disposition, while others do not. Some committees meet as a group with the young offender, while others delegate the work...to an individual member or sub-committee.

Cases are referred to the Youth Justice Committees by the crown, (or

through the probation officer) on recommendation of the police. Remote rural areas may be more police-oriented, in the sense that they will review cases with the Crown, to determine the sufficiency of evidence. Almost every probation office has a Youth Justice Committee which is responsible for the alternative measures cases.

In Manitoba the young person is not typically charged with the offence before being referred to alternative measures. Usually referrals are made before the charge is laid i.e. pre-charge referrals. The decision to refer a youth to alternative measures is held by the Crown, who will review the case and determine the nature of the offence. The Crown will then refer the case to the local probation office, and from there, it will proceed to the Youth Justice Committee. In addition, there is a possibility that a judge may refer a young person to alternative measures as a court-ordered disposition.

In most cases, if the agreement is not successfully completed, the youth will discuss with the Youth Justice Committee representative what has happened, and they will try to come to a new agreement. If a new arrangement cannot be reached, the case will be referred back to the court for formal processing. There is an attempt to resolve the issue before this action is taken.

Statistics for the 1991-1992 fiscal year show that the alternative measures process was used in 3251 of the cases, and in 2798 of those cases an agreement was reached. This works out to be a success rate of 86%. Less than 5% of corrections canada staff time is spent on youth justice committees, which shows

that considerable time and effort is saved by using the committees.

It is significant to note that the development of Youth Justice Committees in Manitoba was met with little resistance. In discussing possible resistance on the part of a province to relinquish some control to the community, Ryant and Heinrich (1988; 102) comment:

Justifying the move to increasing community participation in activities that were the former preserve of staff alone on the basis of such community development objectives as locality development, empowerment or the intrinsic goodness of participation itself, may mask such administrative objectives as redefining workload, de-skilling, privatization, and/or contracting out.

These bureaucratic objectives have been redefined to include the community, but the extent to which the community actually retains the benefits that come from participation/empowerment has yet to be determined.

PROVINCIAL COMMENTARY:

In the future, the province of Manitoba may look to expanding the role of the Youth Justice Committees in the prevention of criminal behaviour. This may involve including more serious offenders in the mandate. If the committees are given the option of involving more serious cases, they may be encouraged to establish committee of experts which could be consulted on matters pertaining to youth crime. The option of expanding the mandate would have to be a voluntary one, for it is very likely that some of the volunteer committees will not want to deal with the more serious cases.

There is a reluctance to loosen the eligibility or offence criteria for

participation in alternative measures programs. Again, there will always be a conflict between recognizing the needs of youth and ensuring the protection of society. Youth justice officials feel the need to be very cautious about what types of offenses and offenders may be included into alternative measures. Naturally, there is a need to be protective of the community, however, one comment made during an interview was that we seem to be caught up in the rhetoric of a "get tough with offenders mentality"--so much so, that the idea of loosening up the offence criteria, may be met with a backlash from the community. What may have to happen to include some of the more serious offenses, is to have the probation officer deal with the case on a one-to-one basis.

Fuchs and Bracken (1984) have selected for discussion and consideration, a community-based program to demonstrate that there are alternatives for empowering people, in this case juveniles, that exist outside the criminal justice system. Empowering groups, that is, giving them the resources that will allow them to develop some sense of autonomy, and personal control over their lives, counters feelings of alienation, and powerlessness. Creating effective programs that combat these types of feelings helps in the prevention of crime and delinquency, by allowing all groups equal participation in the community in which they live (Austin and Krisberg 1981). Rossbrook House is an initiative that began in the community as opposed to being a state objective or initiative, and this is part of the reason it was a success. Rossbrook House did not propose to be a "diversion" program in the strictest sense, however the goals and objectives of the

program were such that it was possible to include it under the general heading.

Diversion for the organization meant:

providing an alternative to life on the street, and the resulting patterns of delinquency, alcohol and drug abuse, social service intervention and juvenile justice system involvement (Fuchs and Bracken 1984; 345).

Based on the principles of self-referral, and self-help, the house operated with the following objectives in mind: stabilization, socialization, personal development, and crisis intervention (Fuchs and Bracken 1984; 346). The adolescents were under no obligation to participate in the services that the house provided, those who did become involved with the activities of the program, did so voluntarily. Rossbrook House made it a point to include youth "...in all aspects of its functioning" (Fuchs and Bracken 1984; 349). By being given the opportunity both to participate and to demonstrate their abilities in these respects, youth could "...develop a sense of ownership, loyalty and concern for the centre itself" (Fuchs and Bracken 1984; 349).

The house's community-based roots were part of its success in that it generated a mass social network, capable of promoting worthwhile social goals. The support of the community in generating the necessary resources, both monetarily and in terms of volunteer service can be seen as a remarkable preventative mechanism of youth crime. Rossbrook House was successful in that it helped youth avoid the negative aspects of being involved in the juvenile justice system, precisely because it existed as part of a communal self-help network separate and distinct from the system itself (Fuchs and Bracken 1984). This is just

one example of a community-response which uses creative ways of dealing with social problems. In this case, the potential for delinquency is addressed by establishing a drop-in centre for the youth in that particular community and is perhaps part of their plan to make better, safer communities.

NEWFOUNDLAND: PROFILE

PROCEDURAL DESCRIPTION/PROVINCIAL PROGRAMS:

Referrals to alternative measures programs in the province of Newfoundland may be police initiated, but are authorized by both the Crown and Youth Justice Committees. Police submit summary reports detailing the information surrounding the incident to the Crown. Referrals are strictly for first time offenders and are recommended at the pre-charge stage. The Crown may use his/her discretion when there is a case involving more than one offence, provided the offenses meet the provincial referral criteria. Youth who have participated previously in alternative measures are not considered eligible, unless a two year period has elapsed since participation. According to Section 45 of the YOA, records detailing a youth's involvement in alternative measures will be eliminated after a two year period. There is another qualification on the eligibility criteria:

If a young person was referred to an Alternative Measures Program, but did not participate to the point of conclusion, and was not subsequently found guilty of the alleged offence, he or she is deemed to have no prior record (Division of Youth Corrections, Jan 1994; p. 4).

The Crown must ensure, as in all provinces, that there is sufficient evidence to proceed with a charge in court, that the offence is not barred by law.

The Crown will direct the case to the Youth Justice Committee, which will inform all parties of the decision to proceed with the case by alternative measures. The Youth Justice Committee speaks or meets with the victim, and informs him/her of the alternative measures process and invites them to participate. It is also the YJC's responsibility to consult with the youth and his/her parents or guardian in the same fashion. During an "intake interview", the Committee informs the youth of both the process of alternative measures and their right to consult with and obtain council. This is done before the youth's consent to participate is obtained. In other words

(t)he young person must be given full information as to the nature and process of the Alternative Measures. This must include a description of the case process, from referral to closure, including records disclosure provisions, and a description of the alternate means of dealing with the case (i.e. the general Court process, and all possible Court dispositions) (Division of Youth Corrections 1994; p.5).

It is the Youth Justice Committee's responsibility during the intake interview, to ensure that the youth freely consents to participate in the process, and accepts responsibility for his/her actions. The intake interview also provides an opportunity to look more closely at the individual needs of each young person. If the youth does not consent to participation, or does not accept responsibility, the case will be returned to the Crown. The Crown will determine whether or not to proceed with a charge. If the youth decides to proceed with the alternative measures process a contract will be developed. The agreement that is drawn up will consider both the needs of the youth and the interests of the victim.

The terms of the agreement may come about as a result of mediation between the victim and the youth. According to the Youth division of Corrections in Newfoundland, "(m)ediation is a means of achieving mutual agreement between parties to a dispute and is the appropriate process to be used where a victim is agreeable to personal involvement" (Jan 1994; 6). What is emphasized in the mediation process, is meaningful participation on the part of the victim and the youth. Mediators are volunteers, who receive training and direction from the Youth Justice Committees. The training the mediators receive is delineated by the Youth Justice Committees. Mediation may also take place without the victim's participation. If the victim does not want to take part in the mediation process, they may still have their concerns and interests, as well as the consequences of the incident will be expressed through the mediator.

The types of conditions that may be assigned to a youth include the traditional measures such as community service (not exceeding 60 hrs), personal work for the victim, apology (in person, or in writing), monetary compensation, essay, or attending an educational program. Like the "Stop-Lift" Program offered in Saskatchewan, the educational programs in Newfoundland "...consist of offence-oriented workshops in which youths examine their personal values, and learn about both the law and the consequences of crime" (Juristat 1990; p. 2). There is also counselling for substance abuse offered in addition to the alternative measures program. This is a significant difference for the province of Newfoundland, for most provinces separate the two services. Therapy and

counselling are usually made available to the youth in other provinces, but it is done so via community service channels, not as a direct part of the alternative measures programs themselves (Juristat 1990; 2).

Alternative measures in Newfoundland are funded by the Department of Social Services. The importance of involving the community in youth justice has been recognized. The department has assisted in the development of 17 Youth Justice Committees around the province³⁹. Youth Justice Committees are the vehicle for community participation and accountability. If the community members are given some supervisory power via Youth Justice Committees over youth justice in their own community, it creates a sense of ownership and empowerment. In other words "(f)or community participation to be meaningful in Alternative Measures Programs, and so as to reflect valid community standards, it is necessary for the community to feel some degree of ownership and control of the program" (Youth Corrections Division Jan 1994; 1). The Department of Social Services works in combination with each individual community to help develop and supervise Youth Justice Committees for a particular area. The province has a detailed procedure outlining the method for forming Youth Justice Committees. The procedure allows for considerable leeway in developing the committee, but also provides guidelines which facilitate supervision by the Department of Social Services.

³⁹There were no statistics available on the success rate of the programs, but during the interview, Ms. Penny indicated that it was a relatively high percent that completed successfully. The province received 714 cases from April 1 1993, to February 8, 1994.

PROVINCIAL COMMENTARY:

One of the main problems encountered in Newfoundland is the lack of victim participation in alternative measures programs. Despite the provision for mediation services and victim-offender reconciliation, there is apprehension and reluctance on the part of victims to participate in the process. The importance of victim involvement in alternative measures cannot be emphasized enough, but the recent coverage of changes to the Young Offenders Act is calling for tightening up of the legislation. There is concern that programs such as alternative measures will not be recognized for the potential harmonizing effect they may have between the young person and the victim. Despite the fact that the public views the court system with increasing disillusionment, they would still rather have the youth go to court than to proceed through alternative measures. The public perception with alternative measures is that the youth is "getting off easy" or is merely "getting a slap on the wrist". In this kind of atmosphere it is difficult to get the victim involved. Media sensationalizing of violent offenses does not help matters⁴⁰.

In the future the province would like to develop a "victim services component" which would be responsible for educating the public, victims included about the nature of the alternative measures program. The benefits of participating in the program would be explained to the victim and the community. The benefits of the mediation process as opposed to the court process for the

⁴⁰This feeling resurfaced in several of the interviews. There is a general feeling among the participants of this study that there is a retributive climate or mentality, in which there is an emphasis on discipline. This may be affecting public perceptions on youth crime and accountability measures.

victim, in particular would need to be expressed. The mediation process allows for the participation of both the victim and the youth. If cases proceed directly to court, the victim rarely finds out what the end result was. Mediation includes the victim in the process directly, and encourages their input in the development of the agreement itself, that is why it is so crucial for them to participate.

NEW BRUNSWICK: PROFILE

PROCEDURAL DESCRIPTION/PROVINCIAL PROGRAMS:

Alternative measures programs in the province of New Brunswick are referred at the pre-charge/pre-court stage. The programs offered are provided and funded by the Department of the Solicitor General province-wide. It is a program operated within the correctional system as opposed to other provinces (NS, BC, SK, ON) which contract out to other agencies to provide alternative measures programs. New Brunswick, like PEI and Quebec, does not contract out for the provision of alternative measures services. As in most provinces, the incident involving the young person is investigated by the police, who then prepare a summary report. The summary report is forwarded to the Crown. The purpose of the report is to provide the Crown with information about the incident. It also gives the officer the opportunity to recommend a young person alleged with an offence to participate in alternative measures. It is the responsibility of the Crown to review the summary report and determine whether or not to proceed with a charge. Before the young person is recommended for the program, there must be sufficient evidence to prosecute and the case must not be one which would greatly affect

the safety of the community.

If the Crown recommends that the case be dealt with by alternative measures, the case is forwarded to the nearest probation office. The probation officer, after contacting the youth and family, will conduct an office interview. During the interview the incident will be discussed, and the level of responsibility will be determined. In addition, the details of the program will be explained and the youth will be advised of his/her right to council. If at any time during the process the youth does not admit responsibility for his/her actions, or wishes to proceed with the matter in court, the case will be redirected back to the Crown.

If the youth does wish to participate in the program, and admits responsibility, the probation officer will discuss the nature of the agreement with the youth. Negotiating the terms for the contract is a skill that varies at the local level. The degree of creativity and flexibility that accompany the conditions for the agreement depends on the individual probation officer and the time they have to devote to each case (also see provincial commentary). The probation officer will consult with the youth and determine a set of terms that are both beneficial to the needs of the youth and the interests of the community. The case will then be brought before the Alternative Measures Committee.

The committee is similar in nature to the Youth Justice Committees that exist in Manitoba, Newfoundland, Alberta and the Northwest Territories. There are three such committees available in St. John, New Brunswick. The information surrounding the alleged offence is presented to the committee without discussing

the youth who was involved. The probation officer discusses the type of agreement that will be developed for this particular youth, and if the committee agrees, the agreement will be signed by the youth. The youth is then responsible for completing the agreement as specified in their alternative measures contract. If the youth breeches the contract, the probation officer will discuss the reasons for the breach with the youth and their family. If no modifications can be made to the previous contract, ultimately, the case will end up before the youth court.

Provincial Statistics⁴¹:

	1990-1991	1991-1992	1992-1993
Referrals to Alternative Measures	1035	937	1030
Percentage of admissions to Young Offender Programs	37%	32%	35%
Percentage Successfully Completed	93%	90%	91%
Types of Offenses Referred			
Property Related	75%	74%	80%
Provincial Offenses	11%	11%	NA
Assault	4%	5%	7%
Drug Related	1%	1%	.2%
Remainder ⁴²	9%	9%	NA

⁴¹The information for the following chart was compiled from the Annual Reports from the Department of the Solicitor General for the province of New Brunswick for the years 1990-1991, 1991-1992, and 1992-1993.

⁴²The remainder of offenses are Criminal Code violations or other federal offenses.

PROVINCIAL COMMENTARY:

Alternative measures programs in New Brunswick vary from community to community due to the allocation of resources in different localities. In some of the larger centres, St. John for example, there are four staff members who manage only young offender cases. In the smaller centres like St. Stephen, there are only two probation officers who manage adult and young offender cases. Alternative measures vary in this respect because in some localities there is simply more time to devote solely to young offender programs, alternative measures included.

The success of the programs is also affected by the individual commitment of prosecutors, police and probation officers to alternative measures programs. Individual beliefs about the nature of the program and its goals may hinder the number of referrals to the programs in some instances. Diversity in the number of referrals in the province can be accounted for by recognizing that some justice officials are more committed to the philosophy of alternative measures, or the principle of least possible interference. If the goals of alternative measures are not recognized or appreciated, there will be fewer young people referred to the programs. Another problem occurs when there is disparity in the kinds of cases that are referred to the program. The number of referrals to alternative measures programs is greatly affected by both prosecutorial and police discretion.

When the alternative measures agreement is negotiated, the probation officers are encouraged to discuss the incident with both the youth and the committee to determine what is considered to be an appropriate measure. The

most common term assigned to the youth is community service work (usually between 10 and 25 hours). The tasks assigned to the youth are kept as simple as possible to ensure that the youth will complete them. This policy of assigning simple tasks has generated some controversy. The controversy centres around the number and types of conditions that may be assigned to a youth as part of an alternative measures agreement.

SASKATCHEWAN: PROFILE

ALTERNATIVE MEASURES: PROCEDURAL DESCRIPTION

The method of referral to an alternative measures program in Saskatchewan can be at the pre-charge or post-charge stage. Referrals are initiated by the police. It is the responsibility of police to investigate the incident and determine if there is adequate information to lay a charge. The police have considerable discretion in recommending a young person to alternative measures. This involves a consideration of the type of incident/offence involved, and any relevant circumstances. Referrals to alternative measures are authorized by the crown attorney. Police are encouraged to refer cases at the pre-trial stage, but sometimes, a referral to alternative measures may be authorized by the crown at the post-charge stage. Also, a youth court judge may make a referral to alternative measures at the post-charge stage.

The criteria that are considered when determining the young person's eligibility to participate in alternative measures are: the nature of the offence, previous record or involvement in alternative measures. A youth may be

considered ineligible if he/she has violated his/her alternative measures agreement during the preceding six month period. Otherwise there are no restrictions on the number of times a young person may participate in alternative measures.

The province of Saskatchewan generally does not refer cases which involve personal violence, the use or threatened use of a firearm, or offenses affecting the administration of justice (Saskatchewan Social Services Information Package). There is, however, a provision to examine the circumstances around the offence when it comes to assault. In cases involving assaults, considerable discretion is given to the police and crown in determining the eligibility of the young person for alternative measures. This is especially true in cases where the youth court process is not seen as the best avenue to resolving the original cause of the dispute.

Once the eligibility of the young person has been determined, the standard procedures for participation are followed. The youth must be informed of his/her rights, this includes the right to council and the right to refuse to participate and face the charge in court. The youth must also be willing to participate, and must convey their acceptance of responsibility. Once these standard procedures are completed, the case may be forwarded to the appropriate agency or probation office.

Saskatchewan is one of the provinces in Canada that has designated specific community agencies responsible for the administration of alternative measures programs. The John Howard Society provides services for the areas of

Regina, Saskatoon, and Moosejaw. The Native Friendship Centres provide similar services in Prince Albert, La Ronge, and Fort Qu'Appelle. In the remaining areas, provincial probation offices, and individual service providers are used.

General statistics on the province:

For the 1991-1992 fiscal year, the province of Saskatchewan administered alternative measures in 2000 cases. In 1991-1992 there were 8,927 youth court cases in Saskatchewan. The 2000 referrals to alternative measures represents 22.4% of all youth appearing before the court in the province. This percentage is not a good comparison for the province, seeing that some youths appearing before the court may end up being referred by the youth court judge to an alternative measures program. Young persons who are referred to a program at the post-charge stage corrupt the data for the youth court statistic, for they in fact do not proceed through court, even though there was a charge laid initially and they did appear in court.

If the youth court judge recommends the youth to alternative measures, upon successful completion of the measures assigned to him/her, the charges will be dropped, but the statistic will still register the youth as having appeared before the court⁴³. Despite the flaw in this particular statistic, the Saskatchewan Social Services reports a success rate of at least 80% for the past two years (For specific success rates please see data for each urban centre ie. Saskatchewan, Regina,

⁴³It was after having spoken to several provincial contacts in provinces that had both pre and post-charge referrals that I realized the inappropriateness of the question. It is not an accurate reflection of the province's data.

Moosejaw).

The breakdown for the types of offenses referred is consistent with the national average, with the majority of referrals for theft under 1000 dollars. During 1991-92, 92% of the cases referred to alternative measures were for theft under 1000 dollars, 3% of cases involved offenses against the person, and the remaining 5% were other criminal code violations.

PROVINCIAL PROGRAMS:

John Howard Society:

The John Howard Society (JHS) is the agency responsible for carrying out alternative measures in Regina, Saskatoon, and Moosejaw. Funding is provided by Saskatchewan Social Services. The agency is under contract with the Department for the delivery of these services. There are two programs available in Saskatchewan that John Howard provides as alternative measures; they are young offender/victim mediation and stop-lift. Mediation is available in Regina, Saskatoon and Moosejaw. Stop-Lift is only available in Regina and Saskatoon.

Mediation:

The mediation program provides both the victim and the youth the opportunity to meet and discuss the incident. By providing a mediated forum for discussion, it is hoped that the two parties will come to understand one another's concerns and ultimately develop a mutually beneficial agreement. According to the JHS

(m)ediation lets people get involved, and allows a healing process to begin. Participation means they can talk about

what happened, and settle the matter in a way that is fair and makes sense to both (Pamphlet on Mediation).

The process of reconciliation is facilitated by a mediator. The mediator ensures to the best of his/her ability that both the concerns and rights of each participant are heard and respected. Mediation meetings are communication-driven, and solution-oriented. Both the victim and the accused young person are encouraged to express their feelings about the incident. Sometimes the victim does not wish to participate in the mediation process. In this situation, a surrogate-victim (a volunteer) is selected so that the youth may still experience the benefits of a mediation meeting.

Most mediation sessions are successful in coming to a solution which benefits both the victim and the youth. If the youth successfully completes the agreement, original charges will be withdrawn. If, for some reason, the youth does not complete the agreement, the mediator will determine the reasons for non-completion. Both parties will be contacted as asked what they would like to do, given the circumstances. There are two possibilities at this stage. The first option is that a new, revised agreement may be drawn up. Secondly, if consensus cannot be reached, the case will be referred back to the Crown. The Crown will review the case and decide whether or not to prosecute. The participants are given considerable opportunities to complete the agreement.

Victim participation is quite high, and the success in this regard, can be attributed to the manner in which he/she is contacted and asked to participate. The initial contact with a victim is very crucial. The first contact gives the service

provider an opportunity to discuss the program objectives with the victim, and inform them of the benefits of mediation for both the youth and the community. While there may be reluctance and apprehension on the part of the victim initially, the victim after having participated usually appreciates having the opportunity to convey his/her concerns. What is not often realized, is that there is fear and apprehension on the part of the youth at the thought of having to confront the victim in mediation. Confrontation, followed by the development of mutually beneficial solution is often the most meaningful consequence.

Stop-Lift:

Stop-Lift is an anti-shoplifting program which is primarily educational in nature, offered to youth charged with the offence of theft under \$1000.00. The program aims

- to create an awareness in the young person of the effects of his or her actions on themselves, the victim, the community and society at large, and
- to provide an opportunity for the young person to reflect on his or her development, discuss values and focus on issues such as self-esteem, peer pressure and decision-making skills (JHS Pamphlet on Stop-Lift).

The program is offered to youth between the ages of 12 and 17 who have been charged with a shoplifting offence under the Young Offenders Act. The younger teens, aged 12 through 14 attend one group, while the older adolescents, aged 15 through 17 attend the other. Participants are grouped in this manner because it is felt that the experiences and level of development are significantly different for the adolescents. The program is structured around an initial interview (where

parents may attend), four group sessions of two and a quarter hours each, followed by a concluding session where a follow-up is done on an individual basis.

The purpose of the follow-up session with each individual participant is to assess the effect the program had on the youth, to discuss the entries in the youth's journal, and to ensure that the youth has been made aware of other community resources in terms of counselling.

The groups sessions involve a variety of activities, including discussions in both large groups and small, role-playing, and videos. All participants must keep a weekly journal. Over the course of the program there are presentations made by community members. The subject of the discussion includes

...an overview of the Young Offenders Act; the Youth Justice System and the implications of a criminal record; their (the community's) perspective on the affects (sic) of shoplifting as well as an overview of community resources available to young people (JHS pamphlet on Stop-Lift).

Upon successful completion of Stop-Lift, the original charge will be withdrawn by the youth court. If the youth does not successfully complete the program, the charge will be addressed at youth court.

Statistics for the Regina Council of the John Howard Society indicate a success rate of 72% for the mediation program during the year beginning April 1, 1992 to March 31, 1993. The total number of cases was 326, the number of cases completed was 230, the number of incomplete cases was 89. The discrepancy between the number of cases originally (326), and the total number of complete and incomplete cases (319), a difference of 7 cases, is likely due to

the ineligibility of some youth, combined with the unwillingness of the youth to take responsibility for his/her actions at the outset of admission into the program. The number of incomplete cases (89) is a representation of the youth who for some reason or other did not complete an agreement that had been decided on as a result of mediation. The results for the Stop-Lift Program were as follows: total cases 181, 125 cases successfully completed, 35 incomplete. This indicates a success rate of 78%⁴⁴.

The Saskatoon Council for the year beginning April 1, 1993 through March 31, 1994 reported a caseload of 353 referrals for both mediation and Stop-Lift combined. The programs experienced an 85% success rate. The majority of referrals are for the offence of theft under \$1000.00 at 224 referrals or 63%.

PROVINCIAL COMMENTARY:

While the province has a success rate of over 80% for the programs offered, there is concern that the programs are not being used to their fullest extent. This is in part due to the nature of the eligibility criteria. Participation in the programs is limited primarily to first time offenders, and property offenses. Service providers would like to see more cases referred at the pre-charge stage. In addition, it was reported in a recent Court Watch Study conducted by the JHS in Saskatoon, that native youth are under-represented in alternative measures programs, despite the fact that they are entering the system earlier than their non-

⁴⁴Statistics for the success rate of the program have been generated from the total of completed and uncompleted cases because the total number of cases does not represent an accurate picture of the number of youth actually involved in the program.

native peers⁴⁵. Any changes made in the future will seek to address the issue of providing equal access to alternative measures programs for all youth in Saskatchewan (Annual Report of Regina Council; 1992-1993). In terms of providing culturally relevant programming, some recommendations include involving native elders and the inclusion of traditional native methods of dispute resolution.

Some suggestions for future directions include an loosening up of the criteria which determine a youth's eligibility, which would ultimately affect which youth could participate. Other options involve creating a provision for caution letters, a cautioning panel, and the establishment of offence-based groups for youth. And in an attempt to address youth needs earlier, the province would like to include such programs as drug and alcohol counselling/rehabilitation, anger management and family counselling, and life-skills training.

NOVA SCOTIA: PROFILE

When the YOA was implemented in 1984, the province of Nova Scotia divided the services for young offenders between two ministries, the Department of Community and Social Services and the Department of Justice. The split-jurisdiction meant that the services for youth between the ages of 12 and 15, known as Phase I Offenders, would be handled by Social Services and the remainder of youth aged 16 and 17 (Phase II Offenders) would be dealt with by

⁴⁵This information was provided in writing by the District Director, Renee Gavigon, of the Saskatoon Council of the JHS, May 1st, 1994.

the Department of Justice (Corrections Division)⁴⁶ (Coffin 1991). As of July 1, 1994 the province of Nova Scotia will amalgamate the services that the departments of both community and social services and justice provide for young offenders⁴⁷.

Alternative measures in the province are administered by the Provincial Director, or an appointed delegate. In some areas, a contract has been negotiated between a community organization deemed appropriate by the Provincial Director to deliver alternative measures services⁴⁸.

ALTERNATIVE MEASURES: PROCEDURAL DESCRIPTION

In Nova Scotia, cases are referred by the police to the crown prosecutor at either the pre-charge or post-charge stage. Upon reviewing the case, the crown must ensure that the eligibility criteria set out in Table 1 are met. In addition to the typical criteria, in Nova Scotia, there are several other factors to consider before a youth may be considered eligible for participation in an alternative measures program. One of the biggest restrictions on participation is the type of offence the

⁴⁶Initially control of the Phase II offenders rested with the Department of the Solicitor General, due to the ministry's original responsibility for federal corrections and policing, however, in April 1987, the "responsibility for juvenile justice policy generally and the YOA was...returned to the Department of Justice...following a clarification of the respective criminal justice policies of the two federal departments" (Coffin 1988; p. 37).

⁴⁷The information on alternative measures programs for the purposes of this paper has been based on information that was available at the time. It is unknown how the amalgamation of the two ministries will affect the delivery of services in terms of alternative measures programs.

⁴⁸For example, The Youth Alternative Society is a community-based organization which provides services for the counties of Halifax, Lunenburg and Queens, NS. The main source of their funding is provided by the Department of Community Services. The provincial department receives support from the Federal Department of Justice in terms of a cost-sharing program.

youth has allegedly committed. Although they are not completely ruled out, referrals for alternative measures are not usually "...considered where the alleged offence is indictable or is one which involves violence, personal injury, weapons or a potentially dangerous situation" (Alternative Measures Program Design, Department of Justice Nova Scotia 1987). Understandably, the youth must not be on probation or be serving a custodial sentence. One other criteria is that the youth not have a criminal record. Also, if a young person has previously participated in an alternative measures program and has committed a subsequent offence within the two year period, the youth is not considered eligible.

The decision to prosecute or to refer the case to alternative measures rests with the crown prosecutor, acting as the Agent of the Attorney General. If the prosecutor believes it is in the best interests of society and reflects both the needs of the youth and society, a recommendation for alternative measures will be forwarded to the provincial director, or delegate. Before the alternative measures hearing takes place, the youth must be informed of his/her rights to obtain and consult with council, and must voluntarily consent to participation in the program.

The alternative measures hearing will be scheduled once the youth consents to participate in the alternative measures process. An opportunity is given to all persons affected to attend the hearing. This includes police, the victim, the youth, and his/her parents or responsible adult. Participation is encouraged, but is not mandatory for the victim, or parents. The purpose of the hearing is to

allow for discussion of both the alleged offence⁴⁹, and the youth's background, and to determine the youth's suitability for alternative measures. If, through the course of the alternative measures hearing, it is determined that the youth is not eligible for alternative measures, the case will be returned back to the crown for prosecution. This may occur for a number of reasons. Firstly, the youth may not accept responsibility for his or her actions. Secondly, if the youth is disrespectful and does not appear remorseful, a recommendation may be made to refer the case back to the youth court. Finally, the agent responsible for conducting the hearing may feel that the circumstances around the offence are such that the youth's participation in alternative measures is not appropriate.

Once a youth's eligibility has been determined, an alternative measures agreement will be drawn up with measures designed with the particular youth, victim and offence in mind. They may select any one or combination of the general types of measures such as community service work (no more than 50 hours total for Nova Scotia), restitution, victim offender reconciliation, educative program(s), no further intervention, or other approved measures.

The stage at which the youth is referred to an alternative measures program will affect the outcome of the process. If the youth successfully completes the measures that were assigned to him/her, as a result of a post-charge referral, the

⁴⁹If the referral has been at the pre-charge stage, it will be an alleged offence. But because some provinces, Nova Scotia included, have a provision for both pre- and post-charge referrals, the offence may in fact be real, or it may be "alleged"; nevertheless, one of the crown's responsibilities is to ensure that there is enough evidence to prosecute even an "alleged" offence.

charges will be withdrawn. A youth with a pre-charge referral will have avoided prosecution by admitting responsibility. If the youth fails to complete the program, the case will be referred back to the prosecutor to be addressed by the youth court. There is a provision to extend or modify the alternative measures agreement should it not be appropriate, to allow for unanticipated circumstances, and to allow for discretion, on the part of the prosecutor should the youth need more time to complete the measure. Services have been made available in several communities for youth between the ages of 12 and 15 by the Department of Community and Social Services. The agency that receives the majority of referrals for youth between the ages of 12 and 15 (Phase One Offenders) is the Youth Alternative Society. The John Howard Society of New Glasgow also receives referrals for alternative measures for phase one offenders. The remainder of services for the province are provided by the Department of Justice for young persons aged 16 and 17. For 1993, the Department of Justice received 260 referrals for alternative measures⁵⁰.

PROVINCIAL PROGRAMS:

Youth Alternative Society⁵¹:

Located in Halifax, Nova Scotia, the Youth Alternative Society is a non-profit

⁵⁰Youth Alternative Society, Annual Report Spring 1994, Number 22, 1994, p. 10.

⁵¹All information on the Youth Alternative Society was provided from their Annual Report for Spring 1994 Number 22.

agency which provides services and/or programs⁵² for young offenders within the communities of Halifax, Lunenburg and Queens. The Youth Alternative Society has in excess of 100 community volunteers who are involved in both the provision of alternative measures programs and court-ordered community service orders. Volunteers may work in a number of capacities, which include: office support, courier, mediator, and community work supervisor. Youth mediators receive about 35 hours of training.

In terms of alternative measures programs, the agency arranges a meeting with the victim, the youth, the police and the young person's parents. The purpose of the meeting is to hear the concerns of all affected parties, with the overall goal of coming to an agreement on an appropriate consequence for the young person's behaviour. The inclusion of participants other than those directly involved, that being the young person and the victim, is encouraged by the Youth Alternative Society. In Nova Scotia, the inclusion of both parents and police is rationalized because of the potential effect it may have on the young person's life. In terms of including his/her parent, this provides a chance for parents to be "...aware of significant events in the lives of their teenagers so that they will be able to support their children both during and after the mediation" (Pate and Peachey 1988; 112). In addition, when the police attend the mediation session it "...provides an opportunity for a youth to encounter the police officer in a somewhat supportive role, in contrast to the role of an arresting officer. (Pate and Peachey 1988; 112).

⁵²The agency also receives referrals as court-ordered dispositions for Community Service Orders.

The organization uses two volunteer mediators in this process, but all participants in the mediation are included and consulted in the creation of the alternative measures agreement. When an agreement is reached⁵³, the Youth Alternative Society will supervise the completion of the measures assigned to the youth, whether it be community service work, or work for the victim.

Of the 505 referrals the agency received for 1993, theft is reported to be the most common. The number of offenses involving assault doubled during 1993, but the number of referrals for offenses such as mischief, break and enters, or possession have remained similar since 1989. The organization reports an 88.3% success rate, which has fluctuated minimally over the past three years. The remainder of youth either defaulted (3.2%) on their agreement, or refused to participate (8.4%) and proceeded through youth court instead. This works out to be a 96.7% success rate after those who refused are omitted.

John Howard Society Alternative Measures Program:

Operating out of New Glasgow, a series of programs are made available to young persons in Pictou, Antigonish and Guysborough counties. Like the Youth Alternative Society, the alternative measures program that the John Howard Society (JHS) provides uses the process of mediation through an informal, yet structured meeting between the victim, police, the young person and their parents. Two trained, volunteer mediators oversee the meeting, and ensure that the relevant issues are brought to the attention of all involved/affected. In addition to

⁵³Agreements are reached in approximately 97% of the mediation sessions.

the traditional measures like apologies, essays, community work or personal service for the victim, the John Howard Society has developed programs geared specifically toward a youth's needs.

The Matching Program "matches" a young person with a volunteer on the basis of 'specified needs or interests', which may include the following: tutoring, hobbies, sports activities. The young person may be referred by police, through the probation office, or through participation in other programs offered by the John Howard Society (JHS pamphlet on Alternative Measures).

Another program, A.L.I.V.E. (Ask, Listen, Interact, Venture-forth, and Enrich) provides an opportunity for youth to examine the issues of "...self-esteem, values, conflict management, decision-making, family dynamics, drug and alcohol abuse, feelings, relationships and personality" with their peers. Referrals to the program, like the Matching Program, can come from juvenile justice officials or through participation in other JHS programs (JHS pamphlet on Alternative Measures). A success rate of over 95% was reported for the alternative measures program in New Glasgow.

PROVINCIAL COMMENTARY:

Some comments made over the course of interviews conducted in the province of Nova Scotia centred around the elimination of the split jurisdiction for young offender programs. The general feeling among the provincial contacts I spoke with is that is a welcomed change. It will take a period of adjustment before it will be possible to determine what the recent change will bring to the

delivery of services for young offenders. There is some apprehension in terms of social service agencies, however. Some service providers feel that with the recent change, it may not be possible to work at an arm's length of the system. It is important for the community agencies to provide services that are different from the options available from the formal system. In this sense the services and programming provided are a reflection of the community, and represent community alternatives. One of the crucial issues raised by social service agencies across the country is the issues of power, in terms of the control and ownership of resources. The key to success in community programs is ownership and control. If there is a constant battle over who is to "own" the resources, and the rights to the program we are missing the point. Our priorities should be with the development of programs which benefit the community and address youth needs.

The types of programs available as alternative measures varies across the province, but all are similar in the offence criteria screening process. The general feeling of the province is that too many youths are being screened out of alternative measures programs because the criteria is too restrictive. In addition to this concern, it is disconcerting to hear of disparity in the number of referrals received for alternative measures from the different police departments. As was mentioned previously, the police are the "informal gatekeepers" to alternative measures. A program will only have referrals at the pre-charge stage if the police recommend the youth to the available programs. Disparity occurs when some "...detachments refer regularly and consistently while others refer youth for (the)

same or similar offenses to court."⁵⁴

The general feeling is that the young person would have a more meaningful experience by participating in alternative measures over the court alternative. This is explained by the variation in the process involved for the youth. The alternative measures model encourages participation and communication, two things that are not as attainable in a court setting. During an alternative measures hearing discussion is encouraged, and the youth participant is better able to understand the mediation process. Finally, there have been recommendations of expanding the criteria to include more serious offenses like assault.

ONTARIO: PROFILE

Ontario is the only province in Canada to have what is known as a "split jurisdiction". What this entails is a separation of young offenders by age and ministry. In Ontario, Phase I offenders are those youth between the ages of 12 and 15, and are managed by the Ministry of Community and Social Services (MCSS). Phase II offenders, those youth that are either 16 or 17 have their cases administered by the Ministry of Correctional Services (Juristat 1990; p.4). There are different program options available for youth as a result of the split jurisdiction. Most social service agencies have a contract with the MCSS, therefore only deal with young offenders between the ages of 12 and 15. Alternative measures are also provided to young offenders aged 16 and 17, but they are offered through

⁵⁴This information was provided by the JHS of New Glasgow as a written response to my original questionnaire, dated May 20, 1994.

Correctional Services⁵⁵.

PROCEDURAL DESCRIPTION:

The procedure for acceptance into alternative measures programs in the province of Ontario is similar to that of Quebec in that the authorizing agent for the program is the Provincial Director. In Ontario, however, it is more common to see the Provincial Director appoint the Crown as his/her delegate. The Crown generally receives referrals from defense council or the young person himself/herself. This is a significant difference to note, for Ontario is the only province that does not receive referrals from the police (Juristat 1990; p.3). This is in part, due to the fact that in Ontario, the referrals to alternative measures programs are made at the post-charge stage. If a youth is involved in an incident, the police have three choices. In the first instance, they may informally divert the youth, and defer any charges. Secondly, they may decide to conduct an office interview to discuss the incident and the ramifications for the youth if they reinvolve themselves in criminal activity. And finally, the officer may decide to charge the youth with an offence. If the youth is charged, he/she must attend court initially in order to apply for alternative measures⁵⁶.

If the application for alternative measures is successful, the youth will enter

⁵⁵It is for this reason that I chose to examine the types of programs that are available for the Phase I offenders in the province. The services offered for Phase II youth are similar all across the province. It is in the programs offered for the 12-15 age group that variation and different programs are visible.

⁵⁶See the discussion of PIP (Preventative Intervention Program) contained in the discussion of the Ottawa Youth Justice Task Force. The program is an exception to the post-charge rule, available to youth between the ages of 12 and 15, and can be referred by the police.

into an alternative measures agreement. Applications are approved by the Crown and then are forwarded to the appropriate agency/office. The exact nature of the agreement, and the method by which it is negotiated will depend on the agency responsible for the program. The procedure and types of programs varies across the province. If the youth does not complete the program successfully, the youth will be required to attend court a second time to face the original charge. Similarly, if the youth commits a second offence while participating in alternative measures, it will be necessary for the youth to face the charges in youth court.

PROVINCIAL PROGRAMS:

John Howard Society of Waterloo:

The John Howard Society provides alternative measures programs for Phase I youth for the regions of Kitchener-Waterloo, and Wellington. Young offenders are accepted into the program on the premise that they have committed a minor offence, usually theft, possession of stolen goods or mischief so long as the value of goods or damage is under 1000 dollars. In addition, the youth must not have a history of involvement in criminal activity. The youth must accept responsibility for his or her actions. The program may in some cases take a youth for alternative measures a second time, depending on the Crown prosecutor.

The process used in the Waterloo area involves a meeting of the youth, his/her parents and a group of community volunteers. The purpose of the meeting is to develop a course of action for the young offender. Participating in alternative measures to completion allows the young person the opportunity to show an

acceptance of responsibility and to be accountable for his/her actions to the community. During the meeting, the nature of the offence, and its ramifications are discussed. Open communication and negotiation are encouraged by volunteer representatives, who act essentially as mediators. The volunteers ensure that all participants have a chance to express their views and concerns.

Referrals to the program are as follows:

Year	Number of Referrals*	Successful Completions
1991	308	90.1%
1992	405	91.8%
1993	383	96.2%

*The number of referrals is for the regions of Waterloo and Wellington combined. Statistics were provided by the JHS of Waterloo.

The program in Waterloo has encouraged the use of creative methods of negotiating the conditions for an alternative measures agreement. The feeling here is to design appropriate measures for each youth, given their interests and capabilities. Outside the traditional measures such as community service work, apologies etc. that are available across the country, some measures that have been used include: book reviews, journals, poetry, and art work. Another creative measure is to have the youth make a personal budget, so they may purchase an item instead of stealing it, for example. In addition, because the parents of the youth are invited to attend the meeting, there can be room for discussion of family issues. For example, one of the possibilities may be to develop "house rules" that

would help both the youth keep out of trouble, and the parents to keep control⁵⁷.

The program may also make referrals for the youth to attend a combination of the following: anti-shoplifting or anti-vandalism program, or anger management programs. The youth may be referred directly to the anti-shoplifting program by the police without having had laid a charge. However, if the youth does not successfully complete the program, the officer is not permitted to charge the youth. This make it difficult for the officer, for if they don't believe that the youth will comply, they are more apt to charge the youth, and let the Crown decide whether the youth should be a candidate for alternative measures. The anti-shoplifting program is not formally considered part of alternative measures because there has been no charge laid.

John Howard Society of Hamilton-Wentworth:

There are similar programs available to Phase I offenders in the Hamilton-Wentworth area offered by the John Howard Society. Like the program in the Kitchener-Waterloo area, youth are referred to the program if the case has been approved by the Crown prosecutor, the youth has no criminal record⁵⁸, and the

⁵⁷One parent commented on the program:

"This is a marvellous intervention for first offenders. The non-judgemental and non-threatening attitude and atmosphere was very unexpected. The volunteer allowed us to verbalize our feelings and emotions and discuss whatever was on our minds while keeping us on track to meet the objectives of the meeting. It even expedited the healing process between parent and child. I am sincerely thankful for such a program. I wish more parents would take an interest in accompanying their child to such a meeting" (JHS Alternative Measures Report, April 1994; p.3).

⁵⁸Generally, this is the case, however, some cases may be approved by the Crown, and even youth who have committed a second offence may be eligible to participate.

offence is relatively minor. The types of offenses that may be considered for alternative measures are: theft under 1000 dollars, possession of stolen property under 1000, public mischief, take auto without owner's consent, and possession of a narcotic (Hamilton JHS Pamphlet on A.M. Programs). Conditions that may be assigned to a youth include: restitution to the victim, personal or community service work; writing any of the following: a letter of apology, research paper, or personal essay, or book report; designing and completing a crime prevention poster and/or anti-shoplifting workbook; or participating in the JH Crime Prevention Program. The John Howard Youth Worker may assign any of the above measures singularly or in combination. The worker will meet with the youth to discuss the incident and what would be an appropriate consequence for their behaviour. The coordinator of the programs is usually a staff member, who may use volunteers as assistants in the process. Volunteers are used in the monitoring of the alternative measures case, and can be responsible for contacting the victim to inform them of the proceedings.

For the period between April 1992 and March 31, 1994 the agency reported that 218 cases were received. Of that 218, 207 (95%) completed the program successfully, and 11 (5%) did not complete the measures. The number of referrals for this particular area appear to be quite low, and there may be a number of reasons for this occurrence. There may be a problem with police and prosecutorial commitment to the concept of alternative measures. Or, if not, it may be that the police are diverting the youth informally by way of their discretionary powers. In

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this sense it is only the youth who need to appear before court, who are getting charged. Again, this kind of discussion relates back to the original concern expressed over the potential of expanding the net of social control if there was a pre-charge program in place.

OTTAWA⁵⁹: Case Study of the Criminal Justice Task Force on Violence and Youth in the Community

The Criminal Justice Task Force is an initiative which represents a community response⁶⁰ to the problem of youth violence in the Ottawa-Carleton area. A discussion of the Task Force is particularly relevant for the purposes of this paper for one of the key concerns of the group is the "few intermediate, community-based options (that) exist between probation/community service orders and a custodial disposition" (Caputo and Weiller 1993; p. 11). Alternative measures is one option that exists under current legislation, yet it is the feeling of the criminal justice task group that the option is not only under utilized, but also that the criteria are too restrictive.

There is concern for the lack of an "intermediate" response which addresses the needs of youth who come in conflict with the law. In particular, there are no

⁵⁹The provincial commentary section for the province of Ontario will be included in this section. The following discussion reports on the recommendations of the task force I have been attending since November 1993. The concerns and issues raised during the meetings are applicable to the province of Ontario.

⁶⁰Members of the task group consist of representatives from several governmental departments such as: The Department of Justice, Correctional Services, Ministry of Community and Social Services, and Solicitor General. Legal council attend. There are community agency representatives from: The Children's Aid Society, Youth Services Bureau, YM/WCA, and local youth initiatives for "street kids", for example, Operation Go Home, and Rideau Street Youth Initiative. There are also representatives from local youth detention, mental health and drug rehabilitation centres. Also present are parents, teachers and teen peer mediators.

pre-charge alternatives for youth between the ages of 16 and 17 in the Ottawa area (Task Force Minutes November 19, 1993). In addition, there are no alternatives for youth who commit offenses other than the minor offenses considered by alternative measures. Expanding the criteria for alternative measures means the inclusion of offenses which may be more violent in nature.

In developing a strategy to include different types of offenses in the eligibility criteria, the group anticipates having to consider several factors. Firstly, the level of violence must be considered with respect to the nature of the offence. Secondly, previous criminal involvement must be determined. And finally, the previous two criteria would assist in concluding whether the youth is a high risk or low risk case. The difficulty arises when trying to come up with a strategy to deal with the wide range of young people who come in conflict with the law. The strategy would therefore, have to include a range of responses or types of intervention that would correspond to each type of situation. One task force member suggested a red, yellow, green, stop-light analogy, when referring to the range of responses possible when considering a youth for alternative measures. The red category would naturally indicate a "full stop" in a particular case, the identification of the case resulting from the previous criteria (nature and violence of the offence, previous involvement, etc). These types of cases would have to be fully investigated, with an in depth social history. This "red light" section may include youth who are high-risk, and/or high-need, that require treatment, or need access to counselling.

The yellow category of youth would be admitted to alternative measures with caution, upon the discretion of the prosecutor and police. These types of cases may include youth who are considered high-risk, but low-need. Under current practices with regard to alternative measures, there is no place for youth in this situation. Similarly, a youth who is high-need but low-risk, may be considered under the yellow light category, so it is possible to assess their needs and provide referrals to the appropriate agencies.

And finally, the green portion includes those cases which the Crown feels are suitable for alternative measures, and pose no risk to the community at large. These types of cases are low-need, low-risk cases. This is what we see happening currently with respect to alternative measures programs, which may explain why there is such a high rate of success with the programs. This type of system would help to loosen up the eligibility criteria for participation in alternative measures, however it does not address the issue of pre-charge alternatives in the province of Ontario.

Concerns have been raised across the province regarding the stage of referral for participation in alternative measures programs. There is controversy in Ontario over the post-charge referral process, for the youth must attend court in order to even be considered for alternative measures. The debate centres around the youth's attendance at court. Some would rather there be a system in place which would be post-charge but pre-trial, the rationale being, if alternative measures was intended to avoid the negative aspects associated with traditional

court proceedings, the youth should not appear in court at all. Others advocate the initial appearance in court, for it helps to convey the seriousness of the charge to the youth. Nevertheless, there may be an unanticipated counter-effect of having attended court, only to have the charge dismissed, or considered by alternative measures. If the consequence of having attended court, is not meaningful, we may be sending the wrong message. To have meaningful consequences does not necessarily mean that the system needs to be more punitive. The difficulty lies in determining what is meaningful. One other problem associated with the post-charge referral process in Ontario is the delay from the time of the incident to the time that the consequence is imposed. Because the application made for alternative measures is made at the post-charge stage, the case must be processed through youth court.

In Ottawa, young persons between the ages of 12 and 15 may be referred to PIP (Preventative Intervention Program) by the police, at the pre-charge stage. If the police decide not to charge the young person, but believe the youth may benefit from participating in the program, the officer may refer him/her to PIP. In this sense, the youth is diverted to the program, and avoids formal court processing. The decision to participate in the program is truly voluntary, for even if the youth does not complete the program, no charges will be laid. As with most national alternative measures programs, PIP does not accept offenses which are violent in nature. One task force recommendation was to expand the mandate of the PIP program to include the Phase II offenders, and higher risk offenders.

As was mentioned previously, the group would like to identify a range of responses that would be appropriate for offenses that are violent in nature. This type of response would require appropriate provisions for risk and needs assessment. To facilitate these types of initiatives there is a need to encourage communication between the various social service agencies, police, schools, and parents. It is this kind of information-sharing which is desperately needed if community-initiated responses are to succeed. This would be part of a coordinated response to the problem of crime in the area. Community-input must be sustained via community-service agencies and organizations. It is the hope of the task force that initiatives can be maintained which encourage active monitoring by the community, to identify and react to incidents before they escalate to the point where the youth justice system becomes involved. The goal of prevention is a considerable part of a strategy developed to avoid crisis justice for youth.

APPENDIX E:**Interview Schedule:**

Are alternative measures programs available in your community?

Can you describe the services your agency/organization provides to youth as an alternative to formal court processing, i.e. alternative measures programs.

Who operates these programs? How are these programs funded? Do you receive any government or quasi-government funding?

How many young people were referred to AM (as a percentage of all youth appearing before the court in your community?) Who decides which youth can participate?

What is the process used in your community for implementing alternative measures (ie. pre-charge or post-charge?)

What percentage of the youths successfully complete alternative measures programs?

What are the consequences for the youth if the program is not completed?

Are there aspects of the programs that are problematic? Why are they problematic?

What changes could be made to improve alternative measures programs in your community? Are there other alternative measures programs possible in your community?

What would these programs be? What is preventing these programs from being developed (i.e. \ more resources, funding; legislative barriers; procedural barriers?)

Does your organization make use of volunteers? If so, what background experience do you look for when recruiting volunteers? What type(s) of training do you provide the volunteers?

END

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