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**Criminalizing Adolescence? Understanding Probation and Probation Violations in the Canadian
Youth Criminal Justice System**

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**Criminalizing Adolescence?
Understanding Probation and Probation Violations in
the Canadian Youth Criminal Justice System**

Jeff Latimer

**Thesis submitted to the Faculty of Graduate and Postdoctoral Studies
in partial fulfillment of the requirements for the PhD degree in Criminology**

**Department of Criminology
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University of Ottawa**

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ABSTRACT

Youth probation in Canada is a critical yet clearly under-researched area within Criminology. Probation is the most common sentence in youth court yet many youth fail to comply with the conditions laid out by the courts. This thesis represents the results of an in-depth examination of probation cases in the youth criminal justice system with a focus on probation violations and Probation Officer discretion. All closed administrative probation files within an Ontario area Probation Office during the year 2005 were selected (N=299) in order to examine the nature and extent of probation violations. In addition, 7 Probation Officers were interviewed to supplement the file review and answer questions that were outside the scope of the administrative files. The findings reveal that the majority of youth within the probation system have a substantial number of serious psycho-social issues. Youth serving probation sentences are also subject to considerable social control through the imposition of numerous probation conditions covering many aspects of their lives. Yet most youth violate one or more of these conditions, usually by engaging in relatively typical adolescent behaviour such as staying out late, drinking alcohol or skipping school. Only a minority of these youth, however, are actually charged with a violation under s. 137 of the *Youth Criminal Justice Act*. The implications of this research for judges, Probation Officers, policy-makers and researchers are discussed.

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1.0 INTRODUCTION

Although there is a vast body of criminological literature focused on youth crime, young offenders and their treatment in Canada (e.g., Alvi, 2000; Carrington, 1999; Doob & Cesaroni, 2004; Tanner, 2009), relatively little attention has been given to the sentence of probation in the youth criminal justice system, and in particular, probation violations (Gray, Fields & Maxwell, 2001; Pulis & Schulenberg, 2009). This is somewhat surprising given that probation is the most common sentence in youth court (Statistics Canada, 2010), and that a substantial proportion of youth sentenced to probation in Canada are returned to court to face a new charge for failing to comply with the conditions of their original probation sentence (Statistics Canada, 2010).

The offence of failing to comply with a disposition was established as a distinct charge before the courts under the *Young Offenders Act (YOA)* and since that time there has been a substantial recorded increase in the prevalence of probation violations in youth court. In 1984, fewer than 50 per 100,000 youth in Canada had been charged for a violation of their probation sentence - by the year 2000, this number had increased fivefold to almost 250 per 100,000 youth (Carrington & Schulenburg, 2003).

In the fiscal year 2008/2009 in Canada, 20,747 youth court cases resulted in a sentence of probation, representing approximately 60% of all convicted cases in youth court (Statistics Canada, 2010). During this same time period, there were 5,880 cases in youth court for failing to comply with a sentence under Section 137 of the *Youth Criminal Justice Act (YCJA)* (Statistics Canada, 2010). This would appear to suggest that approximately 28% of youth sentenced to probation violate the conditions of their sentence. This, however, is likely an underestimate. Many youth who violate the conditions of their

probation are not actually charged with a new offence. In a study by Latimer and Verbrugge (2004), approximately one-third of youth sentenced to probation in five cities across Canada (i.e., Halifax, Toronto, Winnipeg, Edmonton and Vancouver) were found to be in violation of their conditions and charged with a new offence, one-third were known to have violated their conditions but were not charged, and one-third had no apparent violations of the terms of their probation.

Although several major legislative changes have been made to the youth criminal justice system over the last few decades, the sentence of probation and the probationary process has remained relatively static (International Cooperation Group, 2007). Given the high proportion of youth serving probation sentences, and the prevalence of probation violations, it is imperative to gain a clearer understanding of the entire probation process, including the nature and extent of the conditions imposed and the manner in which Probation Officers respond to violations of such conditions.

Within the literature, there is some basic descriptive research focusing on American adult probationers. For example, Clear, Harris and Baird (1992) found that one-quarter of offenders serving a probation sentence violated the terms of their sentence. Among these, one-third violated a major technical rule, one-third committed a new minor offence and the remaining one-third either committed a serious new offence or violated a minor technical rule. Overall, the American research suggests that between one-quarter and one-half of adult probationers do not successfully complete their probation sentence, primarily due to technical violations (Bork, 1995; Taxman & Cherkos, 1995).

In the Canadian context, while general research into youth probation does exist (e.g., Marinos, 2009; Pulis, 2007; Pulis & Sprott, 2005; Sprott, 2004), basic questions related to the conditions imposed by the courts and the violation process remain

unanswered. For example, how many conditions, and what types of conditions, are typically imposed on youth during a term of probation? How many youth are detected in violation of the conditions imposed on them? What percent of youth who are detected with a probation violation are actually charged with failing to comply with the terms of their sentence? And finally, what do Probation Officers (POs) consider when deciding to charge a youth with a probation violation?

The objective of this thesis is to develop an understanding of the nature and extent of probation violations and to investigate Probation Officer discretion in an attempt to better understand why some youth who violate their probation conditions are charged with failing to comply with a sentence and others are not. In order to better understand Probation Officer decision making, this thesis seeks to identify key differences between those who are charged and those who are not charged with failing to comply with their sentence while controlling for traditional variables identified within the literature including age, risk, criminogenic needs and criminal history. This will be achieved through a detailed examination of administrative youth probation files and interviews with Probation Officers.

Given the absence of research in this area, the results are useful simply as a means to shine some light into the ‘black box’ of youth probation in Canada. In addition, this research identifies a number of important policy implications based upon a clearer understanding of the probation violation process and probation officer decision-making. Given that Section 38(2)(e)(ii) of the *YCJA* states that youth courts should be choosing options that are most likely to rehabilitate and reintegrate a young person, this thesis also provides a limited, yet nonetheless valuable, assessment of probation as a sentence.

This thesis contains four sections. The first examines the sentence of probation, the historical underpinnings of the youth criminal justice system and the limited literature in

this area. The second section details both the quantitative and qualitative methods used in this thesis for examining probation cases in the youth criminal justice system. The third section provides the results of the data collection efforts and explores a number of crucial areas including the socio-demographic characteristics of youth within the probation system, the nature and extent of probation violations and Probation Officers decision-making. Finally, the fourth section discusses the implications of these results and identifies a number of additional areas which would benefit from further investigation.

2.0 LITERATURE REVIEW

While detailed research into probation practices in Canada does not appear to exist, there is a body of relevant literature that focuses on particular aspects of the justice system which may help understand PO decision-making. For example, several scholars have argued that the nature of probation work may have shifted over the last few decades from a social work orientation towards a social control model (e.g., Garland, 2001; Nash, 2005), which would ultimately change the culture within which POs operate. Other academics have examined the increasing focus on risk discourse in the justice system (e.g., Friday, 2006; Simon & Feeley, 1992), which may place constraints around probationary practices and decision-making. This section will first examine the sentence of probation in the Canadian youth criminal justice, conduct a brief historical analysis to understand how this form of community corrections evolved, and finally review relevant related research in order to better understand the context within which probation officers make decisions.

Specifically, this section will focus on literature related to the use of discretion in the justice system and examine the purported shifting emphasis in probation practices from social work to social control, the new risk mentality, the concept of labelling theory, and issues surrounding race, class and gender. Each of these areas may provide useful insight into how probation officers conduct their day-to-day work and ultimately exercise discretion.

2.1 The Sentence of Probation in Youth Court

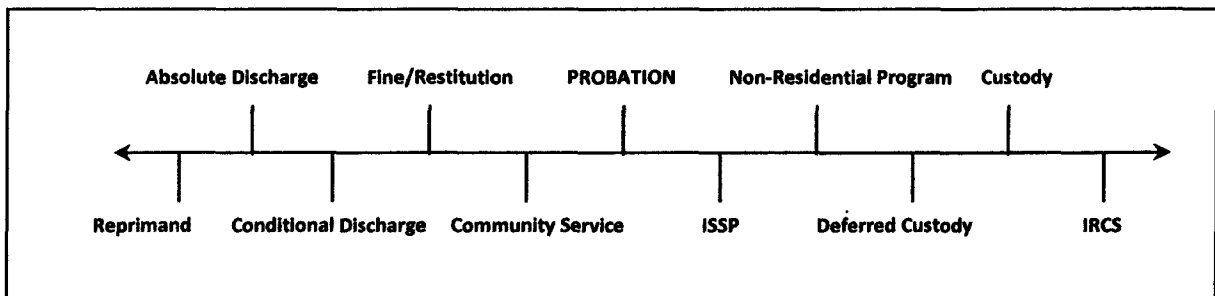
Before discussing the sentence of probation, it is important to briefly review the objectives of the *Youth Criminal Justice Act*, which is the legislative framework that governs state responses to youth crime in Canada. The *YCJA* was introduced in 2003 in order to address several identified deficiencies within the youth justice system. More specifically, the *Act* was designed to achieve the following objectives:

- clear and coherent principles to improve decision-making in the youth justice system;
- more appropriate use of the courts by addressing less serious cases effectively outside the court process;
- fairness in sentencing;
- reductions in the high rate of youth incarceration;
- effective reintegration of young persons; and
- clear distinctions between serious violent offences and less serious offences (Department of Justice Canada, 2003).

In other words, the *YCJA* seeks to restrict the use of the courts and formal criminal justice processes to serious criminal behaviour and to encourage restraint in the use of custodial sentences for youth. Understanding these two primary goals is crucial in setting the context for a discussion of youth probation.

In Canada, the sentence of probation can be situated along a continuum of state responses to youth crime under section 42(2) of the *Youth Criminal Justice Act*, with reprimands (i.e., formal public lectures from a youth court judge) as the least restrictive sanction and intensive rehabilitative custody and supervision (IRCS) (i.e., lengthy custodial sentences followed by community supervision for serious violent offenders who also have serious mental health issues) as the most restrictive sanction (see Figure 1).

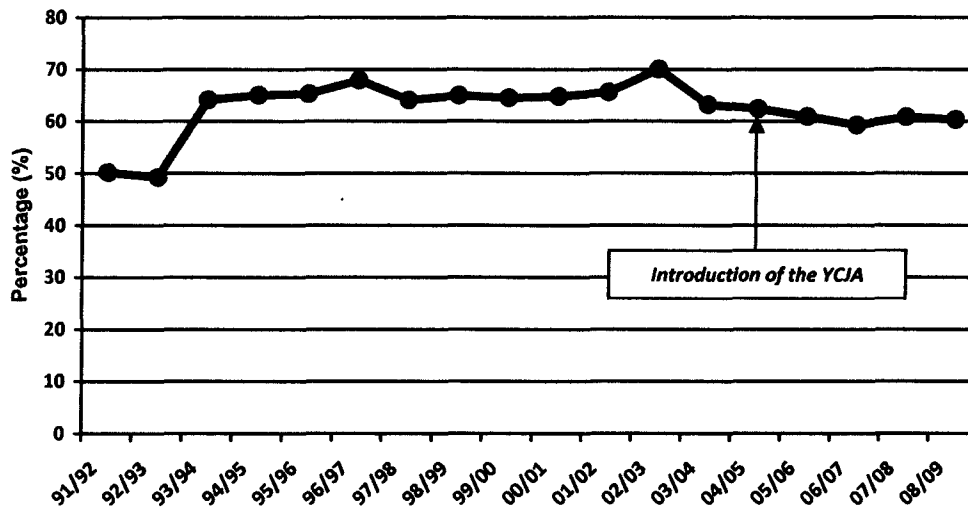
FIGURE 1: SENTENCING CONTINUUM UNDER THE YCJA



1. Source: Youth Criminal Justice Act (2003).

Probation is intended in the *YCJA* to generally fall between community service and intensive support and supervision programming (ISSP), which is similar to probation but involves more restrictions and more contact with the justice system. As Figure 2 indicates, the percentage of youth court cases receiving probation has been stable for several years. In 1991/92, approximately half of all convicted youth court cases resulted in a sentence of probation. The percentage peaked in 2002/03 at 70% prior to the introduction of the *YCJA* and by 2008/09, 60% of all convicted youth court cases were receiving probation.

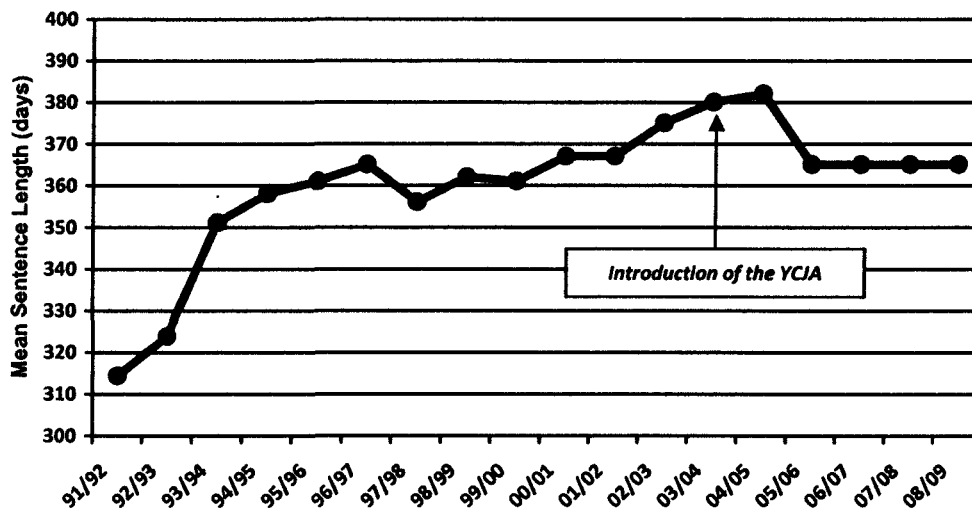
FIGURE 2: YOUTH COURT CASES RECEIVING PROBATION, CANADA, 1991/92-2008/09



1. Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

When a youth is sentenced to probation, he or she remains in the community and typically reports to a PO on a regular basis (e.g., weekly or monthly) for a specified period of time (up to two years). Figure 3 provides the mean probation sentence length for youth in Canada during the fiscal years 1991/02 to 2008/09. Generally, between 1991/92 and 2004/05, the mean probation sentence length increased. In 1991/92, the average sentence for a youth on probation was approximately 315 days and by 2004/05 this had risen to over 380 days. While there was a reduction in the average sentence length following the introduction of the *YCJA* in 2003/04, it appears that the trend has stabilised since that time at 365 days. Sentence length may be an important factor in understanding probation violations as longer sentences increase the amount of time a youth is monitored in the community and have been found to increase the risk of being found in violation of a probation order (Benedict & Huff-Corzine, 1997).

FIGURE 3: AVERAGE PROBATION SENTENCE LENGTH, CANADA, 1991/92-2008/09



2. Source: Youth Court Survey, Canadian Centre for Justice Statistics, Statistics Canada.

During the period of probation, a series of conditions are also imposed on the youth by the sentencing judge. In order to understand the prospective scope of these conditions, it is important to review Section 55 of the *YCJA* which sets out mandatory and optional conditions of probation orders.

55. (1) *The youth justice court shall prescribe, as conditions of an order made under paragraph 42(2)(k) or (l), that the young person:*

- a) keep the peace and be of good behaviour; and*
- b) appear before the youth justice court when required by the court to do so.*

(2) *A youth justice court may prescribe, as conditions of an order made under paragraph 42(2)(k) or (l), that a young person do one or more of the following that the youth justice court considers appropriate in the circumstances:*

- a) report to and be supervised by the provincial director or a person designated by the youth justice court;*
- b) notify the clerk of the youth justice court, the provincial director or the youth worker assigned to the case of any change of address or any*

- change in the young person's place of employment, education or training;*
- c) remain within the territorial jurisdiction of one or more courts named in the order;*
 - d) make reasonable efforts to obtain and maintain suitable employment;*
 - e) attend school or any other place of learning, training or recreation that is appropriate, if the youth justice court is satisfied that a suitable program for the young person is available there;*
 - f) reside with a parent, or any other adult that the youth justice court considers appropriate, who is willing to provide for the care and maintenance of the young person;*
 - g) reside at a place that the provincial director may specify;*
 - h) comply with any other conditions set out in the order that the youth justice court considers appropriate, including conditions for securing the young person's good conduct and for preventing the young person from repeating the offence or committing other offences; and*
 - i) not own, possess or have the control of any weapon, ammunition, prohibited ammunition, prohibited device or explosive substance, except as authorized by the order.*

The potential range of conditions is obviously very broad as section 55(2)(h) allows a sentencing judge to impose *any conditions* deemed appropriate to secure the young person's good conduct and prevent additional offending. Additional conditions typically include curfews, prohibitions on the use of drugs and alcohol, non-association with antisocial peers, and restrictions on mobility (e.g., not allowed to spend time in particular locations, such as high-crime or drug-ridden neighbourhoods). If a youth does not comply with any of the conditions imposed, he or she can be charged with a new offence under section 137 of the YCJA.

137. Every person who is subject to a youth sentence imposed under any of paragraphs 42(2)(c) to (m) or (s) of this Act, to a victim fine surcharge ordered under subsection 53(2) of this Act or to a disposition made under any of paragraphs 20(1)(a.1) to (g), (j) or (l) of the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, and who wilfully fails or refuses to comply with that sentence, surcharge or disposition is guilty of an offence punishable on summary conviction.

Available data from Statistics Canada (2010) indicate that those who are charged with such an offence are likely to be convicted in youth court. In the fiscal year 2008/2009,

for example, 82% of all youth charged under section 137 of the *YCJA* were convicted. In comparison, the overall conviction rate for all offences in youth court was 59%. Thus, probation violation charges are more likely to result in convictions than other offences.

In addition to the high conviction rate, youth convicted of probation violations are somewhat more likely to receive custodial sentences than youth convicted of many offences, including violent crimes in general. For example, approximately 17% of violent youth court cases resulted in a sentence of custody in 2008/09 while 20% of youth court cases for failing to comply with a sentence under the *YCJA* were sentenced to custody. This difference was even more acute under the *Young Offenders Act* when a youth could be sentenced to custody for a single breach of probation (this was changed to at least two breaches under the *YCJA*). In the year prior to the *YCJA*, for example, 27% of violent youth court cases resulted in a custody sentence while 40% of youth court cases for failing to comply with a probation sentence received custodial sentences.

While the *YCJA* appears to have reduced the use of custody for probation violations, which is clearly in line with its stated goals, one could argue that one in five probation violation cases ending in a custodial sentence may be relatively high. If such an argument is accepted, this naturally begs the question: If the original offence was not sufficiently serious to warrant a custodial sentence, why does the State incarcerate a considerable number of youth for a subsequent, less serious offence? Moreover, the 'offence' in these cases generally represents non-criminal behaviour (e.g., truancy, curfew violations). Returning to the stated goals of the *YCJA* (i.e., reducing the use of the formal criminal justice system for less serious criminal behaviour and restricting the use of custody), probation violations may be an anomaly, which raises another important question: How did this system evolve? In order to understand how probation and probation violations

have become so pervasive, a brief historical analysis would be instructive to elucidate how we arrived at this point in time.

2.2 Brief Historical Analysis

Brock (2003) has argued that while the label of deviant (or in this case delinquent) is used to suppress, contain and stigmatize difference, it does not explain how systems have arisen to apply such labels, who creates these systems, and why they make the rules that they do. It is therefore important to explore the development of a separate system of youth justice and understand its historical implications.

According to Cohen (1985), failure to examine and connect the intended and unintended consequences of substantial legislative changes has resulted in a “long discredited system [that has] deflected criticism and justified more of the same” (p. 20). Bernard (1992) posited that youth delinquency and official state responses can only be well understood by studying the ideas in the context of history and law. Cohen (1985) also recognized that the present can only be understood by connecting it with the past arguing that “the use of the past to illuminate the present makes more than dialectical sense: all these revisionist histories contain a hidden and sometimes not-so-hidden political agenda for the present” (p. 9). Thus, an historical analysis allows for a better understanding of the assumptions and values which have led to the current probation system.

Prior to the development of the first foundational legislation in 1908, the *Juvenile Delinquents Act (JDA)*, the issue of whether there should be a distinction between children ‘in need’ and children ‘in need of punishment’ formed one of the most contentious and challenging policy questions. Several major commissions (e.g., Duncombe Commission in 1836; Brown Commission in 1849) and numerous social reformers (e.g., J.J. Kelso,

William L. Scott) debated the need to separate ‘neglected and undisciplined’ children from those convicted of ‘criminal offences’ during the nineteenth century and into the early twentieth century (Carrigan, 1998).

Ultimately, the *JDA* legislated the concept of *parens patriae*, which literally means ‘parent of the country’ and refers to the role of the State as sovereign and guardian of persons under legal control, such as juveniles or mentally disordered persons. Essentially, the State must care for those who cannot take care of themselves, such as children and youth who lack proper parental care and supervision. In other words, the distinction between neglected children and criminal children was blurred by the new legislation. According to Trépanier (1990), the *JDA* relieved the young person of criminal liability for his or her crime, attributing it instead to his or her familial and societal environment. This notion is evident in Section 30 of the *JDA* which states that juvenile delinquents were to be seen as “misdirected and misguided children needing aid, encouragement, help and assistance.”

In general, the *JDA* created a unique system of justice for children and youth over the age of six, including a separate and private court system and youth specific custodial facilities. Prior to this point in time, children and youth were often tried and incarcerated with adults. Section 21 defined a juvenile delinquent quite broadly as “any child who violates a Provision of the *Criminal Code*, federal or provincial statute, municipal ordinance or by-law, or who is guilty of ‘sexual immorality’ or of similar vice, or who is liable for any other reason to be committed to an industrial school or reformatory.”

One of the most significant changes was the introduction of probation as a sentencing option under the *JDA*. Children and youth could henceforth be held accountable for their criminal behaviour through the imposition of a non-custodial sentence. This was

done, however, not only to maintain the family bond and protect children and youth from the negative effects of custody, but also to allow POs to supervise the behaviour of parents and to save money for the State (Trépanier, 1999).

The *JDA* was seen by some as a significant improvement over the previous system of justice for children and youth (Bala, 1997). However, there were also numerous problems with the *JDA* that continued throughout most of the twentieth century. In fact, Platt (1977) argued that it was a myth that the social reform movement leading to advances such as the *JDA*:

...was successful in humanizing the criminal justice system, rescuing children and youth from jails and prisons, and developing dignified judicial and penal institutions for juveniles...if anything, child savers helped to create a system that subjected more and more juveniles to arbitrary and degrading punishments (p. xvii).

One of the major problems was that sentencing could be indeterminate given that youth court judges did not need to set down particular custodial sentence lengths. Rather, youth sentences could be reviewed annually until the age of twenty-one, at which time youth were released from the youth justice system. Therefore, youth often spent a disproportionate amount of time in custody, even for minor offences.

Reid-MacNevin (1991) argued that there was little, if any, relationship between the actual offence that was committed and the disposition that was imposed. More likely, the perceived social needs of the youth were the key determinants of the length of time spent in custody. While criminal law power is often invoked ostensibly to address the *needs* of youth who have violated the law, Barnhorst (2004) argued that such paternalistic thinking results in breaches of protections that would normally shield an accused. Due to this paternalistic approach, which ignored the sentencing principal of proportionality, the

system was often criticised as arbitrary and discriminatory on the basis of race, class and gender (Bala, 1997).

The strategy of indeterminate sentencing, according to Platt (1977), was focused on a system of rewards and punishments and other techniques for organized persuasion in order to more effectively maintain order and compliance and keep youth disciplined and submissive. As will be demonstrated, probation conditions are an extension of this logic out into the community once indeterminate sentences were abolished with the passing of the *Young Offenders Act* in 1984.

Another major issue with the *JDA* was the definition of delinquency which was rather broad and included status offences. Status offences in this context were non-criminal behaviours, such as incorrigibility, promiscuity or truancy, which were defined as crimes only by virtue of the fact that those who committed them were children and youth. Girls, visible minorities and working-class children and youth were much more likely to be charged with status offences than other children and youth (Bala, 1997). The *JDA* imposed patriarchal and moral boundaries that, although non-criminal, were nonetheless dealt with by the criminal justice system when violated by children and youth.

The introduction of the *Young Offenders Act* in 1984 coincided with the repatriation of the *Constitution* and the implementation of the *Charter of Rights and Freedoms*. This change was significant as the *JDA* was clearly not in compliance with the *Charter*, which enshrined a series of important legal rights. Concerns arose that the *JDA*'s informal procedures and age disparities were vulnerable to Charter challenges (Bala, 1997). The informal nature of proceedings under the *JDA* contributed to the ability of decision-makers to apply discretion and to use sanctions in a rather non-uniform manner. In other words, the imbedded assumptions about disadvantaged groups (i.e., visible minorities, those living

in poverty), which drove the reform movement prior to the *JDA*, were played out in how youth were charged, processed and sentenced under the *JDA*. The *YOA* attempted to mitigate this issue by formalizing processes and introducing adult legal concepts such as due process and the right to legal representation.

In keeping with the new legalistic rights-based approach, status offences were also removed from the youth criminal justice system so that youth could only be charged with criminal offences. These changes also clearly reveal the socially constructed nature of 'youth crime'. The crimes of incorrigibility, truancy, and promiscuity, which were common under the *JDA*, were now deemed non-criminal behaviours and supposedly relegated to the child welfare system.

Although the *YOA*, as with the *JDA* in the early 1900s, was hailed as an improvement over the existing system by some, it was immediately recognized as problematic and amended after only two years. The *YOA* originally contained a relatively burdensome process for dealing with youth who wilfully failed or refused to comply with the terms of their dispositions. Under s. 33, when a youth was found by the court to have a probation order, his or her sentence could be reviewed and altered. However, provisions of the *Act* placed restrictions on the nature of any new disposition following a review under s. 33. For example, unless the youth had committed a new serious offence, he or she could not be sentenced to custody for consistent and numerous probation violations. In 1986, a new Section (s. 26) was introduced to create the unique offence of failing to comply with a disposition. In essence, this allowed a Probation Officer to charge a youth with a *new* offence if he or she did not abide by the terms and conditions of their probation sentence. The new section also repealed the restrictions on the use of custody for probation violations thus allowing a sentencing judge to impose prison for the first (and subsequent) probation

violations. As will be seen in the section on the *YCJA*, restrictions were again placed on the use of custody for probation violations in 2003 in order to address the high number of youth sentenced to custody under the *YOA* for probation violations.

Putting aside the nature of some probation violations (e.g., failing to report to a probation officer), the behaviours criminalised through probation conditions are the precise behaviours labelled criminal under the *JDA* as status offences (e.g., truancy, drinking, curfew violations). Therefore, one of the central differences between status offences and probation violations is actually the timing of the charge. Probation violations require the commission of a triggering primary *Criminal Code* offence and a term of probation while status offences were themselves considered a primary offence under the *JDA*. Therefore, one could argue that some probation violations are, in essence, status offences shifted further downstream in the criminal justice system. As such, the *YOA* was more paternalistic than it appeared by maintaining the need to control the behaviour of youth oftentimes through the guise of protecting them or holding them accountable. According to Trépanier (1986), this emphasis on supervision is precisely the reverse of the *JDA* period where unsupervised measures were employed most frequently.

Cohen's (1985) notion that the net of social control can typically widen during attempts to reduce its size is evident with probation under the *YOA*. Since the sanction is relatively minor (and in line with traditional middle-class values) it can by extension be overused by judges. As demonstrated in Figure 2 previously, the percentage of youth court cases receiving probation peaked at 70% under the *YOA*. But as Cohen (1985) argued, the net of social control also typically strengthens. Thus, probation conditions, and the subsequent ongoing supervision of youth and monitoring of their behaviour within the community, can be seen as signs of a strengthening net of social control given the typical

length of time a youth spends on probation. As indicated previously in Figure 3, the average probation sentence length is approximately 365 days. According to Statistic Canada (2010), however, the average custodial sentence length is just over one month (i.e., 36 days). Therefore, while custody is typically seen as a more intense form of social control, if one accounts for the length of time under state supervision and the breadth of conditions attached to a sentence, probation can also be viewed as substantial social control.

In 2003, the state again introduced new youth justice legislation, namely the *Youth Criminal Justice Act*, which made several significant changes to the system. First, an increased emphasis was placed on diverting youth out of the formal criminal justice system through pre-charge extrajudicial measures (e.g., warnings, cautions, referrals) and post-charge extrajudicial sanctions (labelled Alternative Measures under the *YOA*). The assumption was that police officers and Crowns should justify why a youth needed to be processed through the system. In addition, proportionality became the overarching sentencing principle in order to increase fairness in sentencing practices.

Custody orders were also modified so that the final third of the sentence is served in the community. Under the *YOA*, youth typically served their entire sentence in custody. The new approach was premised on the notion that continued supervision in the community would be more appropriate as a means of reintegrating youth back into their families and communities. What has not been determined yet, however, is the possibility that as attempts are made to reduce social control, the net result is an increase in social control. In other words, providing a period of community supervision after custody may result in greater potential for detection of violations of conditions imposed on youth during the

release period (similar to probation) which may lead to further imprisonment and further involvement in the criminal justice system.

Section 39(5) also states that a youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures. In other words, incarceration within the youth criminal justice system is now seen as an inappropriate tool to address child welfare issues (Barnhorst, 2004). This can also be perceived as a strong denunciation of the past tendency in the youth criminal justice under the *JDA* and the *YOA* to blur this distinction. It should be stated that the overuse of child welfare measures within the youth criminal justice system under the *YOA* was, perhaps, partly a reflection of adaptive behaviour by parents, social workers, and justice professionals to the perceived lack of available child welfare resources. In other words, there was a sense that youth were processed through the justice system as a method of gaining quicker access to various services such as psychological assessments and treatment. In fact, custody was often used as a method of ensuring that a youth would receive treatment. The focus under the *YCJA*, however, is not on the condition of the *offender*, but rather the commission of the specific *offence* (Barnhorst, 2004).

This distinction is important and may represent, in some respects, a deliberate departure from the practices under the *JDA* and to a lesser degree the *YOA*. The assumption is that the psycho-social needs of youth (e.g., poverty, substance abuse, psychological issues) should not necessarily be the key influence in judicial or criminal justice decision-making. Since the condition of the youth is not the primary factor to be considered in determining the sanction imposed, it will be interesting to determine if such biases within the youth justice system become less common under the *YCJA*.

A final important change under the *YCJA* is the restrictions on the use of custody. Section 38(2)(d) states that all available sanctions other than custody should be considered for all young persons. As indicated earlier, Section 39(1) also includes limits on the use of custody and in particular requires a second violation of a community-based sanction before a custodial sentence can be imposed. This of course is significant within the context of probation as a youth cannot be sentenced to prison now for his or her first violation.

The entire system under the *YCJA* is now designed to shift cases in the system towards the front-end. In other words, cases that typically received post-charge diversion (e.g., Alternative Measures) are now to be diverted pre-charge (e.g., warnings), many minor cases that were dealt with in youth court are now to be diverted through post-charge diversion programs, and less serious cases that typically had received custodial sentences are now to receive non-custodial sentences, etc. It is not clear, however, if the inclusion of 39(1)(b) may serve to counter this emphasis. Given that the legislation clearly specifies that a custodial sentence may be appropriate for a second or subsequent violation, it is possible that some youth will continue to receive custodial sentences for repeat administration of justice offences.

Generally, the shift from the *YOA* to the *YCJA* has resulted in significant reductions in the use of the courts for less serious cases and significant reductions in the use of custody as a sentencing option (Latimer & Verbrugge, 2004). What is still left to determine, however, is whether the *YCJA* has indeed shifted the focus further away from the actual condition of the offender and closer to the specific offence under question. In the context of probation, for, example, do probation officers base decisions on the social-demographic characteristics of youth (e.g., psycho-social needs) or their behaviour (e.g., the nature and extent of their probation violations). One way of examining this question is to focus on

discretion and the factors that probation officers consider in their day-to-day decision making.

2.3 Discretion in the Criminal Justice System

The exercise of discretion (e.g., laying a charge or determining a sentence) is utilized by all criminal justice professionals engaged in decision-making including police, judges, correctional officers, parole officers and Probation Officers. According to Jones and Kerbs (2007), great discrepancies can result from the exercise of Probation Officer discretion within the justice system, and these can have serious consequences. For example, decisions can involve the deprivation of an individual's freedom (e.g., charging a youth for a probation violation which can lead to a custodial sentence) or they can lead to potential decreases in public safety (e.g., not charging a youth for a probation violation who commits a subsequent criminal offence). And as with any clinical decision-making, there is the possibility of both false positives (e.g., a youth is unnecessarily detained) and false negatives (e.g., a youth is not detained and he or she commits an additional criminal offence during release).

While the exercise of individual discretion may have drawbacks, it also has its advantages. The use of discretion allows for some flexibility and subjectivity within a system that can become embedded in rigid rules. Moreover, the ability to exercise discretion may help balance individual rights with public safety. The impact and importance of discretion cannot be overestimated. It is therefore crucial to understand the factors which influence Probation Officer decision making.

While Canadian research into youth Probation Officer discretion does not appear to exist, Carrington and Schulenburg (2003), examined police officer discretion in relation to

the Canadian youth criminal justice system. The authors determined that when facing a decision to charge a youth with an offence against the administrative of justice (i.e., a probation violation) the police do not feel empowered to utilise their discretionary powers to respond through other measures, such as warnings or cautions (Carrington & Schulenburg, 2003). Generally, given that probation violations are system-generated (i.e., the conditions are imposed by judges rather than observed criminal behaviour), police will often defer to the authority of the judges in these cases.

The police and the courts also believe that, since a previous judge has ordered the young person to adhere to conditions, a violation is evidence of a lack of respect (or insubordination) for the criminal justice system. Moreover, according to interviews with police, the youth justice system provides so few consequences for a young person's behaviour that to 'give them a break' would further enforce this perceived insubordination (Carrington & Schulenburg, 2003).

Typically, a probation violation is viewed as an indication that the term of probation was unsuccessful and requires youth court judges to respond to this perceived lack of success. As such, it is likely that some youth court judges believe they have no choice but to 'ratchet up' the seriousness of the sanction and impose custody after a probation violation. This phenomenon of stepping up sentences in youth court has been labelled by Carrington and Moyer (1995) as an escalation of control measures.

In terms of the broader discretion literature, Jones and Kerbs (2007) have suggested that a number of factors may significantly affect decision-making including:

- differing philosophical orientations to criminal justice goals like rehabilitation versus retribution;
- scholarly interpretations of the law;
- formal organizational and/or community practices; and
- personal preferences.

In their research with American probation and parole officers working primarily with adults, Jones and Kerbs (2007) determined that one of the pertinent factors influencing the decision to use an administrative response (i.e., warning or change in reporting) to a violation compared to a judicial response (i.e., a charge) was the formal and informal policies and pressures within their agency. They found, for example, that while only 11% of respondents worked in agencies that had policies to *inhibit* formal actions for certain violations, nearly two-third of respondents (63%) had policies that *required* formal action for certain violations. Hence, it appears that some agencies are more likely to have policies that mandate rather than suppress formal action.

Another study conducted by Lin and Grattet (2008) assessed the relative impact of four sets of factors on revocation decisions among parole officers and Probation Officers: the characteristics of the cases and the parolees, decision-making organizations themselves, and parolees' communities.

We find that while case characteristics such as charge severity matter a lot in terms of court and board revocation decisions, so too do the characteristics of individuals, correctional organizations, and the communities where parolees live. Revocation decisions are complex, and our analyses show that the process is actually a multifaceted phenomenon involving evaluations of a prohibited act (or acts), the perceived dangerousness and blameworthiness of the parolee, organizational pressures on decision-makers, and decision-makers' conceptions about a parolee's community (p. 19).

With a focus on 'crimes of obedience', Kelman and Hamilton (1989) developed a typology of decision-makers based on their socio-political orientation towards authority. The authors suggested that decision-makers can be classified into those that are rule-oriented (i.e., persons who obey rules in order to avoid trouble), those that are role-oriented (i.e., persons who strongly identify with the norms of their organisation and obey rules out of allegiance and/or personal attachment) and those that are value-oriented (i.e., persons

who are more critical of authority and concerned with the consequences of their decisions). A study by Weber (2002), who conducted interviews with immigration officers who were applying professional discretion in detaining asylum seekers, affirmed the existence of these three basic orientations.

In the context of probation, one might expect that Probation Officers could also be categorized into similar groupings. A rule-oriented Probation Officer, for example, might focus on protecting him or herself by following the appropriate protocols within the organization. A role-oriented Probation Officer may see themselves as serving and/or protecting the community by managing youth appropriately. Finally, a value-oriented Probation Officer might focus on the impact of his or her decisions on the youth within their care and control.

Beyond traditional legal considerations, such as the seriousness of the offence and the criminal history or blameworthiness of the accused, the factors which may influence PO discretion can ultimately be grouped into two broad categories: a) cultural factors such as agency rules and constraints; and b) personal factors such as individual biases and values. In order to better understand each of these broad areas, it is useful to explore the related existing literature in more detail.

2.4 Potential Cultural Factors Related to Discretion

The two central cultural factors found in the literature that may influence probation officer discretion are both grounded in what is ultimately valued within probation agencies. The first factor is the actual nature of the work conducted by POs. Are probation officers encouraged to focus their efforts on trying to rehabilitate youth (i.e., social work) or are they directed to protect society by managing the offender in the community (i.e., social

control). Decisions made by POs likely depend, to a significant extent, upon the model promoted within their probation practices. The second possible factor is the degree of adherence to actuarial justice discourse within probation practice. For example, do risk/need scores form the basis for decision-making? Are they valued and accepted within the probation culture? As will be seen in the subsequent subsections, several researchers have examined both of these phenomenon.

2.4.1 Shifting from Social Work to Social Control

One of the major factors related to the workings of the current probationary system is likely the nature of the work conducted by Probation Officers. Generally speaking, probation practice has traditionally been classified into either social work models, wherein the primary focus is on reforming and assisting the offender, or social control models, wherein the primary focus is on managing and monitoring the offender (Senior, 1984). Garland (2001) has argued that probation (and parole) agencies have de-emphasised the social work ethos that used to dominate their work and, instead, present themselves as providers of inexpensive community-based punishments, oriented towards the monitoring of offenders and the management of risk. In other words, according to Garland (2001), there has been a shift away from the social work model towards the social control model. He further reasoned that this shift has led to a need for Probation Officers to legitimize their new role by ensuring that youth are adhering to the conditions of their probation sentences, putatively in order to minimize the risk to the community. As such, one could view Probation Officers as agents of state control, surveillance and risk management rather than as benevolent helpers.

While Garland's (2001) thesis may accurately describe a predominant shift in western justice practice and discourse in the United States and Britain, Hastings (2009) has argued that the youth justice system in Canada has been somewhat resistant to this change. Hastings (2009) based his conclusions on three specific dimensions of the youth criminal justice system: the decreased use of custodial sentences for youth, the increased use of alternative approaches to the traditional justice system and the growing interconnectedness between the youth justice system and other institutional spheres (e.g., the education system). All three of these indicators, according to Hastings (2009), suggest that the youth justice system is, in fact, not as punitive as argued by Garland.

It has been postulated by Nash (2005), however, that post-modern societies are overly concerned with a perceived risk to their personal safety and that this climate of fear has been exploited by politicians who promise to introduce harsh penalties in order to assuage the public. Nash (2005) further argued that significant pressure has been subsequently applied to probation services to alter their approach to balance the traditional social work focus with the new 'get tough' policies. Such changes suggest that a socio-cultural attitude change may have occurred within the criminal justice system. According to Nash (2005), Probation Officers are now pressured to demonstrate that offenders within their caseload are being carefully assessed for dangerousness and appropriate controls and monitoring are subsequently being applied. It is likely that such approaches are more about the governance of society, (i.e., the electorate), than the management of offenders in the community.

While Nash's (2005) first point is arguably a reasonable assessment of the Canadian system (i.e., federal politicians have promised harsher sanctions to appease an increasingly fearful populous), Hastings (2009) maintained that, given the division of criminal justice

responsibilities in the Canadian system, the impact of such legislative changes on day-to-day practice should be negligible. This is directly related to the constitutional division of powers in Canada. While the federal government is responsible for the development of legislation governing the youth justice system, provincial governments are responsible for the administration of the system. Therefore, the system itself and the provincial public service are somewhat independent of both the federal government and public opinion (Hastings, 2009).

Others, however, have argued that the goal of probation, as a form of community corrections, has in fact changed from being an alternative to custody to being a sanction based on retribution and discipline (van Swaaningen & de Jonge, 1995). Cohen (1985) further suggested that community-based responses to crime, such as probation, have supplemented rather than replaced traditional methods of control such as the prison. As a consequence, Cohen argued that new “deviants” are continually being drawn into the system (i.e., a process of net widening) and existing offenders are exposed to intensified interventions (i.e., a process of net strengthening).

In the current Canadian context under the *YCJA*, however, Cohen’s argument should be reviewed. According to Bala, Carrington and Roberts (2009), the *YCJA* significantly reduced the use of youth criminal courts and custody in Canada without increasing the youth crime rate. Therefore, can this be reconciled with the Cohen’s theory that attempts to diminish social control actually result in a negative and unintended increase in social control? This would depend upon how one assesses the degree of social control associated with a sentence of probation compared to a custodial sentence. Again, as previously argued, it is defensible to suggest that 36 days in custody is qualitatively less social control than a full year monitored in the community during probation, particularly if

a youth has a wide range of probation conditions. In addition, it is possible that based upon the extent of monitoring in the community, youth will face additional sanctions following probation breaches which ultimately increases the extent of social control in the future.

In line with this reasoning, Fischer (2003) has suggested that there has been a significant focus on dispersed regimes of tools and technologies and government networks comprised of state and non-state actors that have increased social control.

What has replaced traditional carceral punishment is a multi-faceted regime of disciplinary and behavioural correction tools...providing new scope, reach and quality of penological or disciplinary control over the offender...The various tools....are categorically framed in constructive and positive 'helping' terms, and are largely silencing connotations of negative power or punishment...in practice, these tools are imposed on the offender in rather coercive ways and deeply penetrate a multiplicity of aspects of the offender's personal life and existence (Fischer, 2003, p. 242).

While some may argue that such new technologies and objectives are inherently designed to reduce social control, probation may have in fact increased both the breadth and depth of social control by imposing stringent conditions on clients and closely monitoring adherence. Drug and alcohol testing, curfew checks, frequently scheduled probation appointments, 'performance' updates from parents, community programs, psychiatrists and social workers, feedback from educators, employers, and group homes all "function as a panopticon-like 'gaze' into the subject's everyday life, triggering... corrective interventions where norm-breaking occurs" (Fischer, 2003, p. 243).

The State has also encouraged the recruitment of community members (e.g., friends, relatives, helping professionals) into surveillance roles in order to manage offenders in the community (Cohen, 1985). While formal and more costly surveillance techniques are still used, increasingly the State relies more and more on the less expensive informal mechanisms such as families, schools, employers, and self-help groups (Friday, 2006).

Ultimately, Cohen (1985) has suggested that the strengthening of supervisory community punishments, such as probation, needs to be controlling and intrusive enough to be responsive to the judicial need for sentences to actually punish and restrict liberties in the name of just-deserts, which again appeals to public pressures rather than youth needs.

In a study conducted by Fielding (1984), it was found that Probation Officers, in an effort to reconcile the conflict between social work and social control, have accepted that control functions are not only necessary in the job setting, but are primarily oriented towards assisting clients rather than punishing them. Thus, this rationalization allows Probation Officers who have a social work orientation to maintain a client-focused self-image and to preserve 'helping' as a predominant theme in their practice, all the while following more control-oriented work practices. Fielding (1984) reasoned that the overall effect of such developments has been to reaffirm social control in probation in a more virulent way than has been the case previously since it is masked as a symbolized form of social work.

Given that models in general are arguably constructs which serve to oversimplify reality, it should be acknowledged that there have never likely been any pure social work treatment models in probation practices (Harris, 1980) or, for that matter, are there likely any pure social control models presently. There has probably always been a blend of the two ideologies. Indeed, Corrado, Grons Dahl, MacAlister and Cohen (2010) found in a small qualitative study that Probation Officers "typically rejected sentencing recommendations drawn from polarized models of youth justice, such as welfare or as crime control" (p.398), instead preferring a more eclectic approach.

Several scholars have argued for the separation of social control and social work functions in the justice system (Bottoms & McWilliams, 1979; Bryant, Coker, Estlea,

Himmel & Knapp, 1978; Harris, 1980). Fielding (1984), however, has reasoned that while care and control are inherently contradictory in their purest forms, the dominant ideology within probation practices has, in effect, collapsed this dichotomy. And this has allowed POs to employ a pseudo-egalitarian 'contract' with offenders by implying a granted consent at the outset of their sentence that ultimately denies the nature and extent of their power.

During the 1970s, one of the major arguments against welfare models and 'correctionalism' (i.e., the application of psycho-social treatment within the justice system) was the belief that treatment interventions designed to change offenders were in fact ineffective in reducing criminal behaviour (Nuttall, 2003). The infamous 'nothing works' position of Martinson (1974) had a profound impact on criminal justice policy (Nuttall, 2003), even though Martinson (1979) himself later claimed that he never intended for his work to be interpreted as such a profound critique of treatment.

Along the same theme of treatment ineffectiveness, Simon (1988) maintained that one of the reasons probation, and its supervisory focus, has become an extension of state control is that changing people is difficult, expensive and sometimes impossible. The State has, in many cases, simply abandoned rehabilitation in favour of the simpler task of restricting an individual's liberties and mobility. In other words, probation as a response to crime seeks to manage offenders rather than treat them, which again ultimately provides the public with a sense that youth are facing appropriate consequences for their criminal behaviour.

Barnhorst (2004), focusing not on treatment effectiveness but on a more fundamental question of whether treatment should be offered within the context of the law, argued that the youth criminal justice system, which has the power to restrict liberties

through force, is not the appropriate mechanism to address the psycho-social needs of youth. In fact, section 35 of the *YJCA* allows a sentencing judge to directly refer a youth to the child welfare system thus arguably permitting a distinction between social control roles and social work roles. Unfortunately, there does not appear to be any research in Canada on the use of section 35 since the implementation of the *YCJA*.

Regardless of the degree of social control versus social work found in probation practices, this dichotomy likely shapes probation officers views on their role within the justice system, and ultimately their decision-making. Feeley and Simon (1992) have characterised this new system as the 'soft' management of offenders followed by 'hard' punishment for non-compliance, and argued it is based upon an increasing reliance on offenders' *risk* to re-offend which represents a clear shift in criminal justice discourse and practice.

2.4.2 The New Risk Mentality

The new risk mentality is an approach that endorses the use of actuarial science to address crime-related problems (Cullen & Gendreau, 2001). From the identification of risk factors using accumulated data, to the quantification and development of risk assessment practices, to the overall preoccupation with risk management, the discourse of risk has become central to the rhetoric of both policy and practice in youth justice (Priday, 2006). It is therefore possible that such a fundamental shift may have an impact on Probation Officer practices and decision-making.

Feeley and Simon (1992), who have described such transformations within the criminal justice system as the 'new penology', identified three discernable shifts during the 1970s and 1980s. First, there was an emergence of new discourses within the system and

in particular, a focus on the language of probability and risk along side of the previously dominant discourse of clinical diagnosis and retributive judgement. Second, a new set of objectives were developed for the criminal justice system. It now strives to identify and manage ‘unruly groups’ of offenders rather than to only punish or rehabilitate individuals. Third, the system now deploys new techniques, along with traditional mechanisms, to manage offenders, such as actuarial risk assessments and electronic monitoring, which are less expensive but can be useful as a means to incapacitate potentially dangerous individuals.

The new penology is neither about punishing nor rehabilitating individuals. It is about identifying and managing unruly groups. It is concerned with the rationality not of individual behaviour or even community organization, but of managerial process. Its goal is not to eliminate crime but to make it tolerable through systemic coordination (Feeley & Simon, 1992, p. 455).

One of the drivers of this new risk mentality was the widespread critiques of discretionary decisions as arbitrary, unfair, gender and racially biased, too dependent on social stereotyping, and ineffective in achieving policy goals (Schneider, Ervin & Snyder-Joy, 1996). Of course, such an attempt to control and/or eradicate professional discretion by mandating actuarial instruments has also been criticized, and is viewed by some as an essential stage towards the detrimental ‘scientification’ of administration and politics (Stone, 1993; Fischer, 1980). According to Priday (2006), “the pseudo-scientific measure of risk replaces clinical, individualised judgement and...obscures the political, moral and cultural dimensions of this power/knowledge dynamic” (p. 415). Notwithstanding these concerns, risk control through actuarial assessment instruments has become an important function of the criminal justice system to potentially assist professionals in making decisions regarding diversion, sentencing, bail, parole, intensity of probation supervision, and treatment modality (Schneider, Ervin & Snyder-Joy, 1996).

In the case of the Canadian youth probation system, the use of actuarial risk assessment instruments has become valued and mandatory. If one examines the conditions imposed on a youth during probation, they are closely aligned with actuarial risk instruments. Typical conditions, such as alcohol and drug restrictions, prohibition of interactions with anti-social peers and mandatory attendance at school address the factors identified in the actuarial literature as correlates of criminal behaviour (e.g., Andrews & Bonta, 2003; Hoge, Andrews, & Leschied, 1996; Latimer, Kleinknecht, Hung & Gabor, 2003). This would suggest that youth court judges have also accepted the new risk mentality, and that through the imposition of particular probation conditions, they are trying to provide Probation Officers with the ability to monitor risk and promptly intervene when appropriate.

There has been much research into the development of actuarial risk assessment tools and their effectiveness in predicting future criminal behaviour (e.g., Andrews, Bonta & Hoge, 1990; Loza & Simourd, 1994) as well as critiques of their validity and ethical application within criminal justice decision-making (e.g., Hannah-Moffat & Maurutto, 2003; Silver & Miller, 2002). In terms of the utility of risk/need assessments, Goldsmith and Libonate (1990) conducted a pilot study to investigate the level of paperwork completed by Probation Officers in the United States. The authors concluded that the vast majority of POs (83%) felt that much of the risk/need assessment process was extraneous to their day-to-day practice. In fact, some argued that risk/need reassessments were completely unnecessary. Overall, the POs within Goldsmith and Libonate's (1990) study believed that most risk/need paperwork benefited the administration and not Probation Officers or the youth within their caseloads.

In a study on the use of risk/need assessments in the justice system by Schneider, Ervin and Snyder-Joy (1996), it was revealed that while most criminal justice professionals recognized the limitations of the instruments and acknowledged that they were not being used as intended and were not having the effects that were promised, they were reluctant to abandon the practice. Simon (1993) suggested that “the risks and needs score was a constructive compromise that lent the aura of statistical prediction to the process without really taking away any power from the local case-by-case system or even accurately mirroring past experience” (p. 4).

In another study by Bonta, Bourgon, Jesseman and Yessine (2005), judges in Canada tended to favour narrative, subjective assessments of risk as opposed to actuarial assessments using standardised instruments. Furthermore, the authors found that both judges and Probation Officers failed to base certain decisions, such as treatment recommendations and treatment orders, on the differing risk levels of offenders.

Hannah-Moffat and Maurutto (2003) have suggested that the logic of risk/need assessments contradicts one of the main *YCJA* principles which is that young persons are to be held accountable through interventions that are fair and in proportion to the seriousness of the offence. They argued that the risk levels generated by the actuarial tools are not measures of the seriousness of an offence and do not necessarily predict the potential for future serious offences, nor is future crime relevant to proportionality. In addition, Hannah-Moffat and Maurutto (2003) identified a number of important limitations related to the use of risk/need assessments in the youth justice system.

Despite the claims that risk/need assessments can better direct or inform treatment plans, no Canadian research has specifically explored the utility of these tools for youth case management purposes. To the best of our knowledge, no international researchers have explored this issue...Existing research on risk/need assessments has focused almost exclusively on the

prediction of recidivism, a factor significant for security management. We know very little about how or whether these tools actually inform decisions about how to intervene with a youth (p. 16).

Notwithstanding the significant criticism of risk/need tools, there is a body of research that suggests that actuarial, evidence-based risk scales are more accurate than subjective or narrative assessments of an offender's risk to re-offend (Bonta, 1996, 2002; Grove & Meehl, 1996; Grove, Zald, Lebow, Snitz & Nelson, 2000). Moreover, the development of such tools was partly driven by the laudable goal of overcoming problems related to racism, sexism and other biases associated with discretionary decision-making in the justice system (Kempf-Leonard & Peterson, 2000). On the other hand, there have also been concerns expressed that risk/need assessments employ extra-legal factors such as race, class and gender which, while possibly necessary for accurate prediction, are inappropriate in the realization of equitable justice practices (Goldkamp, 1988; Petersilia & Turner, 1987).

Generally, there is a growing concern that actuarial justice is radically and negatively altering the criminal justice landscape (Kempf-Leonard & Peterson, 2000). As Garland (1996) suggests, it appears as though the focus is now placed on 'outputs' as opposed to 'outcomes' or on what an organization does versus what an organization actually achieves. Probation Officers are evaluated on their adherence to bureaucratic procedures (e.g., the completion rate for risk/need scores within their caseload) as opposed to how the sentence affects youth. Of course, this does not suggest that POs should be held accountable for recidivism rates or violations, but it does underscore the shift in what is measured by the system. As Kempf-Leonard and Peterson (2000) contend, "these techniques are not merely vehicles for effective implementation of policy, rather, they are

becoming the actual objects of policy. If the means have become the end, then there is reason for concern” (p.68).

Currently, there is little substantial research into the day to day clinical and practical uses of risk/need assessments within Canadian Probation Offices. One of the questions that would be important to answer is: Are probation conditions actually linked to (or explained by) an individual’s risks and needs as measured by various methods, including actuarial tools or clinical judgement? And does the State attempt to mitigate or ‘treat’ these identified risks and needs through programming or referrals? Or have they de-emphasized the treatment aspect of a sentence, as indicated by Simon (1988), in favour of managing risk?

Notwithstanding the issues associated with actuarial tools, the emergence of the new risk mentality is one means of explaining how the probation system has evolved into the current focus on monitoring compliance with conditions. The focus of the work is now on managing offenders in the community based upon their risk to re-offend (Feeley & Simon, 1992). When a youth violates a probation condition, his or her *perceived* risk to re-offend criminally is theoretically higher. Therefore, POs may intervene in an attempt to prevent future crime. While there are numerous issues with this practice, including methodological issues in how risk is measured, and ethical issues in the application of actuarial tools, the reasoning underlying why it is done appears to be clear.

Despite this emphasis on risk management, however, not all youth on probation in Canada are actually charged when risk-based probation conditions are violated (Latimer & Verbrugge, 2004). This naturally begs the question: Why do POs only charge a portion of those who violate conditions? And are risk/need assessments instrumental in PO decision-making? To some extent, the answers to these questions require an understanding of PO

preferences, beliefs and individual values. In other words, it would be useful to review the existing literature on potential personal factors related to discretion.

2.5 Potential Personal Factors Related to Discretion

As stated previously, research on PO decision-making in Canada does not appear to exist. Therefore, in an attempt to better understand possible personal factors, secondary research in two particular areas has been explored. First, it has been assumed that decision-making, and in particular charging a youth for a probation violation, may be influenced by a belief that that further penetration in the justice system can be detrimental to youth. Therefore, it would be instructive to briefly examine the concept of labelling theory to contextualise decision-making as a potentially powerful step in the labelling process. In addition, given that personal preferences and biases may influence decision-making, it would be equally constructive to review the existing literature on race, class and gender issues within the criminal justice system.

2.5.1 Labelling Theory

The origins of labelling theory can be found in the works of Mead (1934), Tannenbaum (1938), Lemert (1951), and Becker (1963), among others, wherein a new view of deviance was proposed. This approach to understanding criminal behaviour suggested that the actor alone (i.e., the delinquent) was not solely responsible for the problem of crime; rather, the reactors (i.e., the agents of social control within the State) also contributed significantly to the problem of crime in society. The actual process of officially labelling an individual as a criminal, and processing him or her through the criminal justice system, may actually contribute to future criminal behaviour. This is an

important concept which if accepted or valued by POs, might theoretically influence how youth are managed within the probation system.

The central contention in labelling theory is that interaction with the criminal justice system propels an individual toward a delinquent self-concept (Ageton & Elliott, 1974). The process, as it was described by Lemert (1967), begins with an initial violation of the law considered 'primary delinquency'. Once an individual has been identified and arrested, a subjective societal response, which is based upon particular attitudes, judgements on morality, disruptive potential, and mental pathology, may lead to an objective societal response in the form of sanctions.¹ This process may continue with further delinquency and stronger sanctions until the delinquent may focus hostility and resentment upon the agents of social control themselves (i.e., police, parents, POs) which might lead to an internalized acceptance of the deviant status and secondary delinquency.

Actors moving to secondary delinquency may even exploit their new, degraded status by essentially changing what they view as rewarding in order to continue with their behaviour. Thus labelling is only 'successful' if it changes the actor's reward systems, attitudes and associates. Lemert (1999) stated that "when a person begins to employ his deviant behaviour or role... as a means of defence, attack, or adjustment to the overt and covert problems created by the consequent societal reaction to him, his deviance is secondary" (p. 388).

Schrag (1971) identified the basic assumptions of labelling theory, which clearly overlap with the idea of social constructionism:

¹ Although the state's response to crime is often considered objective (e.g., codified sentencing quantum), these responses may still be subjective and discretionary based upon particular offender characteristics, such as race, class and age (Wellford, 1975).

- no act is intrinsically criminal;
- criminal definitions are enforced in the interests of the powerful;
- a person does not become a criminal by violation of the law but only by the designation of criminality by authorities;
- due to the fact that everyone both conforms and deviates from social norms, people should not be dichotomized into criminal and non-criminal categories;
- the act of 'getting caught' is what initiates the labelling process;
- decision-making in the criminal justice system is a function of the actual offender as opposed to the offence characteristics;
- age, socio-economic status and race are the major offender characteristics that establish patterns of differential criminal justice decision-making;
- the criminal justice system is established on a freewill perspective that allows for the condemnation and rejection of the identified offender; and
- labelling is a process that can produce identification with a deviant image and subculture and a resulting rejection of the 'rejecters' (p. 89-91).

Wellford (1975) argued that while these assumptions may be modified or extended, they generally represent labelling theory as it was presented and used within criminological theory, research and policy at that time. The transition from primary to secondary deviance, however, is a complicated process with numerous possible outcomes. In fact, labels may be provisional, negotiable, or even rejected. Lemert (1999) also asserted that the change that occurs from accepting and internalizing a deviant label is not always gradual; in fact, it can be quite sudden, particularly after traumatic experiences.

With regards to probation violations, the parallels are clear. Simplistically, the original offence for which a youth received probation represents the primary delinquency and the probation sentence may represent the initial label. The subsequent probation violation and formal charge could propel a youth further towards secondary delinquency. From a labelling theory perspective, one could expect to find an increase in secondary deviance following official responses to probation violations (i.e., charges, convictions and/or sentences). Therefore, it is plausible that decision-making could be influenced by

the degree to which a Probation Officer, consciously or unconsciously, adheres to the basic tenets of labelling theory. In addition, if one accepts the assertion that such official responses vary according to particular offender characteristics, it is constructive to examine race, class and gender issues within the criminal justice system.

2.5.2 Race, Class and Gender

While some have argued that there has been little research into the complex, interrelated issues of race, crime and the criminal justice system (e.g., Henry & Tator, 2008; Melchers, 2006; Mosher, 1998; Schissel, 1993; Wortley, 2004), there is evidence to suggest that there are disproportionate numbers of visible minority youth per capita in various parts of the criminal justice system (Webster & Doob, 2008). Latimer and Foss (2004), for example, reported that the incarceration rate of Aboriginal youth was 64.5 per 10,000 population while the incarceration rate for non-Aboriginal youth was 8.2 per 10,000 population. In other words, Aboriginal youth were almost eight times more likely to be in custody compared to non-Aboriginal youth.

In the adult justice system, the federal incarceration rate for Aboriginal (185 per 100,000) and Black Canadians (146 per 100,000) is many times higher than the rate for White (42 per 100,000) and Asian (16 per 100,000) Canadians (Wortley, 1999). Further research within the Toronto area suggested that Black accused persons were also more likely to be denied bail and held in custody before trial than accused persons from other racial backgrounds (Kellough & Wortley, 2002; Roberts & Doob, 1997).

Wortley (2004) has provided a review of the existing literature on the relationship between visible minority status and representation in the justice system and identified four

basic explanations for this high representation: 1) the Importation Model; 2) the Cultural-Conflict Model; 3) the Strain Model; and 4) the Bias Model.

The Importation Model and the Cultural-Conflict Model both begin with the same premise: a high proportion of visible minorities are recent immigrants. The Importation Model contends that many of these immigrants arrive in Canada with the explicit objective of engaging in criminal behaviour.

This model is often used to explain the presence of international crime syndicates or gangs in Canada, organizations that frequently engage in various forms of illegal activity including drug trafficking, fraud, human trafficking, smuggling, extortion, home invasions, prostitution, and terrorism...Indeed, this theory holds that immigrant, racial minority offenders are already motivated criminals when they arrive in this country (Wortley, 2004, p. 3).

Of course, this does not explain the high representation of Aboriginal youth in the Canadian criminal justice system.

The Cultural-Conflict Model emphasizes the complex cultural and religious differences between certain groups and mainstream Canadian society. The central assumption is that some groups maintain traditional cultural or religious practices which are in conflict with the Canadian criminal justice system. Examples include an acceptance of particular forms of domestic violence, prostitution or drug use within certain non-Canadian cultures (Wortley, 2004).

The Strain Model focuses on extralegal risk factors, such as low socioeconomic status and family dysfunction, which may be more acute and prevalent among some visible minority groups, and also linked to an increased likelihood of criminal behaviour (Bell & Lang, 1985; DeComo, 1998). According to Wortley (2004), the Strain Model is rather consistent with many of the classic theories of crime causation, such as anomie, social

disorganisation, and relative deprivation, which connect anti-social behaviour to the conditions of poverty, frustration, and hopelessness.

These first three models assume that high representation is linked to the visible minority groups themselves. In other words, the models suppose that visible minority groups are overrepresented in the justice system because their rates of criminal activity are simply higher than non-visible minority groups. The Bias Model, however, suggests that systemic racism in the criminal justice system (i.e., racially biased decision-making and practices by police officers, judges and others) is responsible for the high representation of visible minorities. In a study in Kingston, Ontario, for example, Wortley and Marshall (2005) found that Black drivers were more likely to be stopped by the police than drivers from other racial groups. It should be noted, however, that Wortley and Marshall's methodology, and ultimately their findings, have been criticized (e.g., see Melchers, 2006). While the research in this area is contentious, the implications of any form of racially-biased decision-making are important. If there is legitimacy to the claim that visible minority groups are subject to increased levels of surveillance by criminal justice professionals, then they may be more likely to be caught when they violate criminal law compared to non-visible minorities who are also engage in the same criminal behaviour. Thus, Probation Officer decision-making should be examined to determine if race potentially has an influence on charging practices or other important decisions such as programming referrals.

As with the race-crime dynamic, the relationship between socio-economic status and criminal behaviour in modern society is also both contentious and complex. While some studies indicate that youth from lower socio-economic status families are at a higher risk for delinquency than those from higher status families (Farrington, 1989; Lispey &

Derzon, 1998), this finding is not consistent across studies (Tittle & Meier, 1991; Wilkström & Loeber, 2000).

According to Jarjoura, Triplett and Brinker (2004), however, the relationship between socio-economic status and crime is both genuine and robust:

The inability of individual-level quantitative research to demonstrate consistent evidence of this relationship...has been used to call into question whether poverty is indeed related to an increased propensity for delinquent involvement. This may be due to the difficulty individual-level analyses have in identifying the group most important in uncovering the relationship of poverty to delinquency—those individuals that experience persistent childhood poverty. Findings [from this study] indicate that exposure to poverty and the timing of such exposure are indeed related to an increased likelihood of involvement in delinquency (p. 159).

In an examination of the correlates of self-reported delinquency with a large nationally representative sample of Canadian youth, Latimer, Kleinknecht, Hung and Gabor (2003) found that low socio-economic status (which was calculated based on household income and the education level and occupational prestige of both parents) was a not a significant predictor of general delinquency nor of specific forms of delinquency, such as violent offences or drug offences. What is unique about this study, however, is that it examined self-reported criminal behaviour rather than relying on official criminal justice system statistics. Thus, it suggests that if youth from lower socio-economic status families are actually overrepresented within the criminal justice system, this may be an indirect result of biased decision-making (e.g., police more likely to charge youth from low socio-economic families) or increased visibility or surveillance practices (e.g., police are more likely to patrol low socio-economic neighbourhoods).

As identified within the historical analysis subsection, previous youth justice legislation (particularly the *JDA* but also the *YOA*) was criticized for facilitating a system wherein criminal justice decision-making was biased against youth from lower socio-

economic groups (Bala, 1997). It is therefore possible that the discretion exercised by judges, through the imposition of particular conditions, or by Probation Officers, through charging a youth with failing to comply with said conditions, still works within a class bias.

In terms of gender differences, although male youth typically engage in more frequent and more serious criminal behaviour than female youth (Chesney-Lind & Sheldon, 1992; Ellittott & Ageton, 1980), some researchers claim that traditional theories of delinquency (e.g., strain theory) adequately explain both male and female offending (Gottfredson & Hirschi, 1990; Smith & Paternoster, 1987). The argument basically asserts that any difference in frequency or seriousness of criminal behaviour between genders is simply a result of a differential exposure to factors that lead to such delinquency.

Chesney-Lind (1989, 1997), however, disagrees with this contention. She maintains that the predictors of delinquency are not gender neutral. Child abuse, for example, plays a particularly stronger role in female delinquency. Latimer, Kleinknecht, Hung and Gabor (2003) also reported that childhood victimization was a strong predictor of female self-reported delinquency but such a relationship did not exist for male youth. It has been suggested that structural patterns of gender inequality not only increase the risk of females experiencing abuse, but influence how girls respond to such abuse. According to Chesney-Lind (1989) “girls on the run from homes characterized by sexual abuse and parental neglect are forced, by the very statutes designed to protect them, into lives of escaped convicts” (p. 24).

One of the consequences of this difference is clearly the manner in which girls are treated in the criminal justice system. As Funk (1999) points out:

[t]he complexity of the relationship between gender and delinquency lends itself to inconsistent and ambiguous research findings. Nevertheless, it appears that gender differences in structural forces and socialization

experiences may affect not only the types of risks that females and males encounter, but also the ways in which they respond to those risk factors, Therefore, it seems logical to examine female risk factors separately from those of males when conducting risk assessment research (p. 48).

According to research conducted by Erez (1989) within the adult probation system, male and female probationers do not necessarily differ according to a quantification of 'need' scores nor according to the more subjective PO assessment of overall need levels. There were significant gender differences, however, in the factors that helped POs arrive at their decisions, and in the relative weights assigned to them. Erez (1989) suggested that gender-role expectations and sex stereotypes therefore guide and weigh considerably in Probation Officers' decision making. It is therefore important to examine PO decision-making in relation to potential gender biases.

In summary, race, class and gender may each play a unique role in shaping both participation in the criminal justice system and decision-making among professionals. As such, the models used in the analysis section of this thesis include all three demographic variables in order to assess their potential independent effect on PO discretion.

2.6 Literature Review Summary and Research Questions

Based upon the limited research examining probation in Canada, as well as the related literature and historical analysis, this thesis is grounded in the following suppositions:

- probation violations have historical links to status offences, which were common under the *Juvenile Delinquents Act*;
- discretion within the criminal justice system is a complex process impacted by a number of factors including the beliefs and values of the decision-maker, organizational culture and case characteristics;

- probationary practices can have elements of both social work and social control models which likely influence decision-making;
- the focus on actuarial risk management in probation practices seeks to manage offenders rather than simply address underlying risk factors;
- charging, convicting and sentencing youth to custody for probation violations may exacerbate the internalised process of ‘labelling’ and may increase the likelihood of future criminal behaviour; and
- race, class and gender may play an important role in criminal justice decision-making.

From this perspective, it is critical to explore and clearly describe the entire youth probation process. This thesis aims to achieve a comprehensive understanding of the sentence of probation, the prevalence and intricacies of the probation violation process, the nature and extent of Probation Officer discretion and the possible implications of such a system.

In order to better understand probation violations in the youth criminal justice system and Probation Officer discretion, three central research questions have been developed. The first overarching research question is descriptive in nature and sets the stage for the subsequent, more detailed questions related to understanding the complexities of the youth probation process and discretion. Existing Canadian data sources (e.g., the Youth Court Survey and the Youth Community and Corrections Survey managed by the Canadian Centre for Justice Statistics, Statistics Canada) provide very little information on probation violations in the youth criminal justice system. While it is possible to determine the proportion of cases that appear in youth court charged with Section 137 of the *YCJA*, more detailed information is not available. Therefore, the first research question posed in this thesis is:

Q1. What is the nature and extent of known probation violations within the youth criminal justice system?

This overarching question is comprised of several secondary questions:

Q1a. How many conditions and what types of conditions are typically imposed on youth during terms of probation?

Q1b. Are there differences according to demographic variables such as gender, socio-economic status and visible minority status or differences according to legal variables such as the seriousness of the index offence or criminal history?

Q1c. What is the proportion of youth detected in violation of the conditions imposed on them during their term of probation?

Q1d. What proportion of detected violations result in a charge?

Q1e. Which conditions are youth most likely to be detected in violation of during probation?

Q1f. Have the conditions imposed on youth been linked to an assessment of their risks and/or needs?

The second research question, which logically flows out of the first, is:

Q2. What factors are associated with the detection of probation violations in the youth criminal justice system?

In order to effectively answer this question, it is necessary to pose several secondary questions. First, there is very little information available on how and why violations are detected. Do youth report their own violations to POs? Are parents, educators or employers contacting POs and reporting violations (which would fit with Cohen's (1985) argument that the State has recruited family and community members into social control roles)? Or, are most violations a result of youth being questioned by police in the community? Second, it is important to assess whether administrative records are sufficiently detailed and complete to ensure that all possible violations are included in a youth's file. As such, the following secondary questions need to be answered:

Q2a. Who typically reports youth behaviours deemed in violation of a probation condition to POs?

Q2b. Are there violations that come to the attention of POs but are not recorded on official administrative files?

Q2c. What factors are associated with reports of probation violations on official administrative files?

The third major research question examines PO discretion, which is crucial to understanding probation violations and charging practices. Since POs, police and Crowns possess discretionary powers enabling them to charge a youth or not charge a youth with failing to comply with a sentence under Section 137 of the *YCJA*, it is important to understand the factors that are associated with an actual probation violation charge. Schrag (1971) postulated in his summary of labelling theory that race, class and age are the major offender characteristics which establish patterns of differential decision-making in the justice system. Does this assumption hold true within the modern context of the youth criminal justice system in Canada?

It would be important to understand the differences between those youth who have a probation violation recorded in their file and *have* been charged with a new offence and those youth who have a probation violation recorded in their file and *have not* been charged with a new offence. This will provide insight into both the scope of discretion and the factors related to its deployment. The third major research question, therefore, posed in this dissertation is directly related to PO discretion:

Q3. How do Probation Officers make decisions related to charging a youth with a probation violation?

In order to examine this in more detail, three separate, but connected, secondary questions need to be asked:

Q3a. What factors are associated with a charge of failing to comply with a sentence or disposition when probation violations are recorded on official administrative files?

Q3b. What are Probation Officers trying to achieve when charging a youth with failing to comply with a sentence or disposition?

Q3c. How do Probation Officers understand the potential impacts of charging a youth with a probation violation?

In order to provide comprehensive answers to all of these questions, two distinct original data collection methods were developed and implemented.

3.0 METHOD

Given the clear set of research questions, a two-pronged methodological approach was used: a quantitative file review component using administrative youth probation files from an Ontario Probation Office and qualitative semi-structured interviews with active Probation Officers within the same office. The Probation Office is situated within the Ministry of Children and Youth Services (MCYS) of the Ontario government. The MCYS is responsible in Ontario for supervising youth who have been sentenced to a term of probation by a youth court justice.

3.1 Administrative File Review

The administrative files contain information on youth during the period of their probation order, including criminal history and index offence information, the conditions imposed by the courts, a case management plan that contains identified needs and program referrals, a record of violations of probation conditions, and general information on the youth written by the PO. In addition, the files also often contain a pre-sentence report (PSR) which is written by a PO and designed to provide comprehensive background information on the youth to the judge prior to a sentencing decision.

All cases within the Probation Office that were terminated during the calendar year 2005 were selected for analysis as a non-probability sample of the broader probation cases across the province. This represented a total of 299 distinct youth cases. It should be noted that some of the cases managed by the Probation Office are not traditional probation sentences. POs also supervise stand-alone community service orders (i.e., a conviction in court followed by a period of community service), conditional discharges (i.e., a conviction

that is discharged following a successful period of community supervision with conditions) and probation supervision following a custodial sentence. All of these types of sentences were included in sample as they all involve the same basic process: a period of community supervision with conditions managed by a PO that could result in a new charge for failing to comply with the sentence.

A standardised data collection instrument (see Appendix A) was developed and pre-tested on five randomly selected probation files in order to ensure applicability and face validity. A number of changes were subsequently made to the coding manual following this pre-test phase. The two major areas that were removed were court responses to probation violation charges such as conviction rates and sentence lengths, and future criminal behaviour (i.e., recidivism) as they were not available in the files. While it was possible to access other records maintained by the Royal Canadian Mounted Police (RCMP) to determine future criminal behaviour, the cost to access such data was prohibitive (i.e., the RCMP required more than \$6,000 to provide the records).

Following the pre-test, ten files were randomly chosen to be coded independently by each of the three coders working on this research in order to assess inter-rater reliability. All areas of the coding manual were coded similarly by the three coders with the exception of Section F: Miscellaneous Notes on File. In order to address this subjectivity, coders were instructed to discuss any items in Section F as a group whenever there was any interpretation required or uncertainty in the case notes.

The two central dependent variables that were captured by the coding process were:

- the existence of a probation violation on the file; and
- the laying of an official charge of failing to comply with a sentence or disposition (i.e., Section 26 of the *YOA* or Section 137 of the *YCJA*).

The independent variables collected from the probation files were identified primarily from the literature on factors that have been associated with youth delinquency. These include prior criminal history, including seriousness and frequency of offending, victimization, negative familial factors, involvement with anti-social peers, anti-social attitudes, socio-economic factors, age, gender, psychological impairments including learning disabilities and substance abuse, school attachment levels (e.g., performance, attendance), and vocational experiences (Andrews & Bonta, 2003; Latimer, Kleinknecht, Hung & Gabor, 2003).

In addition, the number and nature of the conditions imposed by the courts was also coded. Furthermore, the needs identified by the PO during the development of the case management plan were coded, as well as referrals to programs designed to address such needs. Finally, subjective comments recorded by the PO in the probation file were coded, such as remarks on appearance, attitudes, and behaviours during the probation period.

In order to understand the factors associated with the existence of a probation violation on file and the laying of an official charge for failing to comply with a probation order, multivariate analyses were conducted. Logistic regression analysis, which allows one to establish the relative likelihood of a discrete outcome such as group membership (e.g., probation violations on file versus no probation violations on file) from a set of variables that may be continuous, discrete or dichotomous (Tabachnick & Fidell, 2001), was selected as an appropriate procedure for answering the proposed research questions.

Using a logistic regression procedure affords an ability to control for numerous confounding variables. In addition, logistic regression using the SAS System provides a *pseudo* R-squared statistic, which is a general estimate of the performance of the model (i.e., the percentage of variance explained by the independent variables in the regression) as

well as odds-ratios, which allow a simplistic understanding of the dependent effect of each variable in the model (Allison, 1999).

3.2 Interviews with Probation Officers

For the interview component of this thesis, an email invitation was sent to all active POs working within the Probation Office (approximately 20 officers) in June 2009 asking for volunteers. Additional follow-up emails were sent in July and August to solicit more volunteers. A total of 7 POs agreed to be interviewed – 4 males and 3 females. The interviews were conducted in September 2009 within the office of each PO during regular business hours.

The interviews were guided by a semi-structured questionnaire² designed to better understand probation and probation violations from the perspective of the PO (see Appendix B). The interview guide focused on the following areas:

- the use of actuarial tools in the development of probation conditions and treatment plans;
- the individuals or groups that commonly report probation violations to POs and how (and why) these come to their attention;
- the nature and extent of probation violations;
- the factors related to discretionary recording practices within official administrative files;
- the factors related to discretionary charging practices when a probation violation has been recorded within official administrative files; and
- the potential effects of charging youth with probation violations.

The interviews were analysed using directed content analysis with pre-selected categories as described by Hsieh and Shannon (2005):

...[a]strategy that can be used in directed content analysis is to begin coding immediately with...predetermined codes. Data that cannot be coded

² While all of the areas in the interview guide were covered with each Probation Officer, the interviews were relatively unstructured and questions were often opened-ended in nature in order to elicit more detailed responses.

are identified and analyzed later to determine if they represent a new category or a subcategory of an existing code...Depending on the type and breadth of a category, researchers might need to identify subcategories with subsequent analysis (p. 1,282).

The pre-determined codes that were used in the qualitative analysis were derived primarily from the interview guide. Responses which focused on the following codes were first identified:

- the use of risk/need assessments;
- the development of case management plans;
- the nature and extent of probation conditions;
- the nature and extent of probation violations;
- discretion in charging youth with failure to comply with a sentence; and
- the potential positive and/or negative effects of charging youth.

Following this analysis, all of the responses which were not already coded were re-analysed to determine if additional codes needed to be developed. The only substantial code that was added during the secondary analysis was the role of Probation Officers during a probation sentence.

3.3 Epistemological, Legal and Ethical Considerations

One of the most important limitations of the method used in this thesis was the absence of other forms of truth. Post-modernist academics argue that there is a multiplicity of truths (Grenz, 1996; Lemert, 1997). Focusing on the administrative probation files as the major source of information can be criticized as limiting the breadth and depth of the analysis by reducing human experience to words in a bureaucratic file. Moreover, a major question that needs to be asked is: What is not recorded? The results of this research need to therefore be contextualized as one version of reality and not the only possible one.

In addition, the voices of those directly affected by administration of justice offences, namely the youth, have been omitted from the method. While criticism of such a choice has merit, a primarily quantitative methodology was chosen as the most appropriate approach based on the research questions which were developed for this thesis. That being said, a quantitative approach does not necessarily preclude the collection of supplemental qualitative data. In fact, a number of Probation Officers were interviewed for this thesis. The rationale for excluding qualitative interviews with youth was based on time constraints and the ethical and legal issues inherent in obtaining informed parental consent.

It should be noted that the quantitative analyses in the results Section (in particular the regression analyses) are subject to the typical limitations related to quantifying the complexities of human behaviour. In other words, it is possible that some important confounding variables, which would explain the relationships found in the results, were either not available in the files or are simply not quantifiable. Notwithstanding, all efforts were made to quantify the possible independent variables known to be related to criminal behaviour. The results of this research should, nonetheless, be viewed with this limitation in mind.

Given that there were human subjects in the research design, and that the quantitative data was drawn from personal administrative files, a full ethical review by the University's Research Ethics Board was completed. There were several ethical and legal issues that needed to be addressed. First, the retention of any identifying information acquired from youth records was restricted to the purposes of the research, time-limited, and only done when absolutely necessary (e.g., to verify data entry errors after coding). With identifying information, inappropriate data linkage (i.e., combining different data sources to answer research questions) becomes possible. As such, identifying information

was retained from the administrative files and stored in a separate electronic file using a password protected 'key' system for future verification. This information will be held for a time-limited period and not used for additional research.

Second, under Section 110 of the *YCJA*, it is an offence to identify a youth by name within the youth criminal justice system. Notwithstanding the ethical issues of allowing the identification of a research participant, it would be a criminal offence to publish identifying information within a research study on youth in the criminal justice system in Canada. In addition, under Section 111 of the *YCJA*, it is also an offence to publish identifying information on witnesses and victims in cases within the youth criminal justice system. As such, careful measures were taken to ensure that the data has been presented in a manner that does not allow for the identification of individual youth, victims, or witnesses. Given that additional data coders were used in this study, third-party agreements that outlined the coders' ethical and legal responsibilities were used.

Third, the storage and destruction of data collected through administrative file reviews is an important consideration. In order to ensure that this thesis can be defended, paper copies of the data have been stored in a locked office within Statistics Canada. Upon successful completion and defence of the thesis, the paper copies of the data will be properly destroyed and the electronic data will remain secured by password in only one location.

Finally, access to probation files is restricted under the *YCJA*. In accordance with the notion of diminished responsibility (Bala, 1997), youth records are protected from release and public access under the law. In order for access to be granted, a court order under Section 119(1)(s)(i) of the *YCJA* was secured from a youth court judge in Ontario. The order granted access to records created under sections 114 (youth court records), 115

(police records) and 116 (government records) of the *YJCA*. However, the court order did not provide access to psychological or medical records contained in such files. Therefore, psychological or medical records were not examined during data collection. If any such records were found in a file, they were neither read nor coded.

For the interview component, informed consent was sought from Probation Officers. The informed consent consisted of a signed consent form (see Appendix C) and an information letter (see Appendix D) that documented the research project, including the research questions, and stipulated the possible usages of the data (e.g., doctoral thesis, journal article, conference presentations). Confidentiality was assured during the preparation of all outputs from this research. Not only have the names of participants been withheld, the qualitative data (e.g., quotations) has been presented in a manner that precludes the identification of the source. Moreover, signed consent forms were not linked to individual responses. The interviews were recorded; however, one participant did not consent to recording, but wanted to participate in the research. In this case, detailed notes were taken during the interview. Recordings will be destroyed following the successful defence of this thesis. All standard ethical practices (e.g., allowing a participant to withdraw during any stage of the process, including after the interview was completed) were followed during this research.

4.0 RESULTS

The results of both the quantitative file review and the qualitative interviews with Probation Officers will be presented together throughout this section in order to synthesize the findings and reinforce particular themes. This section is comprised of six distinct subsections each focused on a particular component of the probation process: the socio-demographic characteristics of the youth involved, the probation sentence, the role of the Probation Officer, probation conditions, probation violations and finally PO discretion.

4.1 Offenders or Victims? Understanding Youth in the Probation System

In order to better understand some of the characteristics of those serving youth probation sentences, a number of socio-demographic variables were collected from probation files. There are two important caveats, however, that need to be stated prior to the presentation of results. First, it is possible that not all pertinent information was recorded on the probation files. While POs indicated during interviews that all relevant information is indeed recorded as a practice, it is still possible that some information was missing. Second, it was assumed on a number of occasions that if there was no mention of an issue on file (e.g., substance abuse problems), the issue was not relevant for the particular youth. The rationale for this decision was that POs conduct a thorough assessment of each youth using a risk/need assessment and would have flagged the issue if it had been identified. Therefore, the portrayal of youth that has emerged from this analysis needs to be contextualized as an ‘official’ version of reality as created through administrative records. As will be seen in the following subsections, this reality is nonetheless revealing and oftentimes disconcerting.

4.1.1 Age

While the age of criminal responsibility in Canada for youth is 12 to 17 years of age, the mean age of youth sentenced to probation during the study period was actually 17.2 years ($SD=1.4$). In fact, only 2% of the sample were under 15 years of age and almost half (48%) were 18 years of age or older at the beginning of their probation sentence (see Table 1). In other words, while all offenders were charged as youth under the *YCJA*, and therefore committed their offences before their eighteenth birthday, Probation Officers were often technically dealing with adults on a day-to-day basis. For simplicity sake, the term youth will nonetheless be used throughout this thesis to describe those within the youth probation system.

TABLE 1: AGE AT TIME OF PROBATION ¹		
Age Groupings	N	%
Under 15 years of age	7	2%
15 years of age	26	9%
16 years of age	43	14%
17 years of age	80	27%
18 years of age	94	32%
19 years of age	40	13%
Over 19 years of age	9	3%

1. Mean=17.2 yrs ($SD=1.4$), median=17 yrs, min=13 yrs, max=22 yrs

During the interviews, one of the POs offered an explanation for the fact that youth probation caseloads contain many youth who are technically adults:

The average age has changed...from something like fifteen and a half to something like seventeen and a half. I've got a guy, not long ago, that was twenty-two by the time he finished. Just before he was eighteen he touched this girl in an inappropriate sexual way on the bus. He has a trial a year

later, there's a...psychiatric assessment ordered that took six months, then a pre-sentence report [that took] three months, then probably some other delays, so by the time he starts, he gets the maximum probation sentence of two years and so he doesn't finish until he's twenty-two. I mean, we have a lot of guys who are seventeen, eighteen, nineteen who are sort of straddling both [the adult and youth] systems.

4.1.2 Gender

Most youth sentenced to probation during the study period were male (82%) while slightly less than one in five youth (18%) were female. This ratio of about 5 to 1 is consistent with statistics from the Youth Court Survey which indicates in the fiscal year 2008/09, approximately 20% of all youth sentenced to probation in youth courts across Canada were female (Statistics Canada, 2010). Female youth within the sample were slightly younger than male youth with an average age of 16.9 years compared to 17.4 years ($df=78, t=2.42, p=0.02$).

4.1.3 Race and Citizenship

While only 6 youth (2%) in the sample were identified as Aboriginal, more than one-third (36%) were identified as a visible minority. The remaining 62% of youth were identified as non-Aboriginal and non-visible minority. Based upon population figures from the 2006 Census, the percentage of youth 12 to 17 years of age living in the geographic area serviced by the Probation Office who were identified as visible minority was 18% (Statistics Canada, 2008), which clearly indicates a high representation of visible minority youth within the probation system. This appears to be a gendered issue, however, as 18% of female youth within the sample were visible minorities compared to 40% of male youth ($df=1, phi=0.17, p=0.002$). There were 22 youth (7%) identified as immigrants or refugees in the sample, all of whom were also visible minority youth.

4.1.4 Living Status and Child Welfare Involvement

Table 2 provides information on the living status and child welfare involvement of youth during their period of probation. A relatively small percentage of youth (28%) were living within a two-parent family during the probation period while 40% were living in a lone-parent family.

TABLE 2: LIVING STATUS AND CHILD WELFARE STATUS		
Living Status	N	%
Dual parent	85	28%
Lone-parent	118	40%
Legal guardian ¹	7	2%
Group home	29	10%
Transient ²	21	7%
Living on own	35	12%
No mention on file	4	1%
Child Welfare Status	N	%
Current involvement	47	12%
Past involvement	36	16%
No mention on file	216	72%

1. *Legal guardian usually referred to a foster home or an older sibling.*
 2. *Transient status was usually recorded on the probation file as 'no fixed address' but may have changed during the course of the probation sentence.*

Data from the 2006 Census indicates that among all families with children in the geographic area serviced by the Probation Office, 26% were lone-parent families and 74% were dual-parent families (Statistics Canada, 2008). While this does not suggest that lone-parenting, in and of itself, increases the likelihood of criminal behaviour in children, it does suggest that the conditions experienced by lone-parent families (e.g., housing exiguity, decreased parental supervision) may be related to increased delinquency. Given the

average age of the sample, it is not surprising that 12% were living on their own during their probation sentence and that 7% were identified as transient.

Almost one in eight youth (12%) were involved in the child welfare system at the time of their probation sentence and almost three-quarters of these youth (73%) were living in a group home or foster home. One could assume, therefore, that the issues experienced by the youth either resulted in parental abandonment or were sufficiently serious to warrant state-initiated removal from the home. An additional 16% of the sample had been involved in the child welfare system prior to their probation sentence. In total, more than one-quarter of the sample (28%) had experienced sufficiently traumatic issues in their lifetime to involve the child protective system.

In terms of gender differences, female youth in the sample were twice as likely as male youth to be involved in the child welfare system (48% versus 23%; $df=1$, $\phi=0.21$, $p=0.0002$) and therefore also much less likely to be living with their parents compared to male youth (46% versus 73%; $df=1$, $\phi=0.22$, $p=0.0002$).

4.1.5 Child Maltreatment and Psychological Issues

It is important to note that most cases of child abuse remain undetected and, as such, reported figures typically underestimate prevalence rates (Latimer, 1998). In the case of the Ontario probation sample, just over one-quarter of youth (28%) had a *confirmed* history of sexual, physical or emotional maltreatment, which also includes neglect (see Table 3). If one examines official statistics, the rate of substantiated child maltreatment cases in Canada has been estimated at 18.6 per 1,000 youth or less than 2% all of youth (Trocmé, Fallon, MacLaurin, Daciuk, Felstiner & Black, 2005). In other words, a notably high number of youth serving probation sentences had a record of sexual, physical and/or emotional abuse.

Moreover, female youth were almost twice as likely to have a recorded history of childhood maltreatment than male youth in the sample (46% versus 24%; $df=1$, $\phi=0.19$, $p=0.001$).

TABLE 3: CHILD MALTREATMENT AND MENTAL HEALTH STATUS

Child Maltreatment History¹	N	%
Sexual abuse	28	9%
Physical abuse	41	14%
Emotional abuse ²	15	5%
No mention on file	215	72%
Mental Health Status	N	%
Confirmed diagnosis	53	18%
Suspected psychological issues	21	7%
No mention on file	225	75%

1. *The categories are mutually exclusive due to the nature of the coding: if a youth suffered multiple forms of abuse, the most serious form was selected with sexual abuse scored as the most serious and emotional abuse as the least serious.*

2. *Emotional abuse includes neglect.*

One-quarter of the sample also had a confirmed (18%) or suspected (7%) psychiatric diagnosis (see Table 3). While most diagnoses were not extensively debilitating in nature (e.g., Attention Deficit Hyperactivity Disorder), some youth had more acute diagnoses such as psychoses or limited cognitive functioning. Female youth within the sample were much more likely to have mental health issues than male youth (41% versus 14%; $df=1$, $\phi=0.26$, $p<0.0001$).

Of those youth who were identified as victims of child maltreatment, 36% had a mental health issue compared to 13% of youth who were not identified as victims of child maltreatment ($df=1$, $\phi=0.27$, $p<0.0001$). In addition, more than half of those with mental health issues (58%) were also involved in the child welfare system compared to only one-fifth of youth (21%) not assessed with a mental health issue ($df=1$, $\phi=0.33$, $p<0.0001$).

4.1.6 Socio-Economic Status

Since income information was not available in the probation files, socio-economic status (SES) was determined using two distinct methods. First, if the main source of income for the youth's family (or the youth directly) was indicated as social assistance, this was coded as low SES. Second, if the PO indicated on the file that poverty, income or socio-economic status was an issue for the youth or his or her family, this was also coded as low SES. If the PO indicated that income or socio-economic status was positive for the youth or his or her family, this was coded as high SES. Otherwise, the SES was coded as neutral with the assumption that if it were high or low, it would have been flagged. While a low SES is being used as a proxy for low-income or poverty, it needs to be made clear that this is merely a proxy. It is possible that this method of determining SES does not yield an accurate count of the number of youth in the sample who were living in poverty.

Thirty-six percent of the sample (36%) was coded with a low SES, 58% with no information on SES (i.e., neutral) and only 6% with a high SES. Those identified with a low SES appear to have several common characteristics compared to those flagged with neutral or high SES. For example, low SES youth were twice as likely to have mental health issues (28% versus 14%; $df=1$, $phi=0.17$, $p=0.003$) and almost twice as likely to have been involved in the child welfare system (40% versus 21%; $df=1$, $phi=0.20$, $p=0.0005$). In addition, visible minority youth were more likely to be in the low SES group than non-visible minority youth (44% versus 31%; $df=1$, $phi=0.13$, $p=0.02$).

4.1.7 Education and Employment Status

Table 4 provides information on the education and employment status of the sample. Most youth were either attending school (36%) or working and attending school at

the same time (32%) during their probation period. A relatively sizeable percentage of youth (18%), however, were neither attending school nor working during their probation sentence. Those youth who had mental health issues were twice as likely as others to not be attending school or working (30% versus 15%; $df=1$, $\phi=0.14$, $p=0.01$). In addition, those youth who were not living with their parents were also almost twice as likely to not be attending school or working (27% versus 14%; $df=1$, $\phi=0.16$, $p=0.005$).

TABLE 4: EDUCATION/EMPLOYMENT STATUS		
Education/Employment Status	N	%
Attending school	107	36%
Working ¹	43	14%
Attending school and working ¹	95	32%
Neither attending school nor working	54	18%

1. Working includes both full-time employment and part-time employment.

4.1.8 Criminal Gangs

Only a small number of youth (16) were identified as a confirmed or suspected member of a criminal gang, which represented 5% of the sample. All of these youth were male and most (88%) were visible minority youth. None of the 22 immigrant youth were identified as possible gang members. In other words, all 16 confirmed or suspected gang members were Canadian citizens. The one other meaningful difference between gang members and non-gang members was socio-economic status. Gang members were twice as likely to be within the low SES category compared to non-gang members (69% versus 34%; $df=1$, $\phi=0.16$, $p=0.005$).

4.1.9 Criminal History

Approximately one-third of youth (36%) in the sample had a prior criminal conviction and the vast majority of these youth (94%) had previously served a probation sentence (see Table 5). Among those with a prior record, the number of prior convictions ranged from 1 to 24 with a mean of 4.3 convictions ($SD=4.2$).

TABLE 5: CRIMINAL HISTORY INFORMATION		
Criminal History	N	%
No prior convictions	193	64%
Prior convictions ¹	106	36%
Types of Prior Convictions²	N	%
Prior property convictions	68	23%
Prior violent convictions	66	22%
Prior administration of justice convictions	59	20%
Prior drug convictions	6	2%
Prior sexual convictions	2	1%
Prior Sentences³	N	%
Probation	100	94%
Custody	40	38%
<ol style="list-style-type: none"> 1. Prior convictions: mean=4.3 convictions ($SD=4.2$), median=3 convictions, min=1 conviction, max=24 convictions. 2. Percentages do not total 36% as categories are not mutually exclusive. 3. Percentages are based on those who had a prior conviction and do not total 100% as categories are not mutually exclusive. 		

A relatively equal percentage of youth had been convicted of prior property offences (23%), violent offences (22%) and administration of justice offences (20%) while very few had been convicted for prior drug offences (2%) or sexual offences (1%).

When examining differences between repeat offenders and first-time offenders, there are several meaningful findings. First, repeat offenders were more likely to have

reports of child maltreatment compared to those who were first-time offenders (52% versus 29%; $df=1$, $\phi=0.22$, $p=0.0001$). Second, repeat offenders were more likely to have mental health issues compared to first-time offenders (59% versus 30%; $df=1$, $\phi=0.25$, $p<0.0001$). Third, repeat offenders were more likely to be within the low SES category compared to first-time offenders (48% versus 28%; $df=1$, $\phi=0.20$, $p=0.0006$). Finally, repeat offenders were less likely than first-time offenders to be living with their parents (27% versus 53%; $df=1$, $\phi=0.25$, $p<0.0001$).

4.1.10 Criminogenic Needs

For most youth in the sample, a risk/need assessment was completed which identified both a risk level and a series of criminogenic needs, most of which have been found to be correlated with youth offending. The major criminogenic needs that were identified by POs using risk/need assessment tools can be found in Table 6. The top five need areas were educational issues, antisocial peers, family issues, substance abuse issues, and anger management issues. Interestingly, these correspond relatively well to the top five correlates of self-reported delinquency identified through an analysis of the National Longitudinal Survey of Children and Youth: negative school attachment, antisocial peer involvement, inconsistent and inadequate parenting, aggression, and a history of victimization (Latimer, Kleinknecht, Hung & Gabor, 2003).

The 'Other needs' category in Table 6 included criminal driving problems (e.g., street racing), eating disorders, physical health problems, deficient parenting skills, pyromania, serious trauma (e.g., death of close relative), racist attitudes, and a general lack of motivation. The mean number of needs identified per each youth was 4.6 ($SD=3.0$) while the maximum number of needs identified was 11.

In terms of gender differences, female youth had, on average, a higher number of needs compared to male youth (6.1 needs versus 4.2 needs; $df=297, t=4.19, p<0.0001$). In addition, those youth within the low SES category also had a higher number of needs than those in the neutral and high SES categories (5.8 needs versus 3.9 needs; $df=297, t=5.53, p<0.0001$).

TABLE 6: CRIMINOGENIC NEEDS IDENTIFIED

CRIMINOGENIC NEEDS¹	N	%
Educational issues	194	65%
Antisocial peers	180	60%
Family issues	155	52%
Substance abuse issues	147	49%
Anger management issues	143	48%
Antisocial attitudes	138	46%
Vocational skills	118	40%
General life skills	108	36%
Psychological issues	57	19%
Other needs	47	16%
Cultural issues	43	14%
Child abuse issues	23	8%
Sexual offending behaviour	11	4%
Self harm and/or suicidal ideation	11	4%

1. *Criminogenic needs: mean=4.6 needs (SD=3.0), median=5.0 needs, min=0 needs, max=11 needs.*

4.1.11 Risk Levels

Almost all youth within the sample (93%) had been assigned a risk score based upon an actuarial risk/need assessment tool. One in five youth (20%) were assessed as a high risk to re-offend while the remaining youth were evenly assessed as either low risk (37%) or medium risk (36%). The only identifiable difference between high risk youth and low/medium risk youth was socio-economic status. Those youth known to be in the low

SES category were much more likely to be considered high risk compared to those in the other two SES categories (62% versus 38%; $df=1$, $\phi=0.27$, $p<0.0001$).

4.1.12 Summary of the Socio-Demographic Information

The findings from the socio-demographic analysis provide a clear picture of who is actually within the youth probation system. The vast majority of the youth (80%) supervised within the Probation Office had serious child protective issues (i.e., had been victimized or abandoned), or were living in poverty or on the streets or had identified mental health issues (e.g., psychiatric diagnosis, suicidal ideation, drug addiction). The victim/offender dichotomy that is often utilized in the criminal justice system is clearly questionable when considering the lived realities of youth serving probation sentences. Given the high number of needs identified within the sample, it is clear that the youth serving probation sentences are quite often ‘in need’, rather than simply ‘in need of punishment.’ Moreover, there is a high representation of poor, visible minority male youth in the probation system, particularly among those with identified gang affiliations.

Another obvious conclusion is that female youth within the probation system are different from male youth in several ways. In general, female youth are slightly younger, have a higher number of needs, are more likely to have identified mental health issues and are more likely to have a recorded history of child maltreatment. As a result, they are also more likely to be involved in the child welfare system and live outside of their parental home.

A third important point that needs to be made relates to the age of youth within the probation system. Half are technically adults (i.e., over the age of 18) and many others are not much younger. POs are not typically dealing with younger youth (i.e., 12-15 years old)

and as such, most youth are likely physically mature and often resemble adults. Many are already living outside of their parental home and almost half are already working either full-time or part-time. This fact raises an important question: Is it possible that POs treat youth more like adults given their age and maturity level?

Another factor that should be considered is the criminal history of the youth serving probation sentences. Two-thirds of the youth on probation are first-time offenders and very few are involved in serious criminal gang activities. It is true that some of the youth have extensive criminal histories and were involved in organized criminal activity. Most, however, simply were not. This context is important when considering the nature and extent of social control that these youth experience through probation conditions.

4.2 Crime and Punishment: Understanding Offending and Sentencing

The following section examines the offences which brought the youth into the probation system during the study period, as well as the State's response to this behaviour through the imposition of community-based sentences.

4.2.1 Index Offence Information

Many youth in the sample were convicted of more than one offence at the time of their probation sentence. In order to report a single offence for each youth in the sample, the most serious offence (MSO) was identified using the Seriousness Index produced by the Canadian Centre for Justice Statistics, Statistics Canada, which ranks offences according to the maximum sentence length of each offence within the *Criminal Code*. All offences against a person (i.e., violent offences) are considered more serious than all other offences

(e.g., property offences, drug offences). Table 7 provides information on the most serious offence for each youth.

TABLE 7: MOST SERIOUS OFFENCE		
Most Serious Offence Category	N	%
Assault (level I)	68	23%
Robbery	38	13%
Theft	31	10%
Serious assault (level II and III)	30	10%
Administration of justice ¹	28	9%
Other non-violent ²	19	6%
Mischief	15	5%
Possession of stolen property	15	5%
Break and enter	10	3%
Sexual offences	8	3%
Uttering threats	7	2%
Drug possession	7	2%
Driving offence causing death	6	2%
Criminal harassment	5	2%
Drug trafficking	5	2%
Weapon offences	5	2%
Other violent ³	2	1%
Total Violent	157	53%
Total Non-Violent	142	47%

1. *'Administration of Justice' offences include failing to comply with a sentence, failing to appear in court and failing to abide by release conditions.*
2. *'Other Non-Violent' includes Provincial statutes, fraud, obstructing peace officer, attempt/conspire to commit an offence, and traffic offences.*
3. *'Other Violent' includes arson and using a firearm in the commission of an offence.*

The most common MSO was assault (26%) followed by robbery (13%), theft (10%), serious assault (10%), and administration of justice offences (9%). These five offence categories represent just over two-thirds (68%) of all MSOs committed by youth in the sample. If we examine the violent/non-violent dichotomy, slightly more than half of the MSOs (53%) were violent. The only meaningful difference found during the analysis

of MSO was related to age. Older youth (18+) within the sample were less likely to have a violent MSO compared to younger youth (42% versus 58%; $df=1$, $\phi=0.12$, $p=0.03$).

TABLE 8: ALL OFFENCES

Offence Categories ¹	N	%
Administration of justice ²	105	35%
Assault (level I)	86	29%
Theft	59	20%
Robbery	38	13%
Other non-violent ³	35	12%
Serious assault (level II and III)	33	11%
Possession of stolen property	29	10%
Mischief	27	9%
Uttering threats	12	4%
Break and enter	12	4%
Weapon offences	12	4%
Drug possession	10	3%
Sexual offences	8	3%
Driving offence causing death	7	2%
Criminal harassment	5	2%
Drug trafficking	6	2%
Other violent ⁴	2	1%
Total Violent	191	(39%)
Total Non-Violent	295	(61%)

1. Total does not equal 100% as each youth could have been convicted of more than one offence.
2. 'Administration of Justice' offences include failing to comply with a sentence, failing to appear in court and failing to abide by release conditions.
3. 'Other Non-Violent' includes Provincial statutes, fraud, obstructing peace officer, attempt/conspire to commit an offence, and traffic offences.
4. 'Other Violent' includes arson and using a firearm in the commission of an offence.

If all offences are included in the analysis, and not merely the MSO, the distribution of offence categories changes (see Table 8). The most common offences in the sample are actually a group of administration of justice offences which include failure to comply with a sentence (e.g., breach of probation conditions), failure to attend court and failure to comply with release conditions (e.g., breach of bail conditions).

This is obviously a clear indication that youth are not adhering to a number of administrative conditions imposed by the justice system and further demonstrates the importance of the topic of this thesis. Another notable difference between Table 7 and Table 8 is the proportion of violent offences which drops from 53% to 39%. Overall, however, it is clear that many youth in the sample have been convicted of relatively serious offences including robbery, assault with a weapon/causing bodily harm (level II), aggravated assault (level III), and driving offences causing death.

4.2.2 Sentences within the Probation Office

Given the methodological choice to examine all cases within the Probation Office, not all youth were serving the same distinct sentence (see Table 9). While most sentences were stand alone probation sentences (70%), a sizeable proportion of cases managed by POs in the Probation Office were either conditional discharges (17%) or probation supervision following custody (12%). Only three youth (1%) were serving a community service order. For simplicity, the term probation will be used throughout this thesis. Sentences ranged from one month up to two years, which is the maximum length allowed under the YCJA. The most common sentence length was one year which represented approximately half of all cases in the sample (51%).

TABLE 9: SENTENCE INFORMATION

Type of Sentence	N	%
Stand alone probation	209	70%
Conditional discharge	51	17%
Probation supervision following custody	36	12%
Community service order	3	1%
Length of Sentence ¹	N	%
Shorter than 12 months	57	19%
12 months	151	51%
Longer than 12 months	91	30%

1. Sentence length: mean=13.3 months (SD=5.1), median=12 months, min=1 month, max=24 months.

Older youth (18+ years of age) had longer sentence lengths, on average, compared to younger youth (14.1 versus 12.7 months; $df=293$, $t=2.4$, $p=0.017$). Older youth also had more prior criminal convictions (2.2 versus 1.0 conviction; $df=236$, $t=3.02$, $p=0.002$), which is a strong predictor of sentence length in youth court. It is therefore possible that the longer criminal history of older youth is the primary factor related to their longer sentence lengths and not necessarily their age.

4.2.3 Summary of Offence and Sentencing Information

While many youth in the sample were convicted of offences against the administration of justice and other less serious offences, a substantial number of youth were serving probation sentences for relatively serious crimes such as robbery and serious assault. While the focus of this thesis is not on the impact of the *YCJA* per se, it is important to note that one of the implications of the legislation is a clear shifting of youth

within the system – cases that used to receive open custody under the *YOA* are now found within the probation system. Therefore, POs may now be dealing with youth engaged in more serious criminal behaviour than previously under the *YOA*. Generally, youth are spending one year or more under the supervision of the State. Given that youth tend to perceive time somewhat more slowly than adults (Feld, 1999), as the subsequent subsection will demonstrate, this allows for a relatively long period of time during which a youth is closely supervised.

4.3 The Panopticon Gaze of the State: Understanding Probation Conditions

Given that probation sentence lengths are relatively homogeneous (i.e., courts tend to hand out sentences of six months, one year or eighteen months), one of the ways in which the severity of a probation sentence can be measured is by examining the nature and extent of probation conditions attached to the sentence.

4.3.1 The Breadth and Depth of Probation Conditions

The vast majority of youth (91%) were required to report regularly during their probation sentence (see Table 10). Unfortunately, the reporting frequency (e.g., weekly, monthly) was too difficult to code as it changed frequently at the discretion of the PO. The one finding which differed according to sentence type was the reporting condition. Of those youth serving a traditional probation sentence, only 8% were *not* required to report to a PO during their sentence while 18% of youth serving a conditional discharge and 100% of youth serving community service orders did not have a reporting order attached to their sentence. All youth serving probation after a custodial sentence were required to report to a PO. Beyond the reporting condition, the top five most common conditions attached to a

youth probation sentence were attend school (70%), reside at an approved place (68%), do not associate with a known criminal (68%), attend treatment (64%), and maintain employment (56%).

TABLE 10: PROBATION CONDITIONS ASSIGNED BY THE COURTS

Condition Types¹	N	%
Report to PO	272	91%
Attend school	210	70%
Reside at a place approved by PO	204	68%
Do not associate with a known criminal	203	68%
Attend treatment as specified by PO	191	64%
Maintain lawful employment	168	56%
Complete community service hours	147	49%
Do not communication with victim	102	34%
Do not enter specified area of the city	101	34%
Abstain from the use of drugs/alcohol	97	32%
Notify any change in circumstances	91	30%
Abide by a curfew	80	27%
Prohibited from possessing a weapon	79	26%
Apologize to the victim	38	13%
Agree to release of personal information	38	13%
Pay restitution	32	11%
Other conditions ²	24	8%
Driving restrictions	20	7%

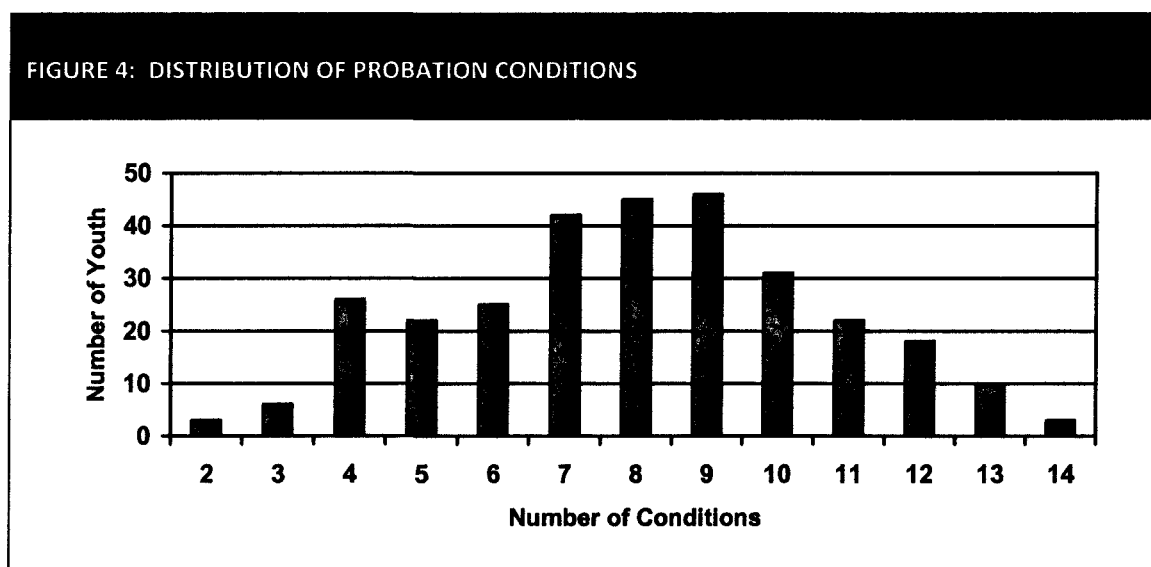
1. Number of conditions: *mean=8.0 conditions (SD=2.6), median=8 conditions, min=2 conditions, max=14 conditions.*

2. *'Other conditions' included writing essays on various topics (e.g., bullying, drugs, violence), prohibitions on possessing particular items (e.g., drug paraphernalia, gang colours, incendiary items, tools, other people's identification, cell-phones, animals), and further restrictions on mobility (e.g., not to be alone with females or children under 14, not to be in a dwelling where drugs are present, must answer telephone and/or front door when home).*

As indicated in Table 10, the median number of conditions attached to a youth probation sentence was 8 while the maximum number of conditions attached to a single sentence was 14. Most aspects of a youth's life were covered including where to live, who to spend time with, what to do during the day (e.g., attend school and/or work) and during

the evenings, (e.g., curfew, attend programming and community service), and even who has access to one's personal information (e.g., agree to release information).

As Figure 4 demonstrates, the distribution about the mean for the number of conditions across the sample is relatively normal. In order to further examine the number of conditions attached to probation sentences, the youth were divided into three groups: minimally controlled youth (5 conditions or less), moderately controlled youth (6 to 10 conditions) and highly controlled youth (more than 10 conditions). The majority of the sample (64%) was in the moderately controlled group while 21% were in the minimally controlled group and 15% were in the highly controlled group.



The main differences between the three groups related primarily to the nature and length of their sentence. For example, those youth with a probation sentence longer than one year were more likely to be in the highly controlled group than those with sentences of one year or less (33% versus 11%; $df=1$, $\phi=0.35$, $p<0.0001$). In addition, those youth who were serving a probation sentence following a period of custody were twice as likely

to be in the highly controlled group compared with those who were only serving a community-based sanction (36% versus 15%; $df=1$, $\phi=.19$, $p=0.003$). Finally, those who had been convicted of a violent offence were more likely to have a high number of conditions attached to their probation sentence than those who had committed a non-violent offence (22% versus 13%; $df=1$, $\phi=.17$, $p=0.01$). Given that a high number of conditions is associated with more serious crimes, longer sentences and custody, it is possible that sentencing judges may be using the number of conditions as a method of increasing the severity of the probation sentence.

The analysis did not find a relationship between the number of conditions and more traditional factors such as the risk level of the youth or the number of criminogenic needs. In other words, higher risk youth did not have more conditions, on average, than lower risk youth and youth with a higher number of identified needs did not have more conditions, on average, than youth with a lower number of needs. This brings into question what is often termed the ‘appropriateness’ of conditions. Since the number of conditions does not appear to be related to the number of needs (i.e., more needs do not necessarily equal more conditions), the question that is often asked is: Are the *nature* of the conditions related to the *nature* of identified needs? For example, are judges more likely to impose an abstinence condition on a youth who has a substance abuse issue or a condition prohibiting contact with criminal peers on a youth who is participating in criminal gang activities? While many conditions do not have criminogenic need counterparts, some can be clearly linked.

Table 11 examines this question and demonstrates that there does appear to be a relationship between identified needs and particular conditions. However, there are also a

substantial number of youth who have a particular condition (e.g., abstinence) and yet do not have an associated need identified (e.g., substance abuse).

TABLE 11: PROBATION CONDITIONS AND RELATED NEEDS

	N	%
Do not associate with a known criminal		
Anti-social peers identified as a need	141	69%
Anti-social peers NOT identified as a need	62	31%
Attend treatment as specified by PO		
Youth identified with a treatment-related need	122	70%
Youth NOT identified with a treatment-related need	52	30%
Abstain from the use of drugs/alcohol		
Substance abuse identified as a need	66	68%
Substance abuse NOT identified as a need	31	32%

If we examine one condition, such as abstinence, there are three possible explanations for this finding. A youth could have had a substance abuse issue that was known to the sentencing judge but not reflected in the probation file, but this is highly unlikely given the extensive social histories conducted by POs. It is more likely that the crime was committed by a youth while under the influence of drugs and/or alcohol but he or she was *not* considered to have a substance abuse issue. Or a judge ordered an abstinence condition for the youth without a clear rationale which may indicate that sentencing judges consider the potential list of conditions as a menu from which they select rather than basing their decisions on the nature of the case before them. Unfortunately, it was not possible to determine why many conditions are not linked to identified needs with the available data.

One PO commented on the nature of the conditions and suggested that sentencing judges simply don't have enough information to craft an informed sentence:

Some [of the conditions] are completely useless, some seem to be done without curiosity on the part of either the Crown, the bench, the system or the kid sentenced. The next thing you know, we get this guy who has committed a minor offence, you know, and he's had thirty contacts with the police and then he's got all these issues. Ok. So, weren't there any questions asked at court? Sometimes defence counsel, their approach is, ok, I'm dealing with this situation here, so I am going to ask the minimal number of questions when I go before the judge and my presentation will be "This guy is sixteen, he lives with his parents, and he goes to [a particular] High School." Very basic stuff. And then the judge doesn't say "Ok, wait a minute, you've just said three or four things about this guy. I want to know more." And so, that's why we get orders that are kind of lame. And that happens quite a bit.

Another PO commented that some of the conditions are simply not practical since youth are clearly not motivated to comply with them right from the beginning of the sentence:

Some of the conditions aren't practical at all. I had one recently, where the judge ordered it with the best of intentions. She ordered the young person to participate in residential treatment...and so that's a probation condition that I will never be able to do anything about. The young lady flatly refuses to involve herself and there is nothing I can do. I can't force her to attend. [If I charged her with a violation] it would be thrown out. So in all the time I have been here, I would never considering laying a charge for that.

Analyses were completed at the individual condition level to examine if particular conditions were more likely to be ordered for particular youth. Generally, youth over 18 years of age were more likely than younger youth to have employment conditions (71% versus 42%; $df=1$, $\phi=25.5$, $p<0.0001$), non-association with anti-social peer conditions (74% versus 62%; $df=1$, $\phi=14.9$, $p=0.03$) and restitution conditions (17% versus 5%; $df=1$, $\phi=10.6$, $p=0.001$) and less likely to have apology conditions (6% versus 19%; $df=1$, $\phi=10.2$, $p=0.001$). Compared to non-visible minority youth, visible minority youth were more likely to have employment conditions (64% versus 52%; $df=1$, $\phi=4.1$, $p<0.04$), non-

association with anti-social peer conditions (76% versus 63%; $df=1$, $\phi=5.0$, $p=0.03$) and less likely to have treatment conditions (56 versus 68%; $df=1$, $\phi=4.0$, $p=0.05$). Finally, immigrant youth were significantly more likely than Canadian citizens to have attend school conditions (96% versus 56%; $df=1$, $\phi=7.2$, $p<0.007$) and non-association with anti-social peer conditions (96% versus 68%; $df=1$, $\phi=5.8$, $p=0.02$). While this basic analysis does not control for confounding variables which may better explain these observed differences, the results nonetheless provide limited context for understanding the use of conditions within particular groups.

4.3.2 Perceptions of Probation Conditions

One of the issues discussed during the interviews was how POs and youth perceive probation conditions. Given that youth were not interviewed for this thesis, the only source of information on youth perceptions comes from the POs themselves. If we assume that this information is valid, there appears to be an important and clear disconnect between youth perceptions of conditions and PO perceptions. Essentially, POs understand probation conditions as a mechanism to assist youth in avoiding future criminal behaviour, based upon their link to criminogenic risk factors, while youth perceive conditions simply as a punitive measure. This is illustrated through the following quotes:

They don't perceive it as a means of assisting them. They don't perceive it as "you know what, you have a history of being out late at night and getting yourself into trouble with kids. So for the next year, maybe it's better, for you especially, to prevent you from getting into more hot water with the cops. Maybe it's better for you to be home at 11 o'clock on Saturday night." Ok. They perceive it as simply a control that has been placed on them and as a punitive measure.

At court, often, you see the kids as relieved, 'cause they didn't go to jail. But then, the minute, it dawns on them that yeah, ok, this is for real, and their parents are expected to help us monitor and enforce, and maybe Mom

is going to call, and curfew is at 10:00 p.m., yeah that's a drag. I'm seventeen and I have to be in at 8:00 or 9:00 or 10:00 p.m.!

The question that therefore arises from this disconnect is: How are the conditions explained to youth? Are they explained as a mechanism to support them and assist them in avoiding future criminal behaviour or are they explained as a punishment? While this was not directly covered during the interviews, regardless of how it is explained, it is unlikely that many youth could be convinced that the conditions judges impose on them during their probation sentence are actually positive and helpful. It would be useful to explore this hypothesis in future research, particularly if conditions were not linked to identified needs.

4.3.3 Summary of Probation Conditions

In general, regardless of the intent, the average number of conditions imposed on each youth during a probation sentence, as well as the breadth of these conditions, represents a clear and significant measure of social control. It may also be possible that sentencing judges are using conditions as a method of increasing the severity of probation sentences which may reinforce the notion among youth that conditions are punitive rather than positive helping tools. At the same time, a number of youth appear to have conditions attached to their sentence which are not directly linked to identified needs. While it is arguable that this is acceptable under the YCJA, given the directive that the law should not be used as a child welfare measure, it does not make sense that youth would have social control measures added to their sentence which are unnecessary and possibly arbitrary. In fact, if conditions are indeed designed to assist youth, as understood by POs, then it makes even less sense.

4.4 Wearing Many Hats: Understanding the Role of Probation Officers

What is the role of a PO during a probation sentence? While the question seems relatively straightforward, the answer is somewhat more complex. The following sub-sections will examine not only the processes that POs follow during a probation sentence, but also the challenges they perceive and their observations on their role in the youth criminal justice system.

As indicated in the Methods section, 7 POs who worked within the Probation Office were interviewed. While their experience ranged from 1 year to 28 years, the average time as a PO was 19.7 years. While it is possible that those officers who volunteered to be interviewed were atypical of the POs in the office, it is unlikely given the following quote from one of the POs:

You are working [here] with a core group of people with a minimum 20 years of experience. Very, very dedicated people.

In order to more fully explore the role of the PO in managing a youth probation case, it is important to understand the basic steps in the probation sentence. Once a youth has been sentenced by the courts, he or she has an appointment with the Probation Office during which an initial assessment is conducted. Typically, this assessment leads to the completion of a formal risk/needs assessment and the development of a case management plan which theoretically may involve referrals to other programs designed to address the issues raised in the risk/needs assessment. After this process has been followed, the PO generally monitors the youth's compliance with both the case management plan and the conditions imposed by the courts. The following sub-sections examine these steps in more detail.

4.4.1 Risk/Need Assessments

While there is large body of empirical literature supporting the use of risk/need assessments in decision making within the criminal justice system (Bonta, 1996, 2002; Grove, Zald, Lebow, Snitz,& Nelson, 2000), most Probation Officers were critical of the process. One PO suggested that the process was unnecessary and merely in place to satisfy the need for documentation and paperwork:

Risk/need assessments are mandatory – we have to do it. And, in fact, it's the law. It's part of what we do. And right now, we're supposed to review them yearly and it's just not doable. It's not manageable with a caseload of thirty-five. Before we had [risk/need assessments] ...were we screwing up in a major way by not setting things down in writing? No. Has this improved service to the client, making sure the client gets what he needs? I don't think so. Because when you meet a kid, we always did assessments, we always did social histories....so you had an idea of where you were going and what the needs were and what services you were going to go out and get for the guy. So if the risk/need is not done does this mean the PO is not doing his job and doesn't have a plan. No. It is just a paperwork thing.

Another PO focused on the reliability of the information collected within the risk/need assessment process and suggested that it is limited in its predictive value:

The assessments are based on information collected, so depending on how thorough we are as individuals, but also depending on the circumstances, so if I am pressed for time and for whatever reason I have to come up with a plan for the youth, I could very quickly go through it and get most of the information but not necessarily all of the information. So I guess the accuracy of the information collected is what I am getting at. I remember years ago, doing this risk/needs assessment on a young man who scored [low] when in actual case he was close to very high. He lied through his teeth all the way through.

Generally speaking, it was clear during the interviews that the risk/need assessment process was understood by POs as a mandatory, yet not very useful, practice. This further brings into question the reliability of the information entered by POs if one accepts the possibility that, given their lack of support, they would not be as diligent as one could be in gathering the necessary information from credible sources. Since risk/need assessment

scores are theoretically used to determine the level of supervision assigned to each youth (and possibly other uses), the information entered into the actuarial tool should be reliable.

4.4.2 Development of Case Management Plans

The basic process each Probation Officer follows is to identify a series of needs based upon the risk/need assessment (e.g., substance abuse, anger management, familial issues) and subsequently identify how each youth can work towards improving these particular areas. In almost all cases, this involves referrals to community-based programming.

From your [risk/need assessment], you develop goals for the kid. Ideally, you should do it in the hope that the kid will take a proactive approach and then you also elaborate the case management plan based on your goals for the kid and which criminogenic risk factors you feel need to be addressed.

Although Probation Officers were critical of the risk/need assessment process, all of those interviewed indicated that the information collected, regardless of the quality, was used in developing case management plans for youth. It therefore appears that it is not the collection of psycho-social information per se that is the concern, but rather the actuarial nature of the risk/need assessment and the bureaucratic requirements to document the information electronically and to re-assess the youth annually. Nonetheless, all Probation Officers follow the same basic process when developing a case management plan and all try, to varying degrees, to involve the youth themselves in the process:

Well, I try to [involve youth]. There are some who just don't [get involved], usually they don't have the ability to think actively and figure out...they may not even understand what we are saying, in terms of what are your goals. You have to be very specific and that's the hard part. You have a kid who has a serious substance abuse problem...how do you elaborate the goal with the kid so you are addressing the substance use but something in a way he can understand and in a way that is meaningful for him.

I would say [to the youth], you are high in these areas and if you want to stay out of trouble with the law this is what you need to work on. I explain it to them and then I say, you can basically do nothing or you can actually say you want to work for the time period and do something and if you do, here are some suggestions. If they are consenting, then I would specifically say, you need to look at drugs, you need to look at school, or you need to look at peers.

For me it is really important that the young person is a participant and not a bystander in his case management plan or her case management plan. Because, you know, you can knock on the door and if the door doesn't open and the youth doesn't participate you might as well just close the door and move on. So for me, the input that the young person has is very important.

4.4.3 Programming Referrals

In terms of referrals to programming, the probation files contained information on whether a youth was referred to a program to address a particular need identified within the risk/need assessment (see Table 12). Overall, 56% of all youth in the sample were referred to at least one program to address an identified risk/need. When examining referral rates following an identification of a particular need, youth with sexual offending behaviour were the most likely to be referred (82%), followed by those with psychological issues (54%), anger management issues (52%), substance abuse issues (42%) and other needs outside of the traditional risk/need assessment areas (43%) (see footnote 3 in Table 12).

The data that is available in Table 12 on the percentage of youth who completed particular programs should be viewed with some caution. While this information was recorded whenever it was indicated on the probation file, it was only available sporadically. As such, the completion rate is based only on the smaller number of cases for which this information was clearly indicated in the file.

TABLE 12: RISK/NEED REFERRALS AND PROGRAM COMPLETION RATES

Risk/Need	Identified	Referred ¹	Completed ²
	N	N (%)	(%)
Sexual offending behaviour	11	9 (82%)	100%
Psychological issues	57	31 (54%)	70%
Anger management issues	143	74 (52%)	68%
Other needs ^{3,4}	47	20 (43%)	80%
Substance abuse issues	147	62 (42%)	49%
Self harm and/or suicidal ideation	11	3 (27%)	0%
Educational issues	194	43 (22%)	35%
Vocational skills	118	23 (20%)	33%
Family issues	155	27 (17%)	33%
General life skills	108	18 (17%)	46%
Child abuse issues	23	4 (17%)	36%
Antisocial attitudes	138	21 (15%)	64%
Antisocial peers	180	17 (9%)	33%
Cultural issues	43	1 (2%)	-

1. *Number of referrals: mean=1.3 (SD=1.5), median=1 referral, min=0 referrals, max=8 referrals.*
2. *The 'Completed' column represents the percentage of referrals that were successfully completed among those where such information was available on the probation file. As such, the number used to calculate the percentage is not equal to the number of referred cases and should be viewed with caution.*
3. *'Other needs' identified by the PO which involved a referral to a program included: criminal driving improvement program, eating disorders, physical health problems, parenting and prenatal classes, religious teachings shop lifting program, sexual assault victim services, lack of friends, fire starting, and issues with healthy relationships.*
4. *'Other needs' identified by the PO which did not involve a referral to a program included: poverty, serious trauma (e.g., death of close relative), racist attitudes, lack of motivation, serious denial, adoption issues, kidnapping victim, and street youth.*

While there is no reason to believe that the sample data on completion rates presented in Table 12 are not representative, there are also no assurances that they are accurate. Nonetheless, the available data suggest that youth are most likely to complete sexual offending programs (100%), programs designed to address specific 'other needs' (80%), psychological treatment (70%), anger management programs (68%) and programs designed to address anti-social attitudes (64%).

While it appears that referrals are not common for many of the other needs, there are several factors that were identified using logistic regression analysis which explain the differences between those who were referred to programming and those who were not

referred (see Table 13). After controlling for a number of important factors including risk level, the number of criminogenic needs, and criminal history (see footnote 2 in Table 13 for a full list of variables), female youth were 2.3 times more likely than male youth to be referred to a therapeutic program during probation while youth under 18 years of age were almost twice as likely to be referred as those 18 years of age and older. In addition, those youth who were attending school or working were 2.4 times more likely to be referred than those who were neither working nor attending school. In addition to these factors, those youth with an identified substance abuse issue were 3.6 times more likely than youth who did not have addiction issues to be referred to programming. Finally, those youth with a treatment condition on their probation order were 2.6 times more likely than those who did not have such a condition to be referred by a Probation Officer.

TABLE 13: LOGISTIC REGRESSION ANALYSIS – PREDICTING PROGRAM REFERRALS

	Standardized Estimate	Wald X²	P-Value	Odds Ratio
Predicting program referrals¹				
Substance abuse issue	0.354	14.54	0.0001	3.6
Treatment condition present	0.236	7.70	0.006	2,4
In school or working	0.189	5.26	0.02	2.4
Youth (under 18 years old)	0.176	4.65	0.03	1.9
Female youth	0.177	4.05	0.04	2.3

1. *Pseudo R²=0.34, X²=87.38, p<0.0001*

2. *Non-significant variables: visible minority status, citizenship, mental health issues, living status of youth, gang status, socio-economic status, risk level, number of needs, criminal history, seriousness of index offence, probation sentence length, sentence type, attitude of youth, level of remorse.*

One factor which might account for much of the referral variance across particular needs is the availability of programming in the community. For example, referrals to anger management programming may be higher than other need areas because a well defined anger management program exists within the surrounding area. Unfortunately, this was not discussed in the interview component and therefore additional context and explanation are not available. It is surprising that the risk level of the youth was not a significant predictor of programming referrals given the theory within the risk literature that higher risk youth are more appropriate for treatment than moderate or low risk youth (Andrews & Bonta, 2003).

4.4.4 Probation File Case Notes

Probation Officers often prepare case notes which include status reports on the youth and his or her progress. In these notes, there are often comments which provide some insight into the PO's assessment of the youth. Table 14 contains information on these comments and whether or not the comment was flagged as a positive issue or a negative issue for the youth. Of course, as one PO explained, the case notes represent only one aspect of their work:

Sometimes I feel that [our expertise] is not being, I think, valued. So, when you see case notes, and go over the records, remember that is only a third of what we do.

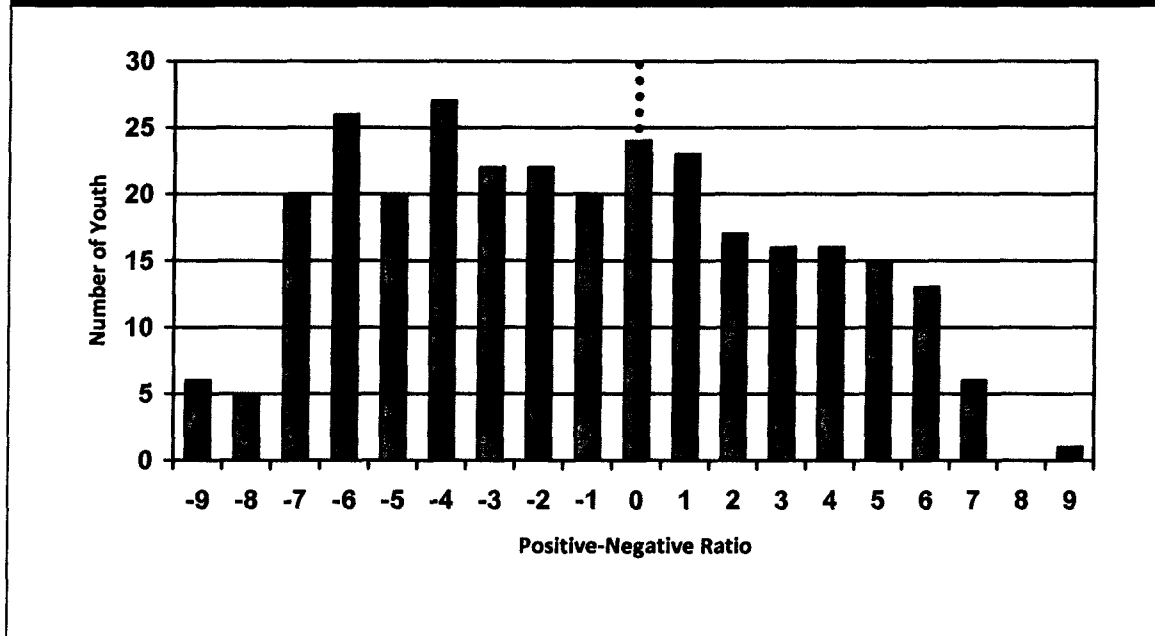
TABLE 14: PROBATION OFFICER COMMENTS ON FILE

Comment	Positive	Negative	No Mention
	N (%)	N (%)	N (%)
General attitude	123 (41%)	108 (36%)	68 (23%)
Parental influences	110 (37%)	120 (40%)	69 (23%)
Attending appointments	106 (35%)	104 (35%)	89 (30%)
Substance use	81 (27%)	130 (44%)	88 (29%)
School attachment	81 (27%)	157 (53%)	61 (20%)
Remorse for offence	69 (23%)	100 (33%)	130 (44%)
Peer influences	45 (15%)	147 (49%)	107 (36%)
Socio-economic status	19 (6%)	90 (30%)	190 (64%)
Other comments ^{1,2}	11 (4%)	45 (15%)	243 (81%)
General appearance	10 (3%)	9 (3%)	280 (94%)

1. *'Other' positive comments' on file included: good job, strong relationship with daughter, very hard worker, involved in positive extracurricular activities, pregnant, made great progress in therapy, and positive girlfriend.*
2. *'Other negative comments' on file included: assault victim, pathological liar, poor relationship with girlfriend, cannot maintain employment, pregnancy/currently a parent, domestic abuse victim, immature/developmentally delayed, body image issues, persistent anger issues, witnessed suicide of best friend. forced to leave school to support mother, lack of pro-social activities, parents out of country for probation period, physically aggressive, Children's Aid Society took custody of baby, disabled brother causing family stress, lack of insight into crime, and ongoing violence at group home.*

If the number of positive and negative comments for each youth are counted and a ratio is calculated (i.e., starting at zero and adding a point for each positive comment and subtracting a point for each negative comment), 56% of youth were rated negatively, 8% were rated neutrally and 36% were rated positively (see Figure 5). In other words, while POs tend to write negative comments more often, a substantial number of positive comments are nonetheless included in the case notes on a regular basis. This is an important point in that, regardless of the overwhelming negative information typically collected on youth (as indicated in the section on socio-demographic information), Probation Officers still manage to find a number of positive aspects to comment on within their caseloads.

FIGURE 5: ANALYSIS OF PROBATION OFFICER COMMENTS



4.4.5 The Evolution of the Probation Officer Role

Based on the lengthy careers of almost all of the POs interviewed for this thesis, it is possible to examine the evolution of the role of a Probation Officer in the youth criminal justice system. There were a few substantial changes that were identified, including a more depersonalised and computerised approach in recent years and a fundamental shift away from human service work (e.g., providing direct services to the youth) to a basic referral service wherein the treatment is provided by community-based programs.

I feel that with the increased caseload, for me a caseload of thirty-nine is completely unacceptable. Right now, I have thirty-nine. Ok. It's unacceptable. Why? Number one, we have a whole list of standards that we have to comply by. It's more and more, we are feeding the computer. Feeding [the computer] to justify further up. My work with kids is now as a broker of services. I don't any longer provide my expertise in services to a kid. All the stuff is brokered out...to tell you honestly, when a young person

comes into the office and is here for a half an hour, I don't feel we are doing what we need to do

I look back at the days when we didn't have all this computer feeding stuff...I ask myself when you do triple the paper work for one case, it's got to stop. I feel like a clerk sometimes, like an input clerk.

It is true that the basic process each PO follows is similar: assess each youth, determine a case management plan which may include referrals, and monitor compliance. It is also clear, however, that some Probation Officers continue to take on a number of distinct roles beyond an agent of social control who monitors court ordered conditions and makes referrals to programs. Some POs continue to offer limited psycho-social counselling in their offices during appointments, although this is clearly not a major aspect of their work and does not seem to be valued by their agency.

One area that consistently emerged across interviews was the role of a surrogate parent. This role was primarily placed on the POs not by the youth but by the parents of the youth and appeared to be a phenomenon related to visible minority and/or immigrant families:

In some situations, parents will call you and say 'My kid isn't coming home every night' ...those situations where parents do that, I often find that it is really parents that are displacing their parental responsibilities. I've had parents who will leave me a voicemail message, 'It's 20 after 11 and it's Saturday night and "Nick" ain't home.' Ok. So parents, what are you going to do about that? They expect us to go and lay a breach.

We have situations where the parents don't parent and expect the Probation Officer to parent for them. And so, what happens is that we get frantic calls...I remember one for example when the thirteen year old [youth on probation] had made a sandwich for [her little sister] and because she was mad at Mom she took the sandwich and smashed it and put it in the garbage...and I was [asked] to assist Mom in kicking the thirteen year old out of the house and making sure she was breached for what she had done. It's kind of like 'wait 'til Dad gets home!' They don't exercise their own rights and responsibilities as parents. They dump them all on us.

Another distinct role that came through during the interviews was that of a criminal justice professional outside of the traditional probationary role. Some POs felt that they needed to act as Crown Attorneys and have expertise in evidentiary law so they could develop an appropriate case against a youth before proceeding with a violation charge. If a charge does not succeed in court, POs feel that a substantial amount of time and money has been wasted - they generally want to ensure that their charges will stand up. As such, evidence needs to be collected and witnesses often need to be arranged. Other POs felt like police officers in that they needed to collect evidence or lay charges against youth. Or they felt like judges since they would decide culpability in a case. In general, Probation Officers felt that they were called upon to assist all the players in the criminal justice system:

[We face] constant pressure. We're like the 'Mr Fix-It' of everything in the system...I mean the Judges, the crowns, the police, we're sort of like helping all of these different partners and we're the go to people on a lot of stuff. There's constant pressure on our time to do things that are not really part of our jobs.

4.4.6 Summary of the Role of the Probation Officer

The interviews conducted with POs were instrumental in gaining a better understanding of their perceived role in the criminal justice system and the issues that are important to them. While it was clear that most of the POs did not value the risk/need assessment process, it was not the development of a psycho-social history that was questioned but rather the actuarial nature of the exercise. Although it was not directly stated by POs, it can be inferred from these interviews that they felt their clinical expertise would be sufficient to identify needs and select an appropriate risk level. In terms of the development of case management plans, it seems that POs generally follow the same

process by linking goals to identified needs and by trying to involve the youth to varying degrees.

The results of the analysis revealed that just over one half of youth sentenced to probation were referred to community-based programming to address identified needs. The remaining youth typically reported to a Probation Officer only. The results also revealed that youth who were referred to treatment were typically younger females, youth with addiction issues, youth with court ordered treatment conditions or youth who were in school or working.

Probation Officers expressed a sense that their role in the criminal justice system had evolved over time and was less and less focused on addressing the underlying psycho-social issues of youth and more and more focused on simply monitoring adherence to conditions. However, they also believed that they were often called upon by parents and others to be much more than Probation Officers.

4.5 Everyone is Doing It! Understanding Probation Violations

As discussed, one of the main functions of a PO is to monitor compliance with the probation conditions that have been dictated by the courts. The number of known probation condition violations was therefore recorded during the entire probation sentence. Of course, as with any data on criminal behaviour (notwithstanding the possibility that the behaviour in question is even criminal), there is a percentage that is always unknown. It is therefore likely that the information contained in this section undercounts the actual prevalence of probation violations.

4.5.1 The Nature and Extent of Probation Violations

Among the youth in the sample, almost two-thirds (64%) were known to have violated at least one of their probation conditions while approximately one-third were not known to have violated the terms of their probation sentence (36%). The mean number of violations per youth was 1.7 ($SD=2.0$) while the maximum number for one youth was 10 violations during a single probation sentence.

Probation Officers were asked during the interviews how often they believed youth violated the conditions of their probation sentence:

Very frequently. There's no keeping up with it!

They probably do it all the time, in my opinion. I mean, every now and then you'll get a kid who doesn't but those are rare...what we find out about is very little. I mean, obviously there's more [violations] than they are telling us about.

I can't give you a percentage. Look, kids who have substance abuse problems are not going to stop cold turkey because the judge says 'Do not possess, purchase or consume [drugs or alcohol].' It's not going to happen...there are probably a lot more violations than I am aware of.

Honestly? On a very regular basis. Most of the kids [violate], because of their attitudes. It's a matter of 'I'll do something until I get caught'. And so, we spend a great deal of time just trying to change that thinking.

I think most kids will have violated at some point [during their sentence]. I have a few that will follow things to a T but they are the exception to the rule. And I'd say half of the kids I supervise on a regular basis are violating at least weekly.

Based upon the high percentage of youth identified in the sample with a recorded violation, along with the perceptions of POs during the interviews, it appears safe to assume that most youth violate at least one of the conditions of their probation sentence.

The most common condition violated by youth was the requirement to report to a PO, with almost half of all youth (47%) failing to report (see Table 15). Of course, this

likely does not represent a single appointment but rather a series of appointments as POs usually do not treat a single missed appointment as a violation. It should also be noted, however, given the nature of this condition, failing to attend an appointment would always come to the attention of the PO; thus it is not surprising that it is the most commonly recorded violation.

TABLE 15: PROBATION CONDITION VIOLATIONS RECORDED

Condition Types	Present	Violated ¹	
	N	N	%
Report to Probation Officer	272	127	47%
Abstain from the use of drugs/alcohol	97	39	40%
Abide by a curfew	80	26	33%
Attend school	210	63	30%
Do not associate with a known criminal	203	55	27%
Maintain lawful employment	168	44	26%
Complete community service hours	147	35	24%
Attend treatment as specified by PO	191	38	20%
Reside at a place approved by PO	204	29	14%
Notify any change in circumstances	91	13	14%
Other conditions ²	24	3	13%
Prohibited from possessing a weapon	79	6	8%
Pay restitution	32	2	6%
Do not enter specified area of the city	101	3	3%
Apologize to the victim	38	1	3%
Do not communication with victim	102	1	1%
Agree to release of personal information	38	0	0%
Driving restrictions	20	0	0%

1. Number of violations: *mean=1.7 (SD=2.0), median=1 violation, min=0 violations, max=10 violations.*
2. 'Other conditions' violated by youth were: *non-association with anyone deemed unsuitable by Probation Officer, no violent or threatening conduct, and no drug trafficking paraphernalia.*

The top three conditions likely to be violated by youth beyond reporting to a PO were abstaining from drugs and alcohol (40%), abiding by a curfew (33%), and attending school (30%). In other words, many of the youth were caught drinking, staying out late and skipping school or more succinctly engaging, in relatively common adolescent behaviour

(see for example, Galambos & Tilton-Weaver, 1998; Hotton & Haans, 2004; Moffit, 1993; Sprott & Doob, 2009; Statistics Canada, 1999).

Since the probation files did not often indicate how the violation came to the attention of the POs, they were asked during the interviews who usually reported the violation to them:

Sometimes you find out from parents...sometimes I say to the kid, 'Truthfully, when was the last time you used [drugs] or how much are you using?' Some of the kids will be truthful.

From the parents, voicemail, twenty-four-seven, we get the time of the call and that's helpful 'cause parents will say, 'He's not home yet.' So you can look at the time of the call. Parents, police reports, we get reports sent directly to us by police...either that or the kid admits to it and then you phone the police and they look it up on the system.

Teachers, I sometimes deal with...but group home staff are very consistent and [custody] facility staff, they are like, bang, bang, like clockwork.

Sometimes it's the kids, like I have kids who are friends with kids who also report here and as POs we can piece things together. Police will also pick them up and realise they are not supposed to associate with someone...and send us the information. If I have a good relationship with the youth, they will tell me...as well as community agencies we work with.

In other words, it appears as though POs find out about violations from multiple sources including the youth themselves, parents, police, other youth, and staff from group homes, custody facilities and community agencies.

4.5.2 Factors Related to Probation Violations

In order to answer one of the central research questions (i.e., what factors are associated with the incidence of detected probation violations in the youth criminal justice system?), a logistic regression analysis was conducted. Given that most youth violated at least one of their conditions, the analysis examined the factors related to a successful

probation term (i.e., not violating a probation condition) in order to identify the common factors among this group of youth (see Table 16). The most robust predictor of a successful probation term, after controlling for a number of important factors including age, risk level and criminal history (see footnote 2 in Table 16 for a full list of variables), was the number of conditions attached to the sentence. In other words, minimally controlled youth (i.e., youth with 5 conditions or less), regardless of their level of risk or any of the more traditional correlates of delinquency, were 10.5 times more likely than other youth to complete their probation sentence without a single violation.

TABLE 16: LOGISTIC REGRESSION ANALYSIS – PREDICTING NO VIOLATIONS				
	Standardized Estimate	Wald χ^2	P-Value	Odds Ratio
Predicting no probation violations¹				
Minimally controlled youth	0.351	18.08	<0.0001	10.5
No programming referrals	0.214	6.49	0.01	2.2
Low number of criminogenic needs	0.243	6.18	0.01	2.5
History of maltreatment	0.216	5.76	0.02	2.4

1. Pseudo $R^2=0.29$, $\chi^2=71.90$, $p<0.0001$
2. Non-significant variables: age, gender, visible minority status, citizenship, mental health issues, living status of youth, gang status, socio-economic status, risk level, criminal history, seriousness of index offence, probation sentence length, school and work status.

In addition to this factor, the other major predictors of a successful probation sentence were related to criminogenic needs and programming referrals. Those youth with a low number of needs (i.e., less than 5) were 2.5 times more likely than those youth with a high number of needs to successfully complete a probation sentence. As well, those youth who were never referred to community-based programming during their probation sentence were 2.2 times more likely to successfully complete probation than those who were referred

to programming. Finally, youth with a history of child maltreatment (i.e., sexual, physical or emotional abuse) were 2.4 times more likely than those who did not have a history of abuse to have a successful probation sentence.

As discussed earlier, the number of probation conditions attached to a probation sentence by a youth court judge is not necessarily related to criminal history, risk/need factors or other socio-demographic characteristics of the youth. Rather, it appears often to be a method of increasing the severity of the probation sentence as evidenced by the relationship between the number of conditions and more serious crimes, longer sentences and custody sentences. Therefore, it needs to be stated that in an effort to increase the severity of the sentence, judges may be creating conditions that increase the likelihood of a probation violation.

Given that many youth had more than a single violation, an additional multiple regression analysis was performed among those youth in the sample who had at least one violation in order to identify significant factors related to having multiple violations (see Table 17).

TABLE 17: MULTIPLE REGRESSION ANALYSIS – PREDICTING THE EXTENT OF VIOLATIONS

	Standardized Estimate	T-Value	P-Value
Predicting the number of probation violations¹			
Number of probation conditions	0.334	5.04	<.0001
Not attending school nor work	0.302	4.73	<.0001
Number of priors	0.191	2.74	0.007

1. $R^2=0.41$, $F=6.9$, $p<.0.0001$.
2. *Non-significant variables: age, gender, visible minority status, citizenship, mental health status, number of needs, probation sentence length, history of child maltreatment, living status of youth, gang status, socio-economic status, risk level, seriousness of index offence, referrals to programming..*

Again, and not surprisingly, even after controlling for important factors including age, gender, risk level, number of criminogenic needs and referrals to programming (see footnote 2 in Table 17 for a full list of variables), the number of conditions was clearly related to the number of violations. However, not attending school and not working also increased the likelihood of multiple violations as did the number of prior convictions. Thus, being highly controlled and not having any structured time (i.e., school or work) undoubtedly increases the likelihood of a higher number of violations during a probation sentence.

During the interviews, Probation Officers were asked what factors they thought were closely related to probation violations among their caseload. The factors identified by POs can basically be classified into two main categories: traditional criminogenic needs which have been linked to criminal behaviour among youth (e.g., family circumstances, substance abuse, antisocial peers) and the system itself (e.g., the actual conditions imposed on the youth).

In some families you realise there is a single parent family and the parent that is available is simply ineffective or so overwhelmed in their own lives that they just don't have the strength or the wherewithal to give to the kid the direction and the supervision that he requires. Or there is something very blatant where you see the kid himself has serious mental health issues or substance abuse issues.

How they were raised, their values, their beliefs...even if they know what's right from wrong, what do they exercise, what do they actually practice? A lot of them have been raised with no structure, no follow-through, no consistency, so actually having somebody to say 'You can't do this' it's like, it's foreign to them...they haven't a clue about structure. I remember early on being shocked by this....kids don't have meals on a daily basis with their families. It's chaotic in most of these homes. They never sit down and have a meal. They don't even have a meal prepared. It's not like there's a stew on the stove and everybody helps themselves. They literally go rooting through the cupboards for food. Their basic needs are not being met. I could go on forever.

In many cases, it is because they are very anti-social and couldn't care less. Or their cognitions are ineffective so that they don't remember and they don't even understand that a probation order means you [need to abide by the conditions imposed by the court].

Most of these kids...don't have a caring consistent adult person in their lives and it's amazing that I actually had a kid years ago ask me if I would adopt her. And I thought, how desperate can you be to ask your Probation Officer to adopt you.

The reality is if [the youth] changes her ways, she doesn't fit in anywhere anymore because her peer group and her family group are all, well they are definitely not pro-social. It puts her in a position that if she changes anything or starts to achieve any success, she'll be the isolated one, the odd one or the black sheep.

There are a lot of factors...dysfunction in the home. We see a lot of that. For me it is not a hard question to answer, it's a complex one. It could be negative peer influences, it could be drug addictions, it could be [feeling] unwelcome at the group home.

Well, sometimes the conditions are, I feel, not very realistic for kids. You know, a curfew condition, how many kids don't abide by their curfew? I mean, I didn't abide by my curfew. I mean, go to school every day? How many kids skip school? Tons of kids skip school. So some of the conditions, I think, are kind of setting them up to breach. Like they are not very realistic. Don't hang around anti-social peers? Well, that's all they know so is it realistic to expect them to stop doing that? I don't know that kids will be like, screw you, and purposely [violate conditions].

4.5.3 Summary of Probation Violations

It is obvious that a substantial proportion of youth violate the terms of their probation orders on a regular basis. In fact, it is quite clearly the norm. When the quantitative factors associated with probation violations are combined with the perceptions of POs, a fairly consistent finding emerges from the analysis: youth are more likely to violate their conditions when they have a substantial number of needs and have been selected to be closely controlled and monitored by the system.

4.6 To Charge or Not To Charge? Understanding Probation Officer Discretion

One of the more complex behaviours to understand within the criminal justice system is arguably discretion. In the case of a probation condition violation, Probation Officers will either charge a youth (leading to a potential deprivation of freedom) or not charge the youth (leading to a potential decrease in public safety).

4.6.1 Charges Under Section 137 of the YCJA

Given that approximately two-thirds of youth are known to violate the conditions of their probation sentence, one would assume that a large percentage would be charged with failing to comply with a sentence under s.137 of the YCJA. The results of the file review, however, reveal that most youth who violate a condition are not actually charged with a new offence. In fact, just over one-quarter of youth (27%) who violate at least one condition is charged with a new offence (see Table 18). This means that almost three-quarters of all youth (73%) who were recorded as having clearly violated the terms of their probation are not charged for their violations.

TABLE 18: PROBATION VIOLATION SUMMARY

Probation Violations	N	%
Violated at least one condition	190	64%
<i>Charged</i>	51	27%
<i>Not charged</i>	139	73%
No violations recorded on file	109	36%

Unfortunately, for those youth that were charged, the probation files did not have information on whether or not they were subsequently convicted in court. However, as discussed previously, based on data from the Youth Court Survey, approximately 8 in 10 youth charged under s.137 of the *YJCA* are ultimately convicted. Therefore, it is safe to assume that the vast majority of youth who were charged for their violation were also convicted.

One of the possible explanations for this lack of charging is the policies under which POs are operating.³ They are trained and encouraged to use a number of alternative mechanisms before laying a charge, which should only be used as a last resort. These alternatives can include cautioning the youth, organizing a conference with the parents or increasing the level of supervision. In fact, POs are provided with a schematic model which identifies the possible consequences for a probation violation before laying an official charge. As one PO described it, charging a youth is the final step for them:

You're supposed to try several different things at some point before a charge. So if I breach a kid, it's because I feel that I don't know what else to do. Like I've tried [other approaches] and I've talked to the kid and gave him a heads up, you know, like you've got to stop doing this...Charging a youth should only be used as a last resort...

4.6.2 Factors Related to a Probation Violation Charge

Table 19 provides information on the likelihood of a violation leading to a charge for each condition type. Failure to comply with a community service order was the most likely violation for which a Probation Officer would charge a youth (34%) followed very closely by curfew violations (33%). If we examine the data at the individual condition

³ It is possible that some of the charges found in the probation files were initiated by police officers and not Probation Officers. It was not clear, however, in the file who actually formally laid the charge. This section should therefore be viewed with this limitation in mind.

level, only 61 violations (13%) led to a charge for failing to comply with a sentence out of a possible 485 violations.

TABLE 19: CHARGES FOR PROBATION VIOLATIONS

Condition Types	Violated	Charged ¹
	N	N (%)
Complete community service hours	35	12 (34%)
Abide by a curfew	26	8 (33%)
Prohibited from possessing a weapon	6	2 (33%)
Other conditions ²	3	1 (33%)
Reside at a place approved by Probation Officer	29	6 (21%)
Abstain from the use of drugs/alcohol	39	7 (18%)
Notify Probation Officer of any change	13	2 (15%)
Report to Probation Officer	127	13 (10%)
Do not associate with a known criminal	55	5 (9%)
Attend treatment as specified by Probation Officer	38	3 (8%)
Attend school	63	2 (3%)
Maintain lawful employment	44	0 (0%)
Do not enter specified area of the city	3	0 (0%)
Pay restitution	2	0 (0%)
Apologize to the victim	1	0 (0%)
Do not communication with victim	1	0 (0%)
Agree to release of personal information	0	n/a
Driving restrictions	0	n/a

1. Number of charges: mean=0.4 (SD=0.8), median=0 charges, min=0 charges, max=4 charges.
2. The 'Other condition' which led to a charge was a condition prohibiting the possession of drug trafficking paraphernalia.

Given the low number of charges for failure to comply with a sentence under s.137 of the YCJA, it is important to understand the factors that increase the likelihood of a charge. A logistic regression analysis was therefore conducted with all youth who had an identified violation on file (see Table 20). Not surprisingly, the number of violations is related to the laying of a charge, even after controlling for a number of factors including age, risk level, criminal history, the attitude of youth and their level of remorse (see

footnote 2 in Table 20 for a full list of variables). For each additional violation recorded on file, the likelihood of a criminal charge increases almost two-fold (1.7 times).

TABLE 20: LOGISTIC REGRESSION ANALYSIS – PREDICTING A VIOLATION CHARGE

	Standardized Estimate	Wald X²	P-Value	Odds Ratio
Predicting a violation charge¹				
Number of violations	0.586	14.21	0.002	1.7
Canadian citizen	0.602	7.64	0.006	76.9
No identified mental health issues	0.416	5.73	0.02	5.0
Number of programming referrals	-0.328	5.30	0.02	1.4
Sentence length	0.256	4.31	0.04	1.1
Visible minority youth	0.258	4.11	0.04	2.6

1. *Pseudo R²=0.46, X²=72.73, p<.0.0001*
 2. *Non-significant variables: age, gender, number of needs, history of child maltreatment, living status of youth, gang status, socio-economic status, risk level, sentence type, attitude of youth, level of remorse for offence, criminal history, number of conditions, seriousness of index offence, school and work status.*

The results also indicate that Canadian citizens are more likely to be charged than immigrant youth. Only one immigrant youth out of the 14 who had violated a condition was actually charged. The model also reveals that mental health status is an important factor in Probation Officer discretion as those youth without a mental health issue were 5 times more likely than those with a mental health issue to be charged. In other words, POs may consider a mental health diagnosis as a mitigating factor for which they are willing to provide additional chances when a youth violates a condition.

With each program referral made by a PO, a youth is 1.4 times *less* likely to be charged. This may be related to the fact that when a youth accepts a referral, it demonstrates a willingness to work on his or her issues and therefore positively influences a Probation Officer’s decision-making. Another factor that emerged from the analysis was

the length of the probation sentence – each additional month slightly increased the likelihood of a charge. Finally, visible minority youth were 2.6 times more likely to be charged than non-visible minority youth with a probation violation. While these findings may be interpreted to suggest a racial bias, it is unclear if there are other factors which were not included in the model that could explain this difference.

4.6.3 What Probation Officers Consider in Charging Youth

In order to further explore PO discretion, each interview focused on what Probation Officers themselves consider important in deciding to ultimately charge a youth. The only factor that was found in both the qualitative and the quantitative analysis was the seriousness of the violation (i.e., the number of violations committed by the youth). The additional major factors that increased the likelihood of a charge according to POs during the interviews included a number of considerations related more to processes under the law and less to the youth themselves. For example, POs often wanted to establish a pattern of violations in order to ultimately allow the courts to impose a custodial sentence, which is required under s.39(1)(b) of the *YCJA*. Of course, this raises an important question: Compared to previously under the *YOA*, are POs more or less likely now to charge a youth for a violation given that a youth can only receive a custodial sentence after multiple violations according to the *YCJA*?

Sometimes it's...about custody because getting kids that kind of consequence in the system now is not near impossible but it is difficult...that's why when I lay a breach, it's in a batch. I tell guys right from the get go that I have up to six months to act on any information in relation to a violation. And I say, I will use it against you.

A second major factor identified by POs was the desire to motivate youth to change by holding a breach charge over their head for a period of time. According to the Youth

Court Survey, it takes an average of 91 days for a probation violation case to be disposed of in youth court. In fact, it can take up to six months or longer for a case to ultimately be completed. During this time, POs will try to encourage youth to abide by their conditions and work on their needs in the hopes that the charge will ultimately be withdrawn:

It's not going to be dealt with in three weeks, maybe three months, maybe six months down the road. So [I tell the youth] ...you can improve on your situation in that time and the charge can ultimately be withdrawn so as though it never happened.

It was also suggested by a few POs that charging a youth with a breach is useful for Crown Attorneys as they can use the charge as a bargaining tool in other criminal cases against the youth.

An additional factor identified by POs was the need to demonstrate meaningful consequences for a youth's negative behaviour. While charging a youth is not the only mechanism a PO can use to demonstrate consequences, it does have the most impact on a youth given that it is a criminal conviction and can lead to a custodial sentence. Some POs compared charging a youth to a parent who follows through on his or her threats:

[Charging a youth] is giving the kid a message that you are being a consistent parent; that you are following through. Now, before I lay a breach, it means I've warned the kid umpteen times, so I've followed through on my warnings.

The final major factor related to the decision to charge a youth that emerged from the interviews was the need to protect youth from serious harm. For example, if a young person has disappeared (e.g., has run away from home), a PO will issue a warrant for his or her arrest in order to protect the youth from the dangers of living on the streets.

Recently, I had a young lady who disappeared on me. So I got a warrant for her arrest. If the young person is at risk...I will find a reason to breach and get a warrant.

The other area I will breach exclusively and without hesitation is when there is a young person...under the age of sixteen, who is absent, not residing at home or she is running away from a group home. And not for ten minutes, it needs to be for a day or more...honestly, and I'll tell you right now, it's a cover your ass thing cause if anything should hit the fan, they come looking here.

This is not only done to protect the youth, but also to protect the Probation Officer in case the youth experiences harm while he or she is missing. The following quote further explains this rationale:

...there was this female offender who I breached a second time for running away. It's not so much that she is a threat to herself, I mean she does do high risk things like getting drunk and hanging around with negative people, but even her parent, who may not necessarily be a good parent, will suddenly become a good parent, when they find out their daughter is dead. And all of a sudden it's "You had her on probation, what did you do?" So it is protecting her, but to be honest with you, protecting me also. CYA. Cover your ass. To put it more politely, I can defend myself in an inquest.

Anecdotally, this appeared to apply, however, only to female youth as opposed to male youth based upon the gender used in each of the Probation Officer examples.

Beyond the factors that POs consider in charging a youth, an interesting point about discretion emerged from the analysis of the interviews. As one PO put it during a discussion of discretion, "*We all work differently.*" In fact, the following set of quotes are examples of how individual POs often operate from different assumptions and different values when considering charging youth with a probation violation:

The areas where I charge, and I think it is primarily because we are expected to as Probation Officers, are non-completion of community service and non-payment of restitution. I rarely breach for community service orders that are not complete...

I don't think I have ever charged a kid [for violating] an abstinence condition.

Fail to have employment, which is a really weird breach. I have never done it before and I don't think anyone here has ever done it before.

I would never, in all the time that I have been here, I would never consider...[charging a youth] for failure to comply with a counselling condition.

When I go over the conditions with the kids, I say "Look, if you miss an appointment to see me, no problem...but there is one condition I have zero tolerance for: non-association with a victim. One complaint, I breach."

One could therefore assume that is confusing for youth who have served multiple probation sentences and who have been supervised by different Probation Officers to know precisely what is expected of them during their sentence. One of the PO explained during the interviews that some Probation Officers have a strict reputation among youth while others are considered to be quite lenient. As an example, another PO explained that he was willing to ignore a court ordered condition but that a youth should still expect to be charged by the police:

Let's say you have a kid who every Saturday night goes out and does eight beers and he has a probation condition that says do not use alcohol. Well I'm not going to put as a case management plan condition no more alcohol use. I try to say to the kid, "Do you think you could cut it down to five on a Saturday night" and I write down as a goal, Johnny will drink only five beers...Now where it gets dicey is I say to the kid "Look, your probation condition says none, no alcohol. If the cops find you on the street, you're breached."

4.6.4 The Effects of Charging a Youth

While theoretically it is possible that charging a youth with a probation violation could increase the likelihood of additional criminal behaviour based upon the assumptions of labelling theory, it was not possible to empirically test this hypothesis during the data collection period.⁴ However, the Probation Officers were asked a series of questions related to the impacts of charging a youth from their perspective. Two prompts were used

⁴ As indicated in the Method Section, it was not possible to collect information on future criminal convictions due to the financial cost of the files imposed by the RCMP.

during the interviews, when necessary, to elicit information on possible positive impacts (e.g., could it have a deterrent effect?) and possible negative effects (e.g., could it have a labelling effect?). The results were relatively homogenous as most POs believed that the negative effects outweighed any possible positive impacts from charging youth with a probation violation.

It is perhaps unfortunate, but I think it is reality that breaching [a youth] does not serve as a deterrent...you'd think somebody would go to jail for a month and say, "This is the worst month of my life. I never want to do this again." And you'd think that that in itself would help the person realise I better not screw up. It doesn't. But why it doesn't is the frustration I have been experiencing. I just can't understand it.

[Charging a youth with a probation violation] will stir up their anger and stir up their sense of injustice.

Is non-compliance with an order criminal? No. It may be quote antisocial. It may be reflective of the dynamism of the kid. It may be a reflection of the cognitive deficits of the kid. It may be a reflection emotionally of the kid's belief "I never did anything wrong." Is it criminal? No. The kid is criminalized by... having to go before the court. But is it criminal. I don't think so. Offhand, I can't think of any [violations] that would be criminal.

[By charging a youth for a violation]you criminalize someone who has not committed a criminal offence in theory. You are wondering if it will have any beneficial effect on the kid at all. Probably not.

...I tend to believe that [the violation] is behavioural. And we are using an awfully big stick to deal with a behaviour problem. And so that's another reason I wouldn't [breach a youth].

If we have a young person on the run, a female for example, [breaching them] just serves to further criminalize a young person where it is not...in my opinion, a criminal offence. You know, running away from home for me is not criminal. It's a social difficulty. It's a social problem that should be dealt with outside the courts.

The hardest thing to do is to supervise a kid on probation who, from his perspective, didn't commit a criminal offence [when violating a condition]. These are the hardest ones to work with.

The only positive impacts of charging a youth for a probation violation identified by the POs related to the need to recognise the legitimacy of the probation order and demonstrate consequences for not abiding by it. Otherwise, there were no substantial positive effects identified.

4.6.5 Probation Officer Assessments of Success

Most probation cases in the sample (82%) were given a successful or unsuccessful rating by POs based upon their own subjective assessment of the youth and his or her progress during the probation period. Over two-thirds of the cases with a rating on file (69%) were deemed a success by the PO while the remaining 31% were deemed unsuccessful.

In order to better understand how POs determine success, a logistic regression analysis was completed (see Table 21). Probation Officers were much more likely to deem a case successful if the youth was *not* charged with a new offence for failing to comply with probation conditions even after controlling for the number of probation violations and the level of remorse of the youth (see footnote 2 in Table 21 for a full list of variables). In fact, those youth who were not charged were almost 17 times more likely to be assessed as having a successful probationary period compared to youth who were charged. In addition, POs were also more likely to consider a probation sentence successful if the youth's attitude was positive or if he or she attended school or worked during the probation period. As can be seen by the following quote from a PO, school and work are considered fundamental to the probation process:

We've got guys who are fourteen, fifteen, seventeen not in school and not working and are not obliged to under their orders. So what's the point? No education, no occupation and so how do you help a person like that?

TABLE 21: LOGISTIC REGRESSION ANALYSIS – PREDICTING SUCCESS

	Standardized Estimate	Wald X ²	P-Value	Odds Ratio
Predicting a success rating on file¹				
No charge for a probation violation	0.567	22.01	<0.0001	16.9
Positive attitude of youth	0.152	19.58	<0.0001	8.8
In school or working during probation	0.439	16.05	<0.0001	7.6

1. Pseudo R²=0.62, X²=142.23, p<0.0001.
 2. Non-significant variables: probation violations, youth demonstrates remorse for offence.

While the conclusions of the analysis are relatively intuitive, there was one surprising finding. Violating a probation condition was typically considered an indication of an unsuccessful probation sentence *if the youth was subsequently charged for the offence*. In other words, it is the laying of a charge that appears to affect a PO’s assessment of success rather than the behaviour of the youth (i.e., the existence of a probation violation).

4.6.6 Summary of Probation Officer Discretion

Very few youth were actually charged with failing to comply with a probation condition even though a large number of them had violated multiple conditions. This of course raises a number of questions related to the perceptions of youth and how they ultimately view the seriousness of the conditions when they do not face consequences for violating them. Nevertheless, it was clear during the interviews that POs have been trained to charge youth *as a last resort*. It is therefore not surprising that there are so few charges.

The factors that were related to the decision to charge can be grouped into two basic categories: behavioural factors and characteristics of the youth. In terms of behavioural factors, multiple violations, not surprisingly, increased the likelihood that a PO would

charge a youth while accepting multiple referrals for community-based programming decreased the likelihood. In terms of youth characteristics, immigrant youth and those youth with mental health issues were less likely to be charged while it appears that visible minority youth were more likely to be charged with a probation violation.

According to POs, one of the major rationales for charging a youth is to document a pattern of behaviour which will ultimately allow the courts to impose a custodial sentence on a youth. In addition, POs will use charges as a mechanism to motivate youth to change their behaviour in exchange for dropping the charge. Finally, POs use charging as a means of protecting both the youth and themselves when there is a risk of harm to the youth from being unsupervised (i.e., missing a curfew, running away from home).

One of the more important findings to emerge out of the interviews with Probation Officers was the fact that each PO appeared to operate based upon their own values and assumptions when considering charging a youth. Some POs had very clear rules about charging for violations of certain conditions, while others were clear they would never charge in the same circumstance. While discretion is a cornerstone of the criminal justice system, and an important aspect of a criminal justice professional's role, there is an argument to be made that discretion has an element of unfairness, particularly in this situation wherein one youth will never be charged with a violation and another would most likely face a criminal sanction for the same behaviour.

The one belief that POs consistently held was the fact that charging a youth likely did not have many positive consequences but often had negative ones. While it was unfortunate that it was not possible to empirically test the hypothesis that charging a youth with a probation violation increases the likelihood of future criminal behaviour, as purported by labelling theory, the interview findings did add further support for this claim.

4.7 Research Questions Revisited

Prior to a discussion of the results, it would be useful to first review the answers to the research questions posed in this thesis. Generally, the results revealed an extensive system of social control imposed on a group of youth with a substantial number of serious psycho-social needs who habitually violated the conditions of their probation sentence but were infrequently charged by Probation Officers.

Q1a. How many conditions and what types of conditions are typically imposed on youth during terms of probation?

A typical youth serving a probation sentence had an average of eight separate conditions attached to their probation order. Some youth had as many as fourteen conditions during a single probation sentence. The most common conditions used by the courts, beyond the standard condition compelling youth to report to a Probation Officer, were to attend school, to reside at a place approved by a Probation Officer, to not associate with a known criminal, to attend treatment as specified by a Probation Officer, to maintain lawful employment and to complete community service hours. More than 30 unique conditions, however, were identified within the probation files including additional restrictions on mobility, possessions and leisure time. The breadth and the depth of this form of social control were evident.

Q1b. Are there differences according to demographic variables such as age, gender, and visible minority status or differences according to legal variables such as the seriousness of the index offence or criminal history?

There were a number of differences based upon age, visible minority status and citizenship status. None of these differences, however, were relatively robust or instructive.

What did emerge from this analysis was the possibility that sentencing judges may be using the *number of conditions* as a method of increasing the severity of the probation sentence. This supposition is based upon the identified positive relationship between the number of conditions and several legal variables such as sentence length, the seriousness of the index offence and the imposition of probation following a custodial sentence.

Q1c. What is the proportion of youth detected in violation of the conditions imposed on them during their term of probation?

Based upon the file review component of this thesis, the answer to this question is clear. Approximately two-thirds of youth are known to have violated at least one of the conditions attached to their probation sentence. If one considers the fact that this only represents those violations that have come to the attention of Probation Officers and have been recorded, it is likely that the vast majority of youth serving a probation sentence violate one or more of their conditions. It is unmistakably the norm rather than the exception.

Q1d. What proportion of detected violations result in a charge?

While most youth violated their conditions, very few were actually charged. Based upon the file review, just over one-quarter of youth who had a known violation were charged with a new offence under s.137 of the *YCJA*. It was clear that the decision to charge a youth is used as a last resort by Probation Officers.

Q1e. Which conditions are youth most likely to be detected in violation of during probation?

The most common conditions violated by youth were those involving reporting to a Probation Officer, abstaining from the use of drugs/alcohol, abiding by a curfew, attending school, associating with a known criminal and maintaining lawful employment. Given the existing self-report research on youth in Canada (see for example, Galambos & Tilton-Weaver, 1998; Hotton & Haans, 2004; Moffit, 1993; Statistics Canada, 1999), this can be classified as relatively typical adolescent behaviour (i.e., drinking, staying out late and skipping school). The conditions youth were least likely to violate included entering a specified area of the city, apologizing to the victim, communicating with the victim and driving restrictions. These conditions can be considered more serious in nature given that, unlike most conditions, they have an impact on individuals or society.

Q1f. Have the conditions imposed on the youth been linked to an assessment of their risks and/or needs?

This question was not as easy to answer as the other research questions. While some conditions appear to be linked to criminogenic needs, it seems that sentencing judges are attaching conditions to probation sentences which appear to have no clear link to such needs (in so far as the available records indicate). What can safely be stated is that more research is needed to answer this question. Beyond a simple examination of the link between conditions and needs, however, additional research questions should focus on whether or not this is even a useful or valid inquiry given the limitations of risk/need assessments and the fact that the *YCJA* prohibits the use of the criminal justice system to address child welfare needs.

Q2a. Who typically reports youth behaviours deemed in violation of a probation condition to POs?

While this information was not clearly stated in the administrative files, Probation Officers indicated during the interviews that violations are reported by a number of sources including parents, the youth themselves, police officers, other youth on probation, staff within group homes, custodial facilities and community agencies.

Q2b. Are there violations that come to the attention of POs but are not recorded on official administrative files?

According to the Probation Officers, it is very unlikely that violations that come to the attention of POs are *not* recorded on official administrative files. In fact, all seven of the POs interviewed felt that all violations identified would be recorded.

Q2c. What factors are associated with reports of probation violations on official administrative files?

The main factors related to a probation violation were the number of conditions attached to the probation order and the number of criminogenic needs of the youth. In other words, youth with multiple conditions and a number of serious psycho-social needs were the most likely to have violated the terms of their probation sentence.

Q3a. What factors are associated with a charge of failing to comply with a sentence or disposition when probation violations are recorded on official administrative files?

The statistically significant factors revealed through the regression analysis can be classified into behavioural and demographic categories. In the behavioural category, multiple probation violations were found to increase the likelihood of a charge while

multiple referrals to community-based programming decreased the likelihood. In terms of demographic factors, immigrant youth and those youth with mental health issues were less likely to be charged while it appears that visible minority youth were more likely to be charged with a probation violation.

Q3b. What are Probation Officers trying to achieve when charging a youth with failing to comply with a sentence or disposition?

Probation Officers expressed a number of different goals when discussing their decisions to charge youth with failing to comply with the terms of their probation sentences. Primarily, they focused on legal issues such as establishing a pattern of violations in order to allow the courts to impose a custodial sentence or providing Crown Attorneys with bargaining tools for other criminal cases against the youth. POs also indicated that they wanted to motivate youth to change by holding a breach charge over their heads for a period of time or demonstrate meaningful consequences for negative behaviour. Finally, POs stated that they sometimes charge youth in order to protect them from serious harm (e.g., if they are on the run) or to protect themselves in case a youth was harmed and an investigation occurred.

Q3c. How do Probation Officers understand the potential impacts of charging a youth with a probation violation?

Based upon the interviews with POs, it was clear that they believed charging a youth for failing to comply with his or her probation sentence has very little, if any, positive outcomes. In fact, they generally believed that charging youth leads to negative consequences akin to the processes described in the

labelling theory literature. The one positive outcome expressed by the POs related to the need to recognise the legitimacy of the probation order and demonstrate consequences for not abiding by it.

5.0 DISCUSSION

The results of this thesis have identified a number of important implications and raised a number of additional research questions which would benefit from further discussion. The following sub-sections will examine the implications of this research and focus on race, class and gender issues, social control in probation practices, the competing principles of justice and treatment, risk/need assessments, Probation Officer discretion, and labelling theory.

5.1 Race, Class and Gender

More than one-third (36%) of the caseload in the Probation Office was comprised of visible minority youth while only 18% of the youth population in the geographic area serviced by the Probation Office is classified visible minority. The results of this thesis therefore provide additional evidence that visible minority youth are overrepresented in the Canadian criminal justice system. Of course, any potential relationship between race and crime is likely not a simplistic dynamic nor easily explainable by a single model. If one examines the quantitative and qualitative analyses within this thesis, all four of the models identified in the literature (i.e., Importation Model, Culture-Conflict Model, Strain Model and Bias Model) appear, to varying degrees, to have some support.

Compared to non-visible minority youth, visible minority youth in the sample were more likely to be within the lower socio-economic status group, which fits well within the Strain Model paradigm. Moreover, the vast majority of those involved in criminal gang activity were visible minority youth which would possibly fall within the Importation and/or Strain Models.

During the interviews with POs, there were insinuations that particular racial/ethnic groups were at odds with some of the Canadian cultural norms, which broadly falls within the Culture-Conflict Model. For example, several Probation Officers described a phenomenon wherein parents insisted that the criminal justice system itself (e.g., police, Probation Officers) assume a strong parental role with their children. Some POs went as far as to suggest that they were expected to discipline youth for misbehaviour within the familial home. What was clear during the interviews was that POs were ostensibly describing this phenomenon in relation to visible minority and immigrant families.

At the same time, it also became apparent, based upon the results of the regression analysis, that Probation Officers may be more likely to charge visible minority youth for probation violations than non-visible minority youth, even when controlling for a number of important factors such as age, risk level and criminal history. While this does not necessarily amount to a clear charge of bias, it does provide justification for future research to understand the complexity and potential interrelationship between race and Probation Officer decision-making.

In terms of class issues, the findings of the file review reveal that more than one-third of youth (36%) were considered to be in the low SES group and that only 6% of the sample was classified within the high SES group. It is also likely, based upon the method of classifying socio-economic status, that percentage of youth in the low SES is a conservative estimate. Although not directly comparable, data from Statistics Canada (2008) indicated that approximately 15% of children under the age of 18 within the geographic area serviced by the Probation Office are considered to be living within low-income families. Thus, as with visible minority status, there appears to be a high representation of low-income youth in the probation system.

On the other hand, decision-making by Probation Officers did not appear to be guided by socio-economic status. In fact, socio-economic status did not emerge as a significant predictor of programming referrals, probation violations or charging practices. Of course, any class-based biases, if valid or discernable, could very likely occur much earlier in the criminal justice system through police charging or surveillance practices or through court sentencing patterns. Nonetheless, there was no discernable evidence that socio-economic status or 'class' prejudiced Probation Officer practices.

With regard to gender, the findings of the file review analysis corroborate the notion that female youth within the probation system do in fact differ somewhat from male youth. Female youth were much more likely than male youth to have a reported history of child abuse, child welfare involvement and mental health issues. In addition, they were much less likely than males to be living in their parental homes during probation.

The issue of gender did not specifically emerge during the interviews with Probation Officers, and it appeared that assessment practices, referrals to community programming or other interventions were, in fact, gender neutral (which could, in itself, be considered problematic given the significant differences between male and female probationers). There was, however, one notable exception related to discretionary charging practices. Anecdotally, it appeared that POs were more likely to charge female youth for violating the condition to reside at an approved residence compared to male youth. During the interviews, POs often referred to charging girls who were 'on the run' in order to protect them from harm but never mentioned male youth within this context. It was unfortunately not possible to further validate this perception through quantitative analysis as the sample size at this detailed level was too small. Nonetheless, gender is likely an important consideration in future youth probation research and should be studied further.

In summary, race, class and gender appear to have an imprecise role in both youthful offending behaviour and Probation Officer decision-making. The literature suggests that many risk factors have additive or interactive effects that increase the risk of delinquency for youth (Thornberry, Huizinga & Loeber, 1995). Future research should therefore examine race, class and gender as structural interrelated factors that may play an important role in youth delinquency and in shaping state responses to youth crime.

5.2 Social Control in Probation Practices

The results of this research reinforce and substantiate the panoptical gaze of the State into the lives of youth on probation - lives which are exposed and scrutinized on a regular basis. The high number of conditions attached to probation orders, coupled with the constant threat of a new criminal charge for essentially non-criminal behaviour, is arguable a high degree of social control.

Furthermore, the analysis revealed a strong and significant relationship between the number of probation conditions and subsequent violations. Those youth who were 'highly controlled' were much more likely to be found in violation of their conditions than less controlled youth, even when controlling for important differentiating characteristics such as criminal history, criminogenic needs, and risk levels. Therefore, judges have the ability to influence the number of probation violations in the youth criminal justice system. The more expansive the social control boundaries, and the more sweeping the net of the State, the more likely youth will be ensnared. While simple and intuitive, the results of this thesis have provided empirical evidence to reinforce such an assertion. Even after accounting for numerous confounding variables, "minimally controlled" youth were more than 10 times more likely than "moderately" and "highly controlled" youth to successfully complete their

probation sentence without a violation. While there may be other factors not available within probation files which have an impact on probation success, the existing model did control for some of the most robust predictors of criminal behaviour including risk level, criminal history, criminogenic needs, and age.

Not only does the number of conditions have an impact on the risk of having a detected probation violation, the length of time under supervision has an influence on how Probation Officers will respond to such violations. Previous research has found that longer sentence lengths increase the likelihood of detected violations (Benedict & Huff-Corzine, 1997). Again, this is an intuitive supposition: the longer one is under surveillance, the more likely one will be caught. While the results of the regression analysis predicting probation violations did not find such a relationship, it did reveal that each month added to a probation sentence increases the likelihood that a youth in violation of a probation condition will be formally charged by a Probation Officer with failing to comply with the conditions of his or her sentence. Thus both the conditions attached to a sentence as well as the length of the sentence may have a significant impact on the number of probation violations.

The Probation Officers interviewed for this thesis maintained, when asked about the factors related to probation violations, that the conditions themselves significantly contribute to the problem (e.g., they are unrealistic). While youth were not directly interviewed during the data collection process, previous research with Aboriginal youth in the justice system has found that they generally believe the sentence of probation is detrimental to their rehabilitation and increases the likelihood of returning to custody. Some of the comments from the youth in this study included: “Probation is just an excuse to keep me in jail... It takes nothing to make a mistake... everyone has breaches, everyone

is here for a breach....Probation is a charge magnet” (Latimer & Foss, 2004, p.17).

Primarily, the conditions attached to probation orders were considered unrealistic by the youth, particularly curfews and those prohibiting drug and alcohol use and association with anti-social peers (i.e., those with a known criminal record). Most of those interviewed by Latimer and Foss (2004) expressed a sense of futility regarding the likelihood of adhering to their probation conditions, as almost everyone in their lives were either chemically-addicted or convicted criminals

Even though few youth are actually charged with a new offence, the ever-present threat of a charge, which can be used against a youth for up to six months following a reported violation, adds to the level of social control. In fact, many of the POs interviewed for this thesis admitted to using s.137 of the *YCJA* as a mechanism to elicit improvements in youth behaviour by holding charges over their heads until positive change has occurred. It was not clear, however, if such an approach was successful in motivating youth.

This raises an critical question: Why do youth not respect their conditions? Is it because they are not often charged? Is it because the restrictions are simply too difficult and unrealistic for youth serving probation sentences given their psycho-social needs? Or is it that youth perceive the prohibited behaviour as typical adolescent conduct and therefore unjust? Additional research with youth is clearly warranted to understand why the increasing social control evidenced through probation conditions does not, in fact, appear to deter such behaviour. Are there alternatives to the current system of intensive control and surveillance that would be more effective in reducing future criminal behaviour? And finally, do sentencing judges understand the positive relationship between the number of conditions and the likelihood of probation violations?

5.3 Treatment versus Justice: Irreconcilable Values?

It is useful at this time to reiterate Garland's (2001) argument that probation agencies have de-emphasised the social work ethos that used to dominate the profession several decades ago. It has been argued that the State has downplayed rehabilitation in favour of the much simpler task of restricting an individual's liberties and mobility so as to minimize risk. This is likely because it is both expensive and difficult to actually change people (Simon, 1988). As the file review component revealed, however, just over one half of the youth on probation were referred to some form of counselling or treatment during their sentence. Thus, while Probation Officers do not appear to directly provide much social work services themselves, they are still referring many youth to community-based programming. This suggests that the sentence of probation, while less treatment-focused than in the past, still has a solid foothold in the social work domain.

Notwithstanding, the factors related to treatment referrals were not the number or nature of psycho-social needs (with the exception of substance abuse), but rather variables such as age, gender, motivation (i.e., working and/or in school), and the fact that the courts had attached a treatment condition to the probation order. Thus, referrals were not necessarily linked to the risk/need assessment process or to the nature of the criminal offence committed by youth.

Moreover, many of the Probation Officers interviewed for this thesis agreed that they have essentially become input clerks (i.e., entering information such as the risk/need assessment and case notes into the computer) as well as brokers for community-based programs rather than social workers or therapists. Clinical expertise and therapeutic skills do not appear to be as valued within the profession. Even when youth violate their court ordered counselling conditions, Probation Officers appear to be reluctant to formally charge

them with a new offence for this violation type. In other words, the Probation Officers themselves may not necessarily view treatment as a crucial component of the probation sentence anymore.

This apparent shift in practice has likely evolved over the last few decades as youth justice legislation has become more focused on rights and due process rather than on treatment. In fact, under the *YCJA*, use of the criminal justice system, and custody in particular, has been deemed an inappropriate mechanism to address child welfare issues. While the results of this thesis would suggest that this principle has been somewhat ingrained into Probation Officer practices (quite possibly against their personal social work orientation), it does not appear to have been as accepted with the youth criminal justice system, particularly by sentencing judges. If it is true that the ‘heavy hand’ of the law should not be used to address child welfare issues (Barnhorst, 2004), then how can this be reconciled with the continued use of treatment conditions by sentencing judges identified in this research? Nearly two-thirds of youth on probation had a treatment condition attached to their order. This raises another important question: Why are sentencing judges continuing to mandate youth into treatment? Is the intent to offer Probation Officers with rehabilitative tools or to provide another mechanism for monitoring risk? Or is it simply an autonomous choice of conditions based upon years of practice?

On the other hand, as Fielding (1984) argued, Probation Officers with a social work orientation, in an effort to maintain their client-focused, welfare-oriented self-image, have rationalised that control functions are actually intended to support probation clients rather than punish them. The line between treatment and control appears to continually be blurred within the youth criminal justice system.

If we examine the therapeutic jurisprudence literature,⁵ which has a substantial number of parallels with the developments in the youth criminal justice system over the last few decades, it is clear that one of the major critiques of the resulting practices within the probation system should centre on the incompatible and irreconcilable mandates of justice and treatment (Behnke & Saks, 1998; Slobogin, 1995). How can youth courts balance therapeutic values (e.g., the need for treatment) with justice values (e.g., autonomy, accountability)? Kress (1999) suggested that “if this charge requires for its satisfaction a watertight method of adjudicating among competing values in which all rational individuals will concur, then the charge will never be satisfied” (p. 556).

There appears to be a tension between the court’s requirement for monitoring an offender in the community and the treatment aspect of a sentence. The issue is primarily the element of force, or power, which is in question and its use as a justification for addressing the psychosocial needs of youth. Furthermore, the treatment implications of a probation order are likely never clearly articulated in youth court so that the system is, in fact, continuing to impose treatment onto youth under the guise of consequences. The primary goal of the youth criminal justice system, according to the *YCJA*, is to hold youth accountable for their behaviour through the imposition of meaningful consequences. Yet such consequences also include mental health services, psychological counselling, substance abuse treatment, family counselling, vocational skills development, and a host of

⁵ Therapeutic jurisprudence is firmly rooted in the work of David Wexler (1990) and can be understood as an interdisciplinary theory designed to bring clinical behavioural sciences into the development of the law. The therapeutic jurisprudence perspective suggests that the law itself (as well as the system and those within it) produce therapeutic or anti-therapeutic consequences. “Therapeutic jurisprudence proposes that we be sensitive to those consequences, rather than ignore them, and that we ask whether the law’s anti-therapeutic consequences can be reduced, and its therapeutic consequences enhanced, without subordinating due process and justice values. Therapeutic jurisprudence does not suggest that therapeutic considerations should trump other considerations; therapeutic considerations are but one category of important considerations, as are autonomy, integrity of the fact-finding process, community safety, efficiency and economy” (Wexler & Winick, 1996, p. xvii).

other services designed to address the welfare related needs of youth. This is not to suggest that such services are necessarily harmful or malevolent. In fact, there is a host of evidence that treatment programs can be quite effective in reducing criminal behaviour in youth (Latimer, 2001; Dowden & Andrews, 1999). The issue is that the youth justice system continues to impose such services under the guise of providing consequences to youth.

This is not a new conflict. In fact, it has been one of the greatest challenges within the youth criminal justice system in Canada for more than a century. Traditional legal doctrine has justified the deprivation of an individual's liberties by the State on two unique grounds: police powers which authorise government intervention for the protection of society and *parens patriae* powers which authorise intervention for the welfare of the individual (Slobogin & Fondacaro, 2000). The *JDA* prioritised the use of *parens patriae* powers over traditional protections afforded to adults under the law, such as the right to a full answer and defence and legal representation, during the majority of the twentieth century. As the historical analysis in this thesis pointed out, however, it was criticized substantially for this very practice (Bala, 1997; Barnhorst, 2004). The *YOA* sought to address this very issue by shifting the focus from *parens patriae* powers to police powers. The *YCJA* has attempted to further this process by declaring that the youth criminal justice system, and custody in particular, should not be used as a means of addressing child welfare issues.

But has the State gone far enough? Based on the results of this research, one could argue that we are somewhere between the two worlds – the system tries to focus on police powers but realises that youth serving probation sentences have a high number of psycho-social needs which, if addressed, could reduce the likelihood of future criminal behaviour and thus continues to focus on *parens patriae* powers. And as suggested previously, many

probation violations can arguably be viewed as status offences simply shifted downstream in the criminal justice process. In other words, the system may not be as legalistic and rights-based as the law claims and the shift from the *JDA* to the *YOA* and ultimately the *YCJA* may not be as drastic as it appears on the surface. Given the clear overlap between criminal behaviour and psycho-social needs, is there a more useful continuum on which to analyse the youth criminal justice system?

5.4 Actuarial Justice

As the results of this research revealed, almost all youth on probation were assessed using an actuarial risk/need instrument. What was not clear, however, was how such assessments were used in day-to-day practice. In terms of the decisions examined in this thesis (i.e., treatment referrals, charging youth with probation violations), the risk/need assessment did not appear to influence Probation Officer decision-making.

Furthermore, the methodological critiques of risk/need assessments found within the literature (e.g., Hannah-Moffat & Maurutto, 2003) were mirrored by the Probation Officers within this thesis. In fact, some POs directly questioned the reliability of the information entered into the actuarial assessment tool during their interviews. Others went as far as to question the utility of the entire process. As one PO claimed, “[*the risk/need assessment*] is just a paperwork thing.” This lack of perceived credibility among Probation Officers, who are the primary users of such tools, is an important finding and raises serious doubts about the reliability of the information used to calculate risk levels and identify criminogenic needs. Given that judges also tend to favour narrative, subjective assessments of risk as opposed to actuarial assessments (Bonta, Bourgon, Jesseman & Yessine, 2005), a

thorough review of risk/need assessment practices within the youth criminal justice system should be completed.

Beyond these issues, this thesis raises another fundamental concern related to risk/need assessments. One of the central premises within modern risk discourse suggests that probation conditions are ostensibly linked to a youth's risk to re-offend in order to empower Probation Officers to lay a new charge in an attempt to prevent criminal behaviour thereby 'managing' or reducing risk. If a youth violates a curfew condition, for example, his or her risk level is theoretically elevated and a Probation Officer can therefore intervene by charging the youth and thus averting future crime. There are arguably three significant issues with this premise.

First, only one in every four youth who violate a probation condition is actually charged with failing to comply with a sentence under s. 137 of the *YCJA*. Therefore, although the majority of youth theoretically exhibit increased levels of risk during probation sentences, Probation Officers infrequently initiate formal charges in accordance with the expectations of risk theory. Such a critique does not necessarily advocate that Probation Officers should charge more youth. Rather, it simply highlights the inherent disconnect between theory and practice. Indeed, the entire risk industry (i.e., pre-sentence reports, court ordered conditions, risk/need assessments, the monitoring of conditions, the threat of new charges for violations), while theoretically rational, does not appear to have the desired impact on practice.

The second concern centres on the fact that many youth had conditions assigned by the courts that were not necessarily linked to the needs identified within their risk/need assessments. In other words, the premise that a violated condition indicates an elevated risk level is not necessarily true for many youth. The factors within risk/need assessments

are developed using aggregate data; therefore, not all factors are equally valid for each youth. The fact that conditions are not always in synch with individual risk factors diminishes further the premise, as per risk theory, that charging a youth with a probation condition will likely prevent future criminal behaviour.

The third fundamental concern with using probation conditions as a method of preventing criminal behaviour relates to a burgeoning new area of risk discourse focused on 'pre-crime'. According to McCulloch and Pickering (2009), "pre-crime links coercive state actions to suspicion without the need for charge, prosecution or conviction. It also includes measures that expand the remit of the criminal law to include activities or associations that are deemed to precede the substantive offence targeted for prevention" (p. 628).

Accordingly, there has been a minor shift in recent years away from what is labelled post-crime (i.e., traditional criminal justice responses after a crime) towards identifying risks and intervening before a crime takes place. Zedner (2007) characterizes this trend as a shift towards a pre-crime society "in which the possibility of forestalling risks competes with and even takes precedence over responding to wrongs done" (p. 261).

The underlying problem with a focus on pre-crime, beyond whether the risk prediction methods are even accurate, is the ethical and/or moral issue of punishing people for non-criminal behaviour simply because it is an indication of future criminal behaviour. There are elements of pre-crime discourse within the probation violation process which raises similar questions: Are we moving further towards a 'pre-crime society' based upon the intense focus on probation conditions and risk within the youth criminal justice system? Naturally, probation conditions are not simply used as a measure of pre-crime. Probation violations, while relatively common among adolescents both within and outside of the justice system, can be viewed as an indication that youth are not respecting the justice

system or that youth are not focusing their efforts on positive change. But does this mean that we should criminalise this behaviour? And if yes, on what grounds?

Given the apparent lack of support for risk/need assessments among POs, coupled with the methodological limitations and general lack of practical applications within the system, the continued use of actuarial tools should be further researched. Indeed, beyond questions of accuracy and relevance, additional research should focus on whether actuarial justice is, in fact, ethical and/or just.

5.5 Discretionary Justice

One of the central research questions posed within this thesis centred on the use of discretion in the youth criminal justice system. Why is it that a substantial proportion of youth in violation of their conditions are not charged with a new offence? One finding from this thesis, which is quite consistent with Jones and Kerbs' (2007) notion that the policies and pressures within organizations is a robust explanatory factor, is clear: Probation Officers are instructed by their Ministry that charging a youth for a probation violation should be considered a last resort. Other options, such as increasing the periodicity of reporting, cautioning the youth or arranging for a family conference, should be exhausted before laying an official charge. Future research should examine this process and explore the nature, extent and utility of these alternatives

The results of the analysis also revealed that discretion was not necessarily easily reduced to a quantitative model. The variables that did emerge as significant predictors of charges under s.137 of the *YJCA* (e.g., mental health status, probation sentence length, referrals to community programming) revealed some of the factors that POs likely consider,

but it did not necessarily reveal much about the decision-making process of Probation Officers.

Gottfredson and Gottfredson (1988), in the context of discretion in the criminal justice system, suggested that there are three main components within the decision-making process. First, there needs to be the articulation of an outcome, objective or goal for the decision. Second, there needs to be alternatives from which to select a response. And, finally, the decision-maker needs to sift through information in order to arrive at the decision. In the case of Probation Officer discretion, the second and third components are relatively clear. A PO can charge a youth for a violation or choose not to lay a formal charge (alternative) and a PO has access to extensive psycho-social histories, offence information, case notes, and a host of other documentation (information) in order to decide. However, it is not always clear what POs are trying to achieve in their use of discretion (outcome). In other words, the results of this thesis suggest that POs often maintain different and possibly competing goals when considering charging youth.

Some Probation Officers, for example, are trying to ensure that a youth will receive a meaningful consequence for their behaviour while others are trying to protect the youth themselves from future harm (e.g., charging a youth who is on the run). Some are trying to protect society from future criminal behaviour by seeking a custodial sentence for a youth and others still are trying to protect themselves (i.e., in case a youth on the run suffers harm).

In comparing these results with Kelman and Hamilton's (1989) typology of decision-makers based on socio-political orientation towards authority, there appears to be some congruence. For example, several POs articulated *value-oriented* objectives when discussing charging practices that focused on their clients directly rather than on their

organization or their own concerns (e.g., providing youth with meaningful consequences or protecting them). Others tended to discuss *rule-oriented* objectives that emphasised their desire to avoid personal misfortune (e.g., protect themselves by showing compliance with policies). Finally, some POs discussed *role-oriented* goals such as ensuring the youth was incarcerated or providing Crowns with a plea bargaining advantage, which demonstrated their alliance with the duties of their position. Additional qualitative research with a larger sample of Probation Officers would be instructive in further exploring the relationship between discretion and socio-political orientation towards authority.

One of the main findings of this thesis was that discretion is intricately linked with the concept of fairness. When the interviews with Probation Officers are examined, it is clear that each PO operates under their own set of rules which are often inconsistent with other officers within the same office. Some POs *always* charge a youth for a particular violation, for example, while others *never* charge a youth for the same behaviour.

In understanding the concept of fairness, Anderson and Patterson (2008) suggest that there are two distinct aspects to assessing the fairness of a particular action such as a decision within the criminal justice system. The first centres on the *outcome* of the event while the second contemplates the *procedures* which were used to arrive at the outcome.

If one examines Probation Officer discretion, the multivariate analysis results described several factors which can be utilised to assess the outcome of the decision-making process. First, it appears as though POs are more lenient on those youth who have identified mental health issues based upon the fact that a lack of a diagnosis was a significant predictor of a criminal charge for a probation violation. From a fairness

perspective, it is likely that this would be perceived as fair or just given the traditional emphasis on culpability and mental illness within the criminal justice system.⁶

Equally, however, the results also revealed that visible minority youth are more likely to be charged with a new criminal offence for a probation violation compared to non-visible minority youth. Such an outcome would clearly not be assessed as a fair and/or just result. Nonetheless, as Roberts (2003) has suggested, when serious concerns that have the potential to erode public confidence in the justice system are investigated, the research must be impeccable. Certainly, additional research is warranted in this case.

Notwithstanding the outcome aspect of fairness, the procedural component as described by Anderson and Patterson (2008) is equally important. Transparency in decision-making may have the ability to assuage perceived unfair outcomes as it typically provides an appreciation and understanding of all three components in the decision-making process (e.g., objectives, alternatives, information). The central question here is: How do Probation Officers arrive at their decisions? Evidently, Probation Officers often have different objectives in mind when formulating their decisions. Moreover, it is unlikely that youth themselves understand why in some cases a particular violation results in a new criminal charge (and possibly a custodial sentence) and in other circumstances, the same behaviour results in a warning or no apparent response. Youth perceptions should therefore be explored to comprehend both their awareness and understanding of the decision-making process with a focus on procedural fairness.

⁶As argued by the Supreme Court of Canada in *R v. Winko*, people who commit criminal acts under the influence of mental illnesses should not be held criminally responsible for their acts or omissions in the same way that sane responsible people are. *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 S.C.R. 625, 1999 CanLII 694 (S.C.C.) at para 31.

5.6 Labelling Theory

As discussed previously, labelling theory provides both a valuable lens through which to view probation violations and a possible explanation for the incredibly high proportion of youth who violate the conditions of their probation sentence. While labelling theory has faced criticism, and was much more prominent in the 1960s and 1970s, it has taken on a new relevance recently as an explanation for why some youth continue to commit criminal behaviour and others do not (Siegel & Welsh, 2009).

The central premise, as Lemert argued, suggests that “when a person begins to employ his deviant behaviour or role... as a means of defence, attack, or adjustment to the overt and covert problems created by the consequent societal reaction to him, his deviance is secondary” (1999, p. 388). This process may be further exacerbated by the fact that what we are labelling criminal is in fact a socially constructed set of behaviours that are *not* criminal for most youth in Canada. As one PO commented during the interviews:

[By charging a youth for a violation] you criminalize someone who has not committed a criminal offence in theory. You are wondering if it will have any beneficial effect on the kid at all. Probably not.

Paternoster and Iovanni (1989) have suggested that labelling experiences (e.g., being classified as criminal or high risk) are instrumental in producing problems of adjustment and in causing subsequent commitment to further deviance which is often known as the ‘secondary deviance hypothesis’. In essence, the labelling process can help create a self-fulfilling prophecy. If a youth continually receives negative feedback, for example, he or she will interpret the judgement or rejection as accurate. Subsequently, his or her behaviour will begin to conform to the negative expectations. Matsueda (1992) claimed that the self-fulfilling prophecy leads to a damaged self-image and an increase in antisocial behaviours.

If one considers probation violations and the labelling process, it is quite possible that the act of being labelled criminal by the justice system, for what is typically non-criminal behaviour, may in fact accelerate the secondary deviance process. Schrag (1971) has argued that everyone both conforms and deviates from social norms and it is in fact the act of 'getting caught' which initiates the labelling process. While it was not possible to empirically test the hypothesis that catching a youth (i.e., charging them with a violation) increases the potential for secondary deviance, the POs' comments during the interviews suggest it is a viable hypothesis. It is an important research question which should be answered in the future.

Schrag (1971) also argued that the criminal justice system is established on a freewill perspective that allows for the condemnation and rejection of the identified offender. In other words, those working within the system accept the notion that offenders are rational actors making informed choices. If we examine comments made by Probation Officers, Schrag's contention appears to have some validity:

...you'd think somebody would go to jail for a month and say, "This is the worst month of my life. I never want to do this again." And you'd think that that in itself would help the person realise I better not screw up. It doesn't. But why it doesn't is the frustration I have been experiencing. I just can't understand it.

The expectation of this PO is that youth should make logical and informed decisions. Given that one of the more robust predictors of a probation violation is high criminogenic needs, this argument would appear to be flawed, or at the very least suspect.

Needless to say, the principle that offenders are rational actors underlies one of the more contentious issues within the criminal justice system, namely deterrence theory.

Individuals are considered to behave in a manner that maximizes their self-interest while minimizing harm to themselves. In other words, rational decision-making involves gauging likely gains versus losses. This theory

assumes that most routine decisions are based on a simple calculation of benefits versus harms which reflects our past experiences or the known information about likely outcomes of our decisions (Corrado, Gronsdahl, MacAlister & Cohen, 2006, p. 550).

As a sentencing principle, deterrence is conceptually quite straightforward.

Traditionally, there are two types of deterrence. Specific deterrence refers to a form of punishment (e.g., monetary penalty, loss of liberty) that theoretically discourages a *current* offender from committing another offence while general deterrence refers to the threat of punishment for a crime which is designed to prevent *potential* offenders from engaging in criminal behaviour.

Research into the validity of specific deterrence theory, however, is generally not supportive. Doob and Webster (2003) argued that, while there are select studies providing support for increased sanctions as a method of deterring crime, such findings are unreliable and should be viewed cautiously. Gendreau, Goggin and Cullen (1999) conducted a meta-analysis of 50 unique studies examining the possibility that longer sentence lengths reduce recidivism and concluded that harsher penalties actually slightly increase recidivism among offenders. Latimer (2003) also found that, compared to non-custodial sentences, imprisonment increased the likelihood of future criminal behaviour, even when controlling for a number of important factors such as criminal history, risk levels, age, and offence severity.

If specific deterrence theory is questionable, and the process of charging a youth for a probation violation may, in effect, accelerate a labelling process that creates a self-fulfilling prophecy and a higher likelihood of criminal behaviour, the probation violation process, at some level, should be re-examined. Youth serving probation sentences are generally victims of poverty, abuse and mental illness and therefore have a high number of

psycho-social needs. As part of their probation sentence, they are subsequently highly controlled by the State and, when they violate a condition, which they are quite likely to do, they are further labelled criminal for essentially non-criminal behaviour.

5.7 Discussion Summary

The results of this thesis have reinforced the notion that there may be race, class and gender issues within the youth criminal justice system which would benefit from future research. The research has also demonstrated that the arguments made by social control theorists such as Cohen, Garland and Fischer have some empirical support within the youth probation system. It is clear that in an effort to reduce the social control of youth in Canada through the development of probation, the State has, in fact, created an intrusive and pervasive community-based system of monitoring and control. At the same time, however, there continues to be a conflict between the competing values of justice and treatment even with recent legislative changes such as the *YCJA*. Moreover, the limitations of an actuarial approach to youth probation services were also clearly reinforced by both the perceptions of Probation Officers and the lack of a link between risk discourse and practice. With regards to the use of discretion in charging practices, there was some evidence to support future research to examine youth perceptions related to fairness. Finally, the entire probation system may in fact be structured to increase the likelihood of future criminal behaviour if the evidenced support for labelling theory holds firm.

6.0 CONCLUSION

Based upon the results of this thesis, one could argue that the sentence of probation is not meeting the central objective of the *YCJA*, which is to restrict the use of the formal justice system and, in particular custody, for more serious criminal behaviour. Probation violations are, by nature, less serious than almost all *Criminal Code* offences (e.g., theft, break and enter, robbery, assault). Of course, it is not clear if the results of this research are representative of the youth probation system across Canada or even in other parts of Ontario given the limited geographical scope of the data collection. The youth criminal justice system is particularly susceptible to the influences of the local community, including local court cultures, and the attitudes of police, Crowns and judges and Probation Officers (Moyer, 1996). As such, it will be important to conduct further research in other areas of the country to validate the findings of this thesis. Nonetheless, the sentence of probation, as well as the probation violation process, is now much clearer and a number of conclusions can be drawn.

First, a sizeable majority of youth serving probation sentences are in fact victims in their own right based upon their histories of serious sexual, physical and emotional abuse, poverty, neglect and abandonment. A proportion of youth also live with family dysfunction and mental illnesses. This context should be explicit in any discussion of state responses to youth criminal behaviour.

Second, the sentence of probation, which was historically a mechanism to divert youth from the harms of custody, among other more surreptitious goals, has in fact created a system of intense social control and monitoring that may also increase the likelihood of

future criminal behaviour. The symbolic gaze of the State into the lives of youth on probation is both sweeping and invasive.

Third, the continued focus on actuarial assessments and risk discourse within the youth criminal justice system is injudicious. Outside of the traditional critiques, which centre on methodological limitations, there are more fundamental concerns that the focus on risk reduction and 'pre-crime' may in fact be both misguided and quite possibly unethical.

Fourth, years of practice and numerous legislative changes have combined to create a confused approach to the provision of psycho-social treatment in the youth criminal justice system. While the *YCJA* suggests that the law is not necessarily appropriate to address child welfare needs, the system continues to mandate significant numbers of youth into treatment and monitor compliance using a persistent threat of punishment. Currently, it is not clear if the concepts of justice and treatment are in fact reconcilable and a new paradigm through which to view this issue may be necessary.

Fifth, almost all youth, perhaps as a result of the high degree of social control and the high number of psycho-social needs, violate the conditions imposed by the courts. This fact seems to have become both normalised and accepted by those within the probation system. Moreover, it is likely that the criminal justice system has the ability to indirectly influence the proportion of youth who violate conditions by increasing the number of probation conditions. Thus, the courts may consider crafting sentences that are more realistic and are more likely to lead to successful outcomes.

Sixth, while almost all youth violate the conditions of their probation sentence, few are charged with a new criminal offence under s.137 of the *YCJA*. In fact, Probation Officers are trained to consider laying a criminal charge for a probation violation as a last

resort. Moreover, charging youth with a probation violation may produce negative results for the youth and may increase the likelihood of future criminal behaviour.

These six conclusions, when clearly expressed, bring into question the legitimacy of the entire youth probation system. The objective of the probation system has basically been to avoid the harms of incarceration while addressing the needs of youth in an attempt to reduce recidivism. At this point in time, one could argue that system does not achieve any of these goals and is in fact confused. This confusion plausibly evolved from the competing and irreconcilable values of justice and treatment that has plagued the youth criminal justice system since its inception. By adulthood, most people accept the belief that an offender has made a choice and should live with the consequences of his or her actions. With youth, however, we recognize their diminished capacity and responsibility and have enshrined this principle in law for more than a century. As such, we more readily accept a role for the State in assisting youth once they have become involved in criminal behaviour.

The fundamental question that remains is how can we truly assist youth? And can we do so without violating important legal rights? The justice/treatment dichotomy, however, may no longer be a useful lens through which to view the youth justice system. It might be time to re-conceptualise how we understand the role of the State in the lives of youth in conflict with the law. If almost all young offenders are also victims with a host of psycho-social needs, and we know that such needs quite often translate into an increased likelihood of future criminal behaviour, should we be punishing them when they fail or should we expect less from them? Section 38(2)(e)(ii) of the *YCJA* states that the courts should be choosing the option that is most likely to rehabilitate and reintegrate a young person. It would be difficult to argue that probation sentences are the most effective option. However, given the choice between probation and incarceration, which is imbedded with a

host of negative repercussions as well as a substantial loss of liberty for young persons, probation appears to be the better choice. It is possible that probation is similar, in fact, to democracy in that, as Churchill once famously said “[it] is the worst form of government, except for all others.”

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APPENDIX A: CODING FORM

SECTION A: SOCIO-DEMOGRAPHIC INFORMATION

FPS Number	<i>Fingerprint System Number refers to the RCMP identification number used in CPIC. If it is missing or unknown, code the last name of the youth in order to link to RCMP</i>
<input type="text"/>	
Probation File Identification Number	The file number unique to the Ministry of Children and Family Services that allows for identification in case there is a need to re-access the file to fix data errors.
<input type="text"/>	
Date of Birth	Month / Day / Year 99/99/99=Unknown
<input type="text"/>	
Sex	1=Male 2=Female 9=No mention on file
<input type="text"/>	
Aboriginal / Visible Minority Status	1= Aboriginal 0=Non-Aboriginal 9=No mention on file 1=Visible Minority 0=Non-Visible Minority 9= No mention on file
<input type="text"/>	
Social Assistance / Low Income	1=Social assistance main source of income 2=Employment income 9=No mention on file 1=Low income identified as an issue 2=Income not an issue 9=No mention on file
<input type="text"/>	
Citizenship Status	1=Canadian Citizen 2=Permanent Resident 3=Immigrant/Refugee 9= No mention on file
<input type="text"/>	
Living Status	1=Dual-parent home 2=Lone-parent home 3=Legal guardian 4=Foster home 5=Group home 6=No stable home 7=Other 9= No mention on file
<input type="text"/>	
Child Welfare Status	1=Past involvement 2=Current involvement 3=No involvement 9=No mention on file
<input type="text"/>	
School Attendance / Performance	1=Not in school 2=In school 3=Attendance issues 9=No mention on file 1=Performance identified as an issue 2=Performing well 9=No mention on file
<input type="text"/>	
Gang Status	1=Suspected gang member 2=No suspected gang affiliation 9=No mention on file
<input type="text"/>	
Supervision / Victimization Issues	1=Lack of parental supervision 2=Appropriate supervision 9=No mention on file 1=Sexual abuse 2=Physical abuse 3=Emotional abuse or neglect 9=No mention on file
<input type="text"/>	
Substance Abuse / Psychological	1=Confirmed diagnosis 2=Suspected 3=No substance abuse issues 9=No mention on file 1=Confirmed diagnosis 2=Suspected 3=No psychological issues 9=No mention on file
<input type="text"/>	

SECTION B: CRIMINAL HISTORY INFORMATION

Total Number of Convictions <input type="text"/>	Code the TOTAL NUMBER of prior criminal convictions. If the accused does not have a prior conviction code 0.
FIRST Conviction Date <input type="text"/>	Code the date of the very FIRST conviction (i.e., the earliest). Month / Day / Year 98/98/98=Not applicable (no prior)
PRIOR Custody Sentences <input type="text"/>	Code the TOTAL NUMBER of prior custodial sentences. 99=Not applicable (no prior)
PRIOR Probation Sentences <input type="text"/>	Code the TOTAL NUMBER of prior probation sentences. 99=Not applicable (no prior)
PRIOR Administration of Justice <input type="text"/>	Code the TOTAL NUMBER of prior AOJ convictions. See Appendix A for list.
PRIOR Violent Offence <input type="text"/>	Code the TOTAL NUMBER of prior violent convictions. See Appendix A for list.
PRIOR Property Offence <input type="text"/>	Code the TOTAL NUMBER of prior property convictions. See Appendix A for list.
PRIOR Drug Offence <input type="text"/>	Code the TOTAL NUMBER of prior drug convictions. See Appendix A for list.
PRIOR Sexual Offences <input type="text"/>	Code the TOTAL NUMBER of prior sexual convictions. See Appendix A for list.

SECTION C: INDEX OFFENCE INFORMATION

Probation Start Date	Month / Day / Year												
<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td><td style="width: 5%;"> </td> </tr> </table>													
Probation Length	Code the length of the probation sentence in months.												
<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td> </tr> </table>													
Custody and Probation	1=Probation was a standalone sentence 2=Probation was part of a custody sentence												
<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td> </tr> </table>													
Offence Code	Refer to Appendix A for a list of Offence codes.												
<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td><td style="width: 10%;"> </td> </tr> </table>													
Offence Code	Refer to Appendix A for a list of Offence codes.												
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Offence Code	Refer to Appendix A for a list of Offence codes.												
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Offence Code	Refer to Appendix A for a list of Offence codes.												
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SECTION D: PROBATION CONDITIONS / VIOLATIONS / CHARGES / CONVICTIONS

Report to Probation Officer	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Attend School	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Obtain/Maintain Employment	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Residency Requirement	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Attend Treatment / Program	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Weapons Prohibition	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Abstain from Alcohol/Drugs	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Non-Communication with Victim	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Non-Association with Antisocial Peers	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Curfew	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Mobility Restriction	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Community Service	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Restitution/Compensation	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
Other Conditions	1=Condition present 0=Condition not present 1=Violated 0=No violation indicated 1=Charge laid 0=No charge laid
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	

SECTION F: MISCELLANEOUS NOTES ON FILE

General Attitude Problems	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Late for Appointments	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Lack of Remorse / Empathy	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Lack of Respect for Authority	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
General Hygiene	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Tattoos and Piercings	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Clothing	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Negative Peer Influences	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Other Issue #1 (specify)	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Other Issue #2 (specify)	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Other Issue #3 (specify)	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	
Other Issue #4 (specify)	1=Indicated as an issue on file 0=Not indicated as an issue on file
<input type="checkbox"/>	

APPENDIX B: INTERVIEW GUIDE

Ensure the informed consent form has been signed and the participant understands that:

- the interview will be recorded and transcribed;
- she/he may withdraw from the interview at any time and exclude any and all aspects of the interview already completed;

I would like to ask you a few opening questions regarding your career as a Probation Officer.

1. How long have you been a Probation Officer?
2. Have you always worked with youth?
3. What training and/or education have you completed?

As I described in the recruitment letter, this interview will focus on youth probation sentences and probation violations.

4. Do you develop treatment plans for each youth on your caseload?
 - a. If yes: how do you develop the treatment plan? (Probe for actuarial tools, youth involvement, parental involvement, other professional assessments)
5. How often do you think youth violate the conditions of their probation orders?
6. Why do you think youth violate their conditions?
7. Are there youth who are more likely than others to violate their conditions?
 - a. If yes, how are they different than those who do not violate conditions?
8. Are their particular conditions that youth are more likely to violate?
9. How do you normally find out about violations? (Probe for police, parents, youth, schools, others)
10. Do you always record a probation violation on the youth's file?
 - a. If no, when do you and when do you not record a violation?
11. Are there any issues or concerns you do not record on a youth's file?
 - a. If yes, what are they and why do you not record them?
12. Do you always officially charge a youth when he or she violates a condition?
 - a. If no, when do you typically charge a youth and when do you not?
13. In your opinion, are probation violations criminal behaviour? And why?
14. How do you think youth perceive probation violations? (Probe for excessive control/monitoring, non-criminal behaviour)

15. Do you think charging a youth for a violation will have any consequences for future criminal behaviour?

- a. If negative consequences probe for labelling theory
- b. If positive consequences probe for deterrence/denunciation

That is the end of the interview. Thank you very much for your time. Do you have any questions you want to ask me?

APPENDIX C: CONSENT FORM

Understanding Probation Violations in the Youth Criminal Justice System

Researcher

Jeff Latimer
PhD Candidate
Department of Criminology
University of Ottawa

Supervisor

Dr. Ronald F Melchers
Department of Criminology
University of Ottawa

I am invited to participate in the abovementioned research study conducted by Jeff Latimer under the supervision of Professor Ron Melchers from the University of Ottawa.

The purpose of the study is to develop a comprehensive understanding of the sentence of probation in the youth justice system and the nature and extent of probation violations. The central objective of this research is to answer the following research questions:

- What is the nature and extent of the use of probation violations in the youth criminal justice system?
- What factors are associated with youth being charged with a probation violation in the youth criminal justice system?
- Are probation violations associated with an increase in the likelihood that a youth will engage in future criminal behaviour?

My participation will consist essentially of participating in one interview with the researcher within normal working hours in my office during which I will answer questions related to my work, and in particular probation violations.

My participation in this study will entail that I discuss my day-to-day activities as a Probation Officer and how I make decisions related to charging a youth with a probation violation.

My participation in this study will provide criminal justice professionals, academics and government officials with previously unavailable knowledge on how the current youth probation system is operating.

I have received assurance from the researcher that the information I will share will remain strictly anonymous and confidential. I understand that the contents will be used only for the purposes of completing a doctoral degree at the University of Ottawa (and possibly for future conference

presentations and journal articles) and that my anonymity will be protected. The researcher has agreed not disclose my name as a participant in any publically available documents and will present any information collected during my interview in a manner that does not identify myself or my clients.

The interviews will be recorded electronically and stored in a password protected file on the researcher's personal computer and will not be distributed via email. Once the file has been copied from the digital recorder to the computer, it will be deleted from the recorder. Back-up files will also be stored on an external hard drive but will also be password protected. Only the researcher and his supervisor will have access to the transcript of my interview.

I am under no obligation to participate and if I choose to participate, I can withdraw from the study at any time and/or decline to answer any questions, without suffering any negative consequences. If I choose to withdraw, all data gathered until the time of withdrawal will destroyed immediately following the interview.

If I have any questions about the study, I may contact the researcher or his supervisor.

If I have any questions regarding the ethical conduct of this study, I may contact the Protocol Officer for Ethics in Research, University of Ottawa, Tabaret Hall, 550 Cumberland Street, Room 159, Ottawa, ON K1N 6N5
Tel.: (613) 562-5841
Email: ethics@uottawa.ca

There are two copies of the consent form, one of which is mine to keep.

I, _____, agree to participate in the above research study conducted by Jeff Latimer of the Department of Criminology at the University of Ottawa who is under the supervision of Dr. Ronald F Melchers.

Participant's signature: _____

Researcher's signature: _____

Date: _____

APPENDIX D: LETTER OF INFORMATION

Understanding Probation Violations in the Youth Criminal Justice System

Jeff Latimer, PhD Candidate within the Department of Criminology at the University of Ottawa under the supervision of Dr. Ronald F Melchers will be conducting the research in order to meet the requirements of a doctoral degree in Criminology.

Description of Research

The purpose of the study is to develop a comprehensive understanding of the sentence of probation in the youth justice system and the nature and extent of probation violations. The central objective of this research is to answer the following research questions:

- What is the nature and extent of the use of probation violations in the youth criminal justice system?
- What factors are associated with youth being charged with a probation violation in the youth criminal justice system?
- Do probation violations increase the likelihood that a youth will engage in future criminal behaviour?

The research will involve a single interview with the researcher in the office of the person being interviewed during normal working hours. The interviews will last approximately 30 minutes. Participation is voluntary, and participants may decline to answer any question or ask to stop the interview at any time.

The information provided by participants will remain strictly confidential and will only be used for the purposes of completing a doctoral degree at the University of Ottawa (and possibly for future conference presentations and journal articles). The researcher will not disclose the name of any participants in any publically available documents and will present any information collected during the interviews in a manner that does not identify the participants or any clients.

The interviews will be recorded electronically and stored in a password protected file on the researcher's personal computer and will not be distributed via email. Once the file has been copied from the digital recorder to the computer, it will be deleted from the recorder. Back-up files will also be stored on an external hard drive but will also be password protected. Only the researcher and his supervisor will have access to the transcript of any completed interviews.

Participation in this study will provide criminal justice professionals, academics and government officials with previously unavailable knowledge on how the current youth probation system is operating.

Participants will be provided with an opportunity to review their transcripts prior to the analysis in order to ensure they are comfortable with their responses.

For more information, please contact:

Jeff Latimer

PhD Candidate

Department of Criminology

University of Ottawa