VI. Conclusions

This report was commissioned by the Department of Justice in support of the implementation and evaluation of the Youth Criminal Justice Act. The research had two main objectives: to provide a comprehensive description of the ways in which police in Canada currently exercise their discretion with youth, and to identify and assess factors which affect that exercise of discretion. Our intention was to provide information which could be used in two ways:

- as baseline data which can be compared in the future with similar data on the exercise of police discretion under the YCJA, in order to conduct an evaluation of the impact of the YCJA on police decision-making with youth, using a "pre-post" quasi-experimental design; and

- to identify aspects of the policing environment and of police organizations, which policymakers and police management could attempt to modify, in order to support police officers in exercising their discretion in conformity with the intent and specific provisions of the YCJA.

Although there have been several in-depth studies of individual police services in Canada, no attempt has been made to analyze police decision-making on a national scale since the study carried out by Statistics Canada in 1976 (Conly, 1978) – and even that study was limited in the depth of information which it collected and the scope of the sample which it studied. Accordingly, we set ourselves the goal of gathering in-depth information, both qualitative and quantitative, on a nationally representative sample of police services. Since a substantial proportion of smaller cities and towns, and most rural areas, in Canada are provided with policing services by detachments of the provincial police, including the RCMP working under contract to provincial governments, we felt that the sample must include a substantial number of these detachments.

Possible sources of information on police decision-making include interviews with officers at all levels and in all units of the police organization, observation of their work during "ride-alongs", police agency documents, statistical data from the Uniform Crime Reporting (UCR) Survey and Incident-Based Uniform Crime Reporting (UCR2) Survey, operated by the Canadian Centre for Justice Statistics, and the individual case files maintained by police agencies, either in hardcopy or on their Records Management Systems (RMS). We used all of these sources except police case files. Early in the design phase of this project, we were advised by representatives of several police services that it would be problematic to access these data; we recognized also that to collect file data on a substantial number of youth-related cases from a representative sample of Canadian police agencies would be prohibitively expensive and time-consuming.

We conducted over 200 in-depth interviews police officers in 95 police services and detachments which are approximately representative of all police services in Canada – from all provinces and territories, all types of communities, and all types of police service, including independent municipal services, detachments of provincial police services including the RCMP, First Nations police services, and police training facilities. The sample included the police services in all of the largest cities in Canada, and a substantial number of police services and detachments in the smallest towns and the most remote rural areas of the country. We also analyzed aggregate UCR data for 1977-2000, and did detailed statistical analysis of UCR2 data on a large sample of individual young offender cases for 2001.

1.0 The exercise of police discretion with youth

We concentrated our attention on two aspects of police decision-making with youth. The first is the decision concerning the police disposition, or clearance, of the incident: whether to lay a charge (or recommend one, in provinces where the Crown makes the final decision) or divert to a pre-charge diversion program or Alternative Measures, or to resolve the incident by informal action. The second aspect comes into play only if a charge is laid, or will be laid: the method(s) chosen to compel the appearance of the youth in court.

We found that many – perhaps most – police officers do not see these as two discrete decisions concerned strictly with the enforcement of the law, but rather view them as inseparably interrelated parts of a repertoire of responses which they use to resolve situations involving youth whom they believe to have committed offences.

Police officers appear to have two main objectives in deciding upon a disposition for an incident. One is to satisfy the requirements of traditional law enforcement: to investigate the incident, identify and apprehend the perpetrator(s), and assemble the necessary evidence if there is to be a prosecution. Their other, less explicit, objective appears to be to deliver an appropriate sanction, or "consequence", semi-independently of the Youth Court and correctional system. Officers repeatedly stressed the importance of youths' experiencing appropriate consequences for their illegal actions, and many, but by no means all, expressed scepticism about the ability of the courts and correctional system to do so; and therefore, the necessity of their dispensing street-level justice. This is not to suggest any impropriety or illegality in the actions of police, but rather to suggest that their own view of the police function in preventing, responding to, and suppressing youth crime is somewhat more expansive than the traditional view of police merely as law enforcement agents.

Particularly in metropolitan jurisdictions, police officers tended to contrast unfavourably the perceived remoteness of the Crown and Youth Court, and the cumbersome and slow nature of their proceedings, with their own proximity to the reality of street crime, their own ability to deliver swift sanctions, and their familiarity with the circumstances and needs of individual young offenders. In rural areas and small towns, officers were more

likely to have closer working relationships with the Crown and court officials, and therefore more confidence in the ability of these agencies to resolve youth crime satisfactorily; and officers in rural/small town RCMP detachments in particular were more likely to have confidence in the ability of the local community and/or local diversion agencies to deal with young offenders, thus reducing their own felt need to resolve the situation entirely themselves.

On the basis of our discussions with police, it is possible to construct a list of the consequences, or sanctions, usually applied by police in dealing with a young person who they believe on reasonable grounds has committed an offence. From least to most severe, these are:

1. Take no further action.
2. Give an informal warning.
3. Involve the parents.
4a Give a formal warning; and/or
4b. Arrest, take to the police station, and release without charge.
5a. Arrest, take to the police station, and refer to pre-charge alternative measures; or
5b. Lay a charge without arrest by way of an appearance notice or summons, then recommend for post-charge alternative measures.
6. Arrest, charge, and release on an appearance notice, a summons, or (more commonly) a PTA without conditions.
7. Arrest, charge, and release on a PTA with conditions on an OIC Undertaking.
8. Arrest, charge, and detain for a JIR hearing.

(The severity of options 6, 7, and 8 could be mitigated by recommending post-charge alternative measures.)

Apart from these two main objectives – law enforcement and informal sanctioning – a third objective of police action arises from what police see as their crime prevention and social welfare responsibilities – responsibilities which in some cases they would prefer not to assume, but feel that they are forced to do so by the inadequacy of existing social services. On some occasions, police will refer a youth to a diversion program, not as a sanction, but in order to address the youth's perceived needs – whether these needs are directly related to the crime, or are seen as problems with which the youth needs assistance. Furthermore, when a youth has been arrested, an officer may feel, in some circumstances, that it would be irresponsible to release the youth back "out on the street", but is unable to contact the parents, or the parents are unable, unwilling or unsuitable to take custody, and no agency can be found that will take the youth in. Circumstances which are seen as involving a risk to the youth's well-being include intoxication, involvement in prostitution, or a dangerous home environment. In these circumstances, the officer feels constrained to detain the youth; and research on bail hearings suggests that the judge may then approve continued detention, also for welfare reasons. In many jurisdictions, police said that this expedient is forced on them by the lack of suitable facilities and agencies for youth.

Data from the UCR Survey show that the proportion of apprehended youth who were charged increased under the Young Offenders Act (YOA) – from an average of 55% during 1977-1983 under the Juvenile Delinquents Act (JDA) – to an average of 64% during 1986-2000; however, the proportion charged has been slowly declining from a peak in 1991 to 59% in 2000. The main reason for this increase under the YOA in the national level of charging of apprehended youth has been the enormous increase in charging in certain provinces, notably Ontario and Saskatchewan. Under the JDA, these two provinces had high levels of police discretion with youth; that is, low proportions of apprehended youth charged – less than 40% in Ontario and less than 30% in Saskatchewan – but they now rank second and third highest in the country in the proportions of youth who are charged. Because Ontario comprises such a large part of the population of Canada, the trend in that province has had a substantial effect on the national trend. Analysis of UCR data and interviews with officers suggest that the main reason for this increase in charging under the YOA is the reliance of these two provinces on post-charge Alternative Measures. The scant data available from the UCR2 Survey suggest that police in Ontario and Saskatchewan use informal action with youth-related incidents approximately as frequently as police in other provinces, but generally they are unable to pre-charge Alternative Measures.

On the other hand, the use of police discretion with youth in two other provinces – Quebec and British Columbia – has increased substantially in the past decade, with the result that they now have the lowest recorded proportion of apprehended youth charged. The decline in charging of youth in Quebec in the past decade has been particularly pronounced. We are unsure of all the reasons for this trend, but the most plausible explanation is the unique screening systems for charging youth which are in operation in those two provinces. In Quebec, the police recommendation to charge a youth is reviewed by the Crown, in the context of an integrated youth justice and social welfare system which emphasizes both law enforcement and the welfare of apprehended young persons. In British Columbia, a police recommendation to charge a youth is reviewed by the Crown, who makes the final decision. As a result of not "owning" the decision to charge, many officers in British Columbia indicated that they try to use informal action and pre-charge diversion wherever possible, in order to ensure that the young person will receive at least some "consequence" for his or her wrongdoing.

Many forms of informal action are open to an officer who has apprehended a youth – taking no action, informal and formal warnings, involving the parents, arresting and taking the youth to the police station and then releasing him or her, and informal referral to a program (i.e. without invoking Alternative Measures). The great majority of the officers and police agencies in our sample use informal action frequently with youth. At least in the larger police services, informal action is usually recorded in the police RMS when the incident has been reported to police by a member of the public (because a record is generated when the call is received by dispatch), but recording is much more variable if the incident is discovered by an officer in the field.

Almost all of the agencies in our sample use informal warnings, and one-third use various types of formal warnings. It is also common practice to take apprehended youth home

and/or involve the parents if possible. One-quarter of the sample said that one type of informal action which they use with a youth whom they have reasonable grounds to believe has committed an offence is to arrest and take him or her to the police station, then release without laying a charge.

Approximately half of the sample refer youth to pre-charge diversion programs, whether under the auspices of Alternative Measures or not. These programs are more available in cities: many smaller towns and rural areas have no such programs whatsoever. Although some officers remain sceptical about the value of pre-charge diversion and Alternative Measures, it appears that the great majority feel that they can play a useful role with some young offenders in some circumstances. In their view, diversion to a program or agency can be a much more effective way of dealing with a youth's perceived criminogenic problem than referring him or her to Youth Court; also, some see referral to Alternative Measures as a useful intermediate sanction, representing a consequence for the youth which is more severe than informal action, but less harsh than laying a charge.

By far the greatest source of dissatisfaction with AM programs which was expressed by interviewees is their unavailability. In many communities, the range of programs is inadequate; in many others, there are no programs at all.

A second deficiency of alternative measures which many officers identified is the lack of mechanisms to provide them with feedback on the outcomes of their recommendations – whether they were accepted, and whether the resulting placement was effective. In the absence of information, they can only speculate about the appropriateness and effectiveness of their past and future recommendations.

Although many officers were interested in discussing pre-charge diversion with us, and many had definite opinions on this subject, very few showed any such interest in discussing post-charge AM. Apparently, this is largely foreign territory for police officers: many said that this is entirely a matter for the Crown, and they did not offer input to the Crown on a decision which is entirely out of their hands.

In summary, pre-charge diversion and alternative measures seem to have been accepted by the great majority of police officers and police services as a very useful method of dealing with certain kinds of offending youth in certain circumstances. However, according to police whom we interviewed, the available facilities and programs are woefully inadequate.

Although the recorded rate of youth crime in Canada has not changed substantially in the past 20 years, there is one category of youth crime which has increased exponentially: offences against the administration of justice. Almost all of these are violations of bail or probation conditions and failures to appear for court. The recorded rate of bail condition violations and failures to appear by youth in 2000 was approximately 20 times as high as in 1983. In the year 2000, offences against the administration of justice accounted for 16% of all youth charged in Canada. In fiscal 1999/2000, administrative offences accounted for 27% of all Youth Court cases, and 40% of all custodial dispositions.

According to UCR statistics, police exercise less discretion with these offences than with any other offence except murder. When we asked officers why so little discretion is used with these offences, which are victimless and cause no harm except for expense and inconvenience to the justice system, they explained that many such cases are referred to them by other system agents – mainly the Youth Court or probation officers – and they feel they have no alternative but to comply with what they interpret as an implicit or explicit request to lay a charge. When police themselves discover a breach, they may well overlook it, unless there are aggravating circumstances. Often, for example, the breach is just the tip of the iceberg – the youth has a substantial record of prior offences, including prior breaches, and is on bail in multiple current cases before the court, and/or on probation for past offences. None of the officers whom we interviewed seemed to think that they could overlook a failure to appear: apparently (although this was by no means entirely clear to us), notification by the court of the failure to appear and of the subsequent issuance of a bench warrant is understood as a request for the laying of a charge. The epidemic of administration of justice offences in the youth justice system appears to be more a result of the way in which the Youth Court and probation systems define and enforce their orders, than of police decision-making. The one way in which police do seem to be contributing to this epidemic is in their decisions concerning conditions of release from custody (discussed below). In some circumstances, police will impose, or seek to have imposed, intrusive conditions which may inadvertently "set the youth up for failure". This is particularly a concern with intensive supervision programs for high-risk youth, such as SHOP and SHOCAP, which rely on bail (and probation) conditions such as a curfew to give police the opportunity to monitor the lifestyle of the youth.

Possible methods of compelling the appearance of a youth (or adult) in court include: the summons and appearance notice, which can be used either instead of arrest, or as a method of release after arrest; and release on a Promise to Appear (PTA), with or without an Undertaking involving conditions. Theoretically, police can also release a young person on a Recognizance, but this is apparently never done.

The use of the summons or appearance notice without arrest would seem to be particularly desirable with young offenders, because of the non-intrusiveness of these measures. However, they are in fact rarely used. Several reasons were offered by police. The main reason appears to be that when an officer contemplates laying a charge or referring to pre-charge Alternative Measures, s/he needs to provide enough evidence to the Crown that a prosecution would be feasible (whether or not a prosecution actually takes place). This would typically involve establishing identity, taking a statement, possibly fingerprinting, possibly notifying the parents, and completion of one or more forms, all of which can be done much more satisfactorily in a police station than in the street or police car. Another reason is that arresting the youth and taking him or her to the police station prior to laying a charge are seen by some officers as ways of impressing the seriousness of the situation upon the youth, who might not take a summons or appearance notice as seriously. Related to this is the perceived necessity, in some circumstances, of establishing control of the situation, and of separating the youth from

his or her peers, in order to elicit cooperation. A final reason is the difficulty, in some circumstances and jurisdictions, of serving a summons.

Following arrest and temporary custody, most officers prefer the Promise to Appear to the summons or appearance notice as a method of release. The main reason is that the PTA can be accompanied by an Undertaking which specifies conditions of release. Many officers seem to attach considerable significance to the conditions contained in an undertaking. They see these conditions as relatively precise, immediate, enforceable constraints on the young person's future behaviour, and immediate, concrete consequences (sanctions) for the youth's criminal act. These are contrasted with what they see as the remote, delayed, unpredictable, and perhaps inappropriate constraints and sanctions which may (or may not) be imposed eventually by the Youth Court and correctional system.

The final, and by far the most intrusive, option for compelling appearance is detention for a Judicial Interim Release (JIR) hearing. The reasons given by police officers for detaining youth fall into three broad categories. The first includes reasons related to law enforcement, narrowly defined, such as establishing identity, protecting evidence, ensuring attendance at court of a youth whom police have reason to believe would not otherwise attend, and preventing a repetition of the offence. The second group of reasons could be summarized as "detention for the good of the youth". These include detaining youth who are intoxicated, who do not have a safe or secure home to be released to, and whom social services will not or cannot accommodate, or who are prostitutes. In these cases, police find themselves acting, not as law enforcement officials, but as staff of the "only 24-hour emergency service in town". The third type of rationale treats detention as another kind of police disposition – that is, as another in the repertoire of measures which police can take in order to administer a sanction or "meaningful consequence" for a youth's illegal behaviour. This view seems to underlie some officers' statements that they will detain a repeat offender or a youth with multiple breaches, or a youth with a "bad attitude", or a youth in a gang-related incident. A variant of this is the use of detention and the JIR hearing to get judicial bail conditions, in order to impose immediate control on the young person, and, in some cases, to facilitate the work of monitoring programs for high-risk youth, such as SHOP and SHOCAP.

2.0 Environmental factors influencing police discretion with youth

Two major sources of influence on the way in which officers exercise their discretion are the environment in which the police agency is situated, and the way in which the agency is organized. Police agencies operate within a complex environment, consisting of, among other things, the nature of the local community, federal and provincial legislation, policies, procedures, and programs, local public and private resources, and public opinion. The police have little or no control over their environment. Nor can any federal

or provincial government agency expect to have much immediate impact on some salient aspects of the policing environment, such as the degree of urbanization, socio-demographic characteristics, or the level and type of crime of the communities which police serve. However, it is certainly within the power of provincial governments to affect other aspects of the policing environment which affect the exercise of police discretion, namely the relationship of Crown prosecutors with the police, and, above all, the availability of programs to which youth can be referred as an alternative to being charged (and, on occasion, held in police detention).

The availability of external resources to which apprehended youth can be diverted is seen by many police officers as crucial to their ability to avoid laying a charge. This availability varies widely. They are much more common in metropolitan jurisdictions than in suburban/exurban communities or, especially, rural communities and small towns. However, they are seen by officers as inadequate in all types of communities and all parts of Canada. In all provinces and territories, officers felt that they did not have the appropriate external resources for the effective handling of youths with alcohol or drug addiction, anger management issues, or mental illness (including Fetal Alcohol Syndrome/Fetal Alcohol Effect). Officers in many police agencies said that there were absolutely no programs available for young people with these problems. Lack of suitable diversion programs is associated with increased use of charging, and with increased use of detention. When there is no available agency to which police can release a youth in need of immediate supervision or intervention, then they sometimes feel constrained to hold the youth for a bail hearing.

We looked at several characteristics of the community in which the police work. Some research, especially in the U.S.A., has found that urbanization is associated with higher crime rates and higher levels of formal action by police; whereas, there is less crime and a more neighbourly atmosphere in rural areas and small towns, and a corresponding less formal policing style. In Canada, there is no relationship between urbanization and the crime rate. Crime rates in small places are as high as those in the largest cities. However, youths commit more serious violent crime and property crime, and more gang-related crime, in metropolitan areas. Another major difference between the Canadian and American situations is that most rural areas and small towns in Canada are policed by detachments of three very large, professional, and bureaucratic police services – the RCMP, OPP, and Sûreté du Québec; whereas, in the U.S.A., small towns and rural areas are often policed by elected sheriffs or small-town police forces recruited locally. The findings from the interview data suggest a different style of policing in rural and small town areas, and also some differences between policing in urban centres and their suburban and exurban fringes. Rural and small town communities have a distinctive social climate that appears also to influence police decision-making. With a higher density of acquaintanceship, rural and small town officers feel more accountable to the community. On the other hand, detachment commanders in the RCMP and OPP are accountable to their superiors, and, ultimately, to headquarters in Ottawa or Orillia. Rural and small town officers whom we interviewed – whether in independent municipal agencies, or RCMP or OPP detachments - suggested that the communities they police want the police to be tough on youth crime but not to incarcerate their youth. Officers in

rural areas and small towns appear to make more use of informal action, but less use of pre-charge diversion, than officers in metropolitan and suburban jurisdictions. Rural/small town and suburban/exurban jurisdictions are particularly likely to have no external agencies to which police can divert youth: almost half of the officers whom we interviewed in non-metropolitan communities said that they are *never* able to make referrals to external agencies. Officers in rural/small town communities and in suburban/exurban communities are more likely to use a summons to compel appearance, because they do not face the same problems of serving it as do officers in larger centres; and officers in rural areas and small towns are less likely to detain a youth for a JIR hearing, because the distance to the nearest youth detention facility makes access problematic, both for the police and for the youth's family.

Concerning the level of youth crime in the community, 29% of police services said they had "a lot", 17% said "not very much", and the others indicated "a normal amount". Perceived high levels of youth crime are more common in the Prairies and the Territories, and in metropolitan areas. UCR data indicate that police agencies in communities which police said had "not very much" youth crime have higher rates of charging apprehended youth than others. These are confirmed by data from the interviews, which suggest that police officers tend to use more discretion if they identified their jurisdiction as having a lot of youth crime. They are more likely to use various forms of informal action and pre-charge diversion, and they are more likely to detain for a JIR hearing and to cite "legalistic" rather than social welfare reasons for detention.

When we asked about the types of youth crime which are characteristic of their jurisdictions, officers in most police services reported, not unexpectedly, that they deal with high levels of minor property crime and minor assaults. Three-quarters of the police agencies also perceive high levels of serious property crime by youth, especially break and enter. One-quarter identified a problem of serious violent youth crime. These were more prevalent in metropolitan areas and in the Prairie provinces. One-quarter identified a problem of youth gangs; these were also more common in metropolitan areas and the Prairies. Surprisingly, 80% of the police services in the sample perceive a serious problem of drug-related crime among youth in their jurisdictions. These are spread across all the provinces and territories, and in all types of communities, although they are slightly more prevalent in the Territories, and in metropolitan jurisdictions. 14% of the police services, all but one in metropolitan jurisdictions, identified a problem of teenage prostitution. We found no significant relationship between the types of youth crime identified in a jurisdiction, and the exercise of discretion with young persons in that jurisdiction.

The literature on the history of police-aboriginal relations in Canada suggests that they have been characterized by conflict and mutual distrust. 42% of the agencies in the sample said that they have jurisdiction over significant populations of aboriginal peoples, living either on- or off-reserve. They are more prevalent in the Territories, British Columbia, and the Prairies. The UCR data indicate that police services which police *off-reserve* aboriginals have rates of charging apprehended youth which are a little higher than other police agencies. The interview data indicate that police agencies with

jurisdiction over aboriginal populations are slightly more likely than other police services to use informal action, twice as likely to refer youth to a Restorative Justice program, less likely to use summonses or appearance notices, more likely to use a Promise to Appear and an OIC Undertaking, and more likely to detain for a JIR hearing because the youth is a repeat offender, is intoxicated, or for the youth's safety.

The characterizations by respondents of police-community relations in their jurisdictions are consistent with the results of previous research. About two-thirds of respondents found the community to be generally or very supportive of the police; one-quarter offered fairly neutral or mixed assessments, and 14% found the community to be only "somewhat" or "not" supportive. Police in suburban/exurban jurisdictions were most likely to find the community generally or very supportive; those in rural/small town agencies were slightly more likely to find the community generally or very supportive than those in metropolitan agencies. Police in British Columbia and the Prairies, and those which have jurisdiction over a significant aboriginal population, are less likely than other officers to find the community generally or very supportive. We found no relationship between the exercise of police discretion with youth and the perceived level of community support.

3.0 Organizational factors influencing police discretion with youth

Analysis of the organizational characteristics of police agencies, and their influence on the exercise of discretion with youth is particularly germane to the objectives of this research, because almost all aspects of police organization are mutable. Police forces which want to modify the ways in which their members exercise their discretion with young offenders, in order to conform to the specific provisions and general intent of the YCJA, can effect change to most of the aspects of police organization and culture which are identified here as affecting the exercise of discretion – although organizational change can be difficult and fraught with risks and unanticipated consequences. Presumably, federal and provincial policy-makers in the areas of policing and youth justice can play a role in encouraging such changes.

Probably the most salient aspect of the police organization is whether or not it has a youth squad (or dedicated youth officers, i.e. officers assigned exclusively to youth-related duties). Only 17 of the 92 police services in our sample have a youth squad or dedicated youth officers. These are all independent municipal police services, and 14 of them have more than 100 officers. They are mainly located in metropolitan areas, especially in Ontario, Quebec, and British Columbia. It is difficult for smaller police services and detachments to dedicate one or more officers exclusively to handling youth crime. Some smaller police services and detachments have officers who specialize in youth-related incidents, but who also do other kinds of police work. It appears that the use of youth squads and dedicated youth officers by Canadian police services has diminished

considerably since their heyday in the 1970's, and that this is probably largely due to financial stringencies during the 1990's.

Our data suggest that police services with youth sections and/or dedicated youth officers respond differently to youth-related incidents. It appears from the interview data that police services with youth sections or dedicated youth officers make more use of parental involvement, referrals to external agencies and pre-charge diversion, and less use of formal charges. Analysis of UCR data confirms that the overall use of formal charges is lower (Table IV.6), and the limited information from the UCR2 Survey suggests that the use of informal action is greater. They are more likely to use the less intrusive methods of compelling appearance, except that they tend to use more restrictive conditions with OIC undertakings and are more likely to use detention, like the conditions of release, as a means of addressing what they see as the criminogenic conditions of the youth's life. Many innovative programs are developed by youth officers, and they are able to involve themselves proactively with youth in the community within a primary, secondary or tertiary capacity. Youth officers acting as follow-up and as a resource to patrol officers facilitate the gathering of intelligence and an increased knowledge of alternatives to formal youth court. In a sense, the existence of a youth squad – just like the existence of a homicide or armed robbery unit - is an indication that the police service recognizes the unique nature of this particular kind of crime, and places priority on developing specialist expertise in responding to it.

83% of police agencies in the sample have School Liaison Officers (SLO's), but only 40% assign enforcement duties (response, investigation and disposition) to their SLO's – in the other police services, the role of the SLO is restricted to making crime prevention presentations in schools. SLO's, especially with enforcement duties, are more common in larger police services, presumably because of resource considerations. UCR data suggest that the presence of SLO's, especially SLO's with enforcement duties, slightly reduces the use of charging with young offenders. The interview data suggest that police agencies which have school liaison officers, especially SLO's with enforcement duties, appear to use less intrusive means of dealing with youth crime: they are more likely to use informal action, less likely to lay charges, bring the youth home or to the police station for questioning, more likely to make referrals to external agencies, more likely to use pre-charge diversion, and more likely to use appearance notices to compel attendance at court.

Community policing can be seen as having four dimensions: philosophical, strategic, tactical, and organizational. The strategic dimension of community policing comprises the adoption and public promulgation of written policies and protocols for all aspects of policing, and the allocation of significant resources to community policing. According to the officers whom we interviewed, 22% of the police services in the sample have implemented the strategic dimension by allocating significant resources to community policing. This is considerably less than "virtually every" police force in Canada, which, according to Horne (1992) had adopted the rhetoric of community policing. Analysis of UCR data suggests that police services which have allocated significant resources to community policing have lower charge rates than those which have not. Analysis of the

interview data suggests that police services which have allocated significant resources to community policing use more informal action, make more referrals to external agencies, use more pre-charge alternative measures, and more PTA's to avoid detaining the youth, or "as a higher consequence" for the youth.

The tactical dimension of community policing includes involvement in crime prevention programs and the adoption of the problem-oriented policing (POP) model. Every police agency in the sample is involved in crime prevention programs, but the degree of involvement varies considerably. Analysis of UCR data suggests that agencies with a higher level of involvement in crime prevention programs tend to have a lower rate of charging, especially in communities with high levels of youth crime. The interview data suggest that more involvement in crime prevention programs is associated with more use of informal action. Adoption of the problem-oriented policing (POP) model does not appear to have a large impact on decision-making with youth.

About half of the sample was able to provide documentation on policies and protocols for handling youth-related incidents and young offenders. However, only 13% of officers whom we interviewed found their organizations' policies and protocols helpful, and only 2% found them to be realistic. Analysis of UCR data shows that police services which have youth-related policies and protocols charge, on average, 5% fewer apprehended youth. The interview and documentary data indicate that police services which have youth-related policies and protocols tend to make more use of pre-charge diversion, and of appearance notices. Many differences appear between officers who do and do not find these policies and procedures helpful and/or realistic. Those who find them helpful or realistic are more likely to use various forms of informal action, referrals to external agencies, pre-charge diversion, and appearance notices; and to "follow the law" and not to invoke social welfare considerations, in making detention and release decisions.

In examining what officers had the authority and responsibility to lay a charge (or recommend a charge, in Crown screening provinces) against a young person, we found two common models: front-line autonomy, and front-line initial decision with review by another officer(s). Analysis of UCR data suggests that the impact of the procedural model for charging varies, depending on whether the police service has a youth squad or not. The model which is associated with the lowest charge rates is front-line autonomy in a police service which has youth specialists. The model associated with the highest charge rate is front-line autonomy with no youth specialization. The implication is that front-line autonomy results in greater use of discretion not to charge young persons *if* the front-line officer has training to deal with youth, or if the police service is committed to using discretion with youth, as indicated by its establishment of a youth squad. If there is no youth specialization, or commitment to special treatment for youth, then autonomy appears to result in front-line officers using their discretion *to lay charges* against youth. Thus, in a police agency without youth specialization, it is the review by another officer, whether supervisor or GIS, which appears to moderate the tendency of front-line officers to lay charges. The interview data suggest three themes. First, the likelihood of police officers using informal action with young offenders is higher in police services where front-line officers are autonomous, and where there is a commitment to the use of

discretion with youth. Second, agencies in which there are no dedicated youth officers, and front-line officers decide alone on the disposition of youth-related cases, tend to use referrals to external agencies and pre-charge diversion less, and lay charges more, than agencies in which a supervisor or youth specialist is involved in the decision. Finally, autonomous patrol officers appear to use less intrusive measures to compel the attendance of a young person in court. In cases where they *do* detain a young person they tend to do so as a result of stipulations within departmental policy.

We assessed the impact of proactive versus reactive policing in relation to individual officers, rather than trying to characterize an entire police service as proactive or reactive. 40% of officers said their work was mostly reactive, 9% said it was mostly proactive, and 51% said that their work involved "a bit of both". Officers whose work is mostly proactive are more likely to use informal action, less likely to use formal charges, less likely to detain youth for a JIR hearing, but more likely to use more intrusive conditions on release Undertakings.

The degree of centralization of a police organization refers to the extent to which central management retains control of day-to-day decision-making by its divisions. In principle, decentralization should increase the opportunities for the exercise of discretion by individual officers. Our interview data suggest that decentralized police agencies use more informal action, more pre-charge diversion, more Promise to Appears (PTA's), more conditions on release Undertakings, and more detention for JIR hearings. Analysis of UCR data found no differences between centralized and decentralized agencies in the level of charging of apprehended youth, when other related variables, such as the type of policing and community, were controlled.

The size (number of officers) and degree of hierarchy (number of ranks) of the police services and detachments in our sample varied substantially: from 2 to more than 5,000 officers, and between 1 and 12 ranks. In principle, size and vertical differentiation should have considerable impact on the way in which members do their work. However, we were unable to assess their impact on police decision-making, because we could not distinguish their effects from the effects of the size of the community, with which both variables are very strongly correlated.

4.0 Situational factors influencing police discretion with youth

Most research on police decision-making with youth has been restricted to analysis of the impact of factors specific to the individual incident and apprehended youth on the decision whether to charge (or to arrest, in most American research). Our main source of information about these factors was the views expressed by officers in interviews, but these were complemented wherever possible by statistical analysis of data from the UCR2 Survey.

Both sources of data confirmed that the "legal" factors of the seriousness of the offence (including its Criminal Code classification, the presence and type of weapon, and harm done to the person or property of a victim) and the youth's criminal history are by far the

most important determinants of the officer's decision whether to lay a charge or resolve the incident otherwise. Almost every respondent identified seriousness and prior record as major factors in their decision-making. However, these apparently simple relationships become more complex when examined more closely.

The relationship between the type of offence and the likelihood of charging is by no means a simple question of "seriousness". Less discretion is exercised with offences against the administration of justice than with any other offence except homicide and attempt murder – although administrative offences have no victim and cause no harm, except expense and inconvenience to the justice system. If discretion varies inversely with seriousness of the offence, then possession of stolen property is more serious than abduction, major assaults, drug trafficking, break and enter, and sexual assaults; impaired driving is more serious than break and enter, sexual assaults, and sexual abuse; arson is less serious than almost any other offence; and violent crimes, as a group, are slightly less serious than victimless crimes. Clearly, there is *some* relationship between the seriousness of the offence and the amount of discretion exercised by police, but the relationship is not straightforward.

The issue *is* more straightforward with respect to weapons and harm to a victim. Both the interview data and the UCR2 data confirm that a charge is much more likely if the youth was carrying a weapon, especially a firearm (which is very rare), or if a victim suffered significant harm to person or property.

The interview data and the UCR2 data also make clear that the youth's history of previous criminal activity – whether indicated by prior apprehensions by police, prior referrals to Alternative Measures, prior charges, or prior convictions – has a very strong influence on police discretion. Our analysis of UCR2 data found that the number of prior apprehensions of the youth – regardless of their outcome – is the strongest single predictor of the decision to charge.

After the seriousness of the offence and the youth's criminal history, the interview data indicate that the strongest influence on the decision to charge is the youth's demeanour – both his/her "attitude" and the extent of his/her cooperativeness when apprehended and processed. Approximately three-quarters of the respondents identified demeanour as a factor or major factor in their decision-making. Officers stressed the importance of the youth's accepting responsibility for his/her wrongdoing, and their willingness to "give him a break" when remorse and respect for the law were expressed. They also repeatedly referred to "accepting responsibility" as a criterion of eligibility for Alternative Measures.

According to the interview data, the next most important factors in the decision to charge are the victim's expressed dispositional preference, the extent and nature of parental involvement (whether parents appeared to be willing and able to take custody and control of the youth, and whether they expressed an appropriate attitude to their child's wrongdoing), and the stability of the youth's home and school situations. Approximately one-half of the respondents identified these as factors or major factors in their decision-making.

40% of respondents mentioned whether the crime was gang-related, and 22% cited the youth's gang affiliation, as factors or major factors in their decision-making. These officers were much more likely to be in metropolitan police services and/or communities with an identified problem of youth gangs.

Both the interview data and the UCR2 data identified the youth's age as a factor, although the results of analysis of the UCR2 data were stronger than the views expressed by interviewees. Only 28% of interviewees said that the youth's age was a factor or major factor in their decision-making. However, analysis of UCR2 data found that an apprehended 17 year old youth is 50% more likely to be charged, even when other factors such as the seriousness of the offence and his/her criminal history are controlled.

According to the interview data, some other factors play a minor or secondary role in the police decision to charge: whether the incident involved one or more offenders, the location and/or time of day, whether the youth was under the influence of alcohol or drugs, any relationship between the youth and a victim, and whether an adult co-offender as involved. The impact of two of these factors was also analyzed with UCR2 data, and both were found to have a minor effect. A lone offender is somewhat more likely to be charged than one apprehended with accomplices. Youths whose victims are a parent or stranger are more likely to be charged than those whose victims are siblings, friends or acquaintances, even when other related factors such as the type of offence are controlled.

The type of victim (person or business) and the youth's gender and race play little or no role in the decision whether to charge, according to officers interviewed. Analysis of UCR2 data confirmed that the youth's gender plays no role, but suggests that aboriginal youth are substantially more likely to be charged, even when other related factors are controlled.

We compared the views of officers from different parts of the country, different types of communities, and in different functional assignments. The most striking result was the consistency of views across all officers (and the consistency of the interview data with the results of statistical analysis of UCR2 data, and, indeed, with most previous research, in Canada and in other countries). However, there were differences in emphasis related to the region of the country, the type of community, the level and types of youth crime with which the police service was dealing, and whether the respondent was a member of a youth squad or was a School Liaison Officer.

5.0 Implications for implementation of the YCJA

Our commission did not include making recommendations to the Department of Justice – much less to police - concerning the implementation of the YCJA, and we have not done the kind of thorough analysis of the provisions and intent of that legislation which would qualify us to make recommendations. However, even with our limited knowledge of the statute, some implications of our findings seem so obvious that they bear repeating.

Our research suggests that the main impediment to police diversion of apprehended youth is the lack of suitable programs. The YOA set out an elaborate system of diversion - Alternative Measures – and invited its widespread use with youth, but to a considerable extent it appears that the invitation has not been accepted by the authorities responsible for implementing diversion programs. The great majority of police officers whom we interviewed believe that informal diversion and Alternative Measures are potentially valuable responses to youth crime, but many officers are unable to use them at all, and practically all officers are unable to use them as much as they would like to, because of their unavailability. Thus, they feel that they have no alternative but to lay a charge in circumstances where mere informal action is, in their view, an inadequate response.

At least from the point of view of the police whom we interviewed, post-charge diversion programs are not an attractive alternative. They have little input to the post-charge diversion decision, and are ignorant of its outcome. It is paradoxical to them that they have to lay a charge in order to divert the youth. Our analysis of statistical data lends support to the commonsense view that post-charge alternative measures result in net-widening: increasing the use of formal sanctions.

Apart from diversion programs per se, social programs which can offer help to youth in need or at risk are, according to many of our respondents, woefully inadequate. In the absence of these programs and agencies, police officers sometimes find themselves in the position of surrogate social workers, seeing no alternative to the use of their powers to arrest, charge, and detain youth whose main needs appear to be for protection and assistance, not criminal sanctioning.

Concerning informal action, our conclusion from this research is that it is, and always has been, widely used by police with apprehended youth, and will continue to be under the new statute. However, there is room for a huge expansion in its use. Under the Juvenile Delinquents Act, many police services used informal action with three-quarters or more of apprehended youth. According to UCR statistics, quite a few police services and detachments in Canada, particularly in Quebec and British Columbia, currently charge only 20-30% of apprehended youth. In this respect, the YOA was, in principle, a revolutionary statute, because it explicitly authorized the use of police discretion with youth: to take “no measures” or “measures other than judicial proceedings”. Statutory recognition of police discretion was revolutionary because – in principle – it exploded the “myth of full enforcement”: the myth, in which much of the public and many police officers continue to believe, that it is the responsibility of the criminal and juvenile justice systems to prosecute all violations of the law, and that failure to do so can only be justified by lack of resources. Under the myth of full enforcement, the use by police of their discretion not to charge is seen as an undesirable expedient which is best concealed behind a discreet curtain of obfuscation. The persistence of this uneasiness can be seen in the joke which we heard repeatedly when we introduced our research to police officers: “Discretion? What discretion?” – or, “Discretion? We don’t have any.” To some extent this joke is simply a wry reference to the various constraints which police experience in doing their work, but we believe that it also refers to the preference of many officers to

minimize the extent of their power not to charge. This uneasiness with the term "police discretion" can be attributed to two sources: first, the perceived desire on the part of the public for full and vigorous enforcement of the law, and second, the ever-present danger that discretion will be used, or be seen to be used, in a discriminatory way. It seems to us that the implementation of the YOA was singularly unsuccessful in legitimating, for both the police and the public, the use by police of informal action with youth. Most police officers continue to see informal action (and pre-charge diversion) as "giving the kid a break", rather than as a legitimate law-enforcement response to a violation of the law. Thus the importance of the record of prior apprehensions: a kid who has received one break doesn't deserve another. Therefore, it seems to the authors that the implementation of the YOA largely failed to achieve in practice what it did in principle: to encourage the expanded use of informal action by police.

The YCJA appears to take this "revolution in principle" a step further, by requiring police to consider informal action with apprehended youth, and by making it presumptive with non-violent first offenders. However, it seems to us that a major educational campaign will be needed to persuade the police, other system agents, and the public that informal action is a fully legitimate and appropriate response to juvenile lawbreaking – just as legitimate and appropriate, in some circumstances, as referral to a program or to court.

We paid a great deal of attention in Chapter II to the epidemic of cases involving administration of justice offences by young persons, since they are subject to such low levels of police discretion. Another revolutionary aspect of the YCJA, in our opinion, is its preference for the use of alternatives to laying a charge in cases of a breach of a probation order – either through extrajudicial measures or an application for a review of the order under Section 59. In cases of failure to appear, it appears that police will no longer be able to find that their discretion is inapplicable, since they will be required to "consider" extrajudicial measures – i.e. using their discretion - before laying a charge. However, as with the use of informal action by police, it seems to us that the implementation of this new way of thinking about administrative offences will require a major effort. It will also be interesting to see how the programs for monitoring of high-risk offenders, such as SHOP and SHOCAP, deal with this challenge to what is one of their major monitoring tools and sources of leverage with their clients.

Concerning the process of laying a charge, we have noted at several points in this report that the two provinces in which police said that the Crown screens their recommendations to charge – Quebec and British Columbia – also have the lowest recorded rates of charging of apprehended youth in the country. Can this be merely a coincidence? It seems not, from the comments of many officers in British Columbia. They told us that they find the system of Crown screening of their recommendations to charge so frustrating that they prefer, wherever possible, to use informal action or pre-charge diversion (not Alternative Measures). The rather perverse implication of this is that one way to reduce the use by police of formal charges is to make the procedure frustrating so that they avoid using it.

Concerning organizational influences on the use of police discretion with youth, our findings suggest that police services which want to increase their use of informal action and of pre-charge diversion, and to reduce the use of intrusive methods of compelling appearance, might consider any of the following measures: wholehearted adoption of the community policing model, in all its dimensions, including a fundamental organizational redesign and philosophical reorientation, the allocation of significant resources to community policing, increased involvement in crime prevention programs, especially in high-crime communities, and the adoption of the POP model by all ranks; creation of a youth squad, or at least one or more officers who specialize in youth crime; adoption of explicit policies and protocols for handling youth crime and young offenders; provision of training in handling youth crime to all front-line officers, and then allowing them to have autonomy in deciding how to dispose of youth-related incidents; assigning investigative and enforcement functions to SLO's who currently are limited to making presentations in schools; increasing the use of proactive policing; and decentralizing decision-making in the organization.

However, once again, we must emphasize that organizational innovation does not take place in a vacuum. Many police managers are perfectly aware of the value of a youth squad, enforcement SLO's, etc., and many police services used to have youth squads, but they were abandoned under the pressure of financial stringency during the 1990's. When money is tight, all sorts of innovative programs are abandoned, and the organization must concentrate on its core activities. The core activities of the police, in the view of most police officers and most members of the public, are routine patrol, and responding to calls for service, i.e. reports by the public of a crime. Police services operating on restricted budgets will give up almost any other activity before these. In this, they can probably count on the support of the public. Therefore, if the various organizational innovations detailed above are to be adopted, a police service must not only receive funding for that innovation, but it must also be assured of an adequate base budget – because if the base budget for traditional policing functions which are expected by the public is inadequate, then inevitably ways will be found to divert the funds for innovation to what are seen by all as core activities.

Our analysis of situational factors in police decision-making has at least one implication for the implementation of the YCJA. This concerns the paramount importance to police of the record of the youth's previous apprehensions, whether or not they resulted in a charge or a conviction. Currently, the recording by police of informal action is quite variable. If one aspect of the implementation of the YCJA is going to be a significant improvement in the recording of informal action, in order to track its use and effectiveness, this may well have the effect of increasing the information available to police on a youth's previous criminal activity – and this may result in an increase in charging. To put it differently, the statutory recognition of what was previously "informal" police action may, implicitly, raise its status to that of "semi-formal" or "formal" action, with a corresponding increase in its influence on a subsequent police decision to charge.

Thus, provisions of the YCJA which were intended to reduce charging may have the unintended consequence of increasing it. This does not seem so far-fetched if one considers some of the totally unanticipated consequences of the YOA: an increase in police charging and an increase in the courts' use of custodial dispositions. One of the authors of this report did research some years ago on the factors affecting dispositions in Youth Court, and found that the youth's prior record was the principal predictor of a custodial disposition; an implication of that research was that part of the reason for the increase in custodial dispositions might simply be improved record-keeping by the Youth Courts. In a similar vein, we note that the police services studied by Black & Reiss in the 1970's did not have the advantages of today's sophisticated Records Management Systems, and patrol officers in the field did not have effective access to the records of youth whom they encountered: therefore, the youth's prior record could not play a role in their decision. Today's patrol officers have computers in their cars, and instant access to whatever information is in the RMS.

6.0 Implications for future research

In this section, we suggest several research initiatives which we believe would be valuable contributions to the evaluation of the impact of the YCJA.

6.1 A pre-post evaluation of the impact of the YCJA

One of the main objectives of the present study was to provide baseline data on the exercise of police discretion with youth, so that the impact of the YCJA on police discretion could be evaluated by collecting comparable data in a few years time, and analyzing any changes that had taken place. Such a study should collect qualitative and quantitative data on all aspects of police discretion with youth, and on organizational characteristics of police services and their environments, as the present research has done. The proposed research should also repeat our analysis of situational factors influencing police discretion, in order to see if any changes have occurred.

Such a study could replicate the methodology of the present study, or it might be possible to collect the data which we obtained through face-to-face interviews by telephone interviews or perhaps even mailed questionnaires. These more streamlined methods might be feasible because the present study has defined the issues, and has developed a set of standardized answers to all of the questions which we asked. (All of our questions, except those concerning the impact of various situational factors, were open-ended, i.e. we simply asked the questions and recorded the answers, which were classified and coded later; in many cases, it was not so much a matter of question and answer as of introducing a topic and recording and later coding the ensuing discussion.) However, it is our strong impression that a principal reason for the incredible cooperation which we received was that we made a visit to each police service and conducted face-to-face interviews. Telephone interviews or mailed questionnaires might result in a much lower

degree of participation, and much less complete data from each participating police service. The follow-up study would also analyze data from the UCR and UCR2 Surveys, and would benefit, hopefully, from improvements in the UCR2 Study (see below). Such a follow-up study could be conducted in late 2004 or, preferably, in 2005 after the YCJA has been in effect for two full years; one factor which might affect the timing would be the availability of UCR2 data for an expanded sample of police agencies (see below).

6.2 A baseline file study of police discretion under the YOA

One of the major lacunae of the present research is the lack of quantitative data on various aspects of police discretion, such as informal warnings, formal warnings, arrest, etc. Although we have been able to report the percentage of police services which use such forms of discretion "usually", "always", etc., we have been unable to report precisely what proportion of their youth-related cases are handled by each of these methods.

As is explained above, it was not possible, for various reasons, for us to obtain this kind of information on individual (or aggregated) young offender cases from police hardcopy files or Records Management Systems. Such baseline information for the sample of police services which we studied, or a comparable sample, would be enormously useful in a later evaluation of the impact of the YCJA, assuming that comparative data could again be collected in the follow-up evaluation study. We therefore suggest that the possibility of a file study be revisited.

6.3 A "best practices" study of police discretion under the YCJA

Because the present study was designed as a exploratory survey, that is, a study of a relatively large representative sample of police services, with a somewhat open-ended set of questions, we were not able to study any one police service in much depth. However, it was quite evident that some police services have already implemented, or are in the process of implementing, many of the structures and processes which we believe will result in greater use of police discretion with youth. It would be valuable to do in-depth study of a small number - perhaps six - of these police services, in order to evaluate more carefully the impact of these various organizational factors. Such information could be useful both to policymakers and to management of other police services.

6.4 A study of the processing of administrative offences under the YCJA

We have referred repeatedly in this report to the epidemic of offences against the administration of justice committed by young persons, and the apparent inability of the current system to deal with them constructively. We have also alluded to the view taken

by most police officers that they have very little discretion when a request, whether explicit or implicit, to lay an administrative charge comes to them from another system agent. We also reported that we were unable to clarify the process by which a youth's failure to appear in court leads to the laying of a charge by police, who apparently feel that in this situation they have no discretion because of the wishes of the judge.

Because of the enormity of the problem of administrative offences, it might be worthwhile to devote a separate study to a close investigation of the respective roles of police, judges, and other system agents such as probation officers, in the genesis of administrative charges. Such a study would also monitor the implementation of the provisions in the YCJA for nonjudicial responses to administrative charges, and the impact of these provisions.

6.5 Improvement of the UCR2 Survey

In principle, the UCR2 Survey should be an enormously useful tool for monitoring the implementation of the YCJA and evaluating its impact. The UCR2 has two data elements which capture the use of police discretion. One is the clearance status of each incident, coded as cleared by charge, or cleared in several other ways, some of which are forms of police discretion, and one of which captures referral to diversion programs. The other element is the clearance status of each apprehended person, which is currently coded as charged or processed otherwise. It is our understanding that these codes may be expanded somewhat to capture the new provisions of the YCJA.

However, the UCR2 is currently of extremely limited use in monitoring the use of police discretion in Canada, and its correlates. As a research tool for studying police discretion in Canada, it suffers from two crippling deficiencies. The main one is the non-participation of a large number of police services. Although the UCR2 for 2001 included 59% of incidents in Canada, its coverage is concentrated in Quebec, and, to a lesser extent, Ontario. It included only 1 police agency in British Columbia, 4 in each of Saskatchewan and Alberta, etc. Since the RCMP does not participate, there is practically no information on policing in small towns and rural areas outside Ontario and Quebec. Even in Ontario, only 13 municipal agencies and the OPP report to the UCR2, leaving numerous towns unrepresented. Until at least the RCMP, and preferably many more municipal agencies report to the UCR2, it will be all but useless for portraying the national situation.

The second deficiency is specific to the two elements described above: the clearance status of incidents and of apprehended persons. Some police services which report to the UCR2, including some very large police services, provide information on few or no incidents or persons which are cleared other than by charge. Thus, according to their UCR2 returns, they lay a charge in approximately 100% of incidents, and against approximately 100% of apprehended persons. This makes the information in the UCR2 for these police services useless in the study of police discretion. It is also possible that other police services substantially under-report incidents and persons cleared otherwise,

thus inflating their charge rates. Until the non-reporting problem is cleared up, the effective coverage of the UCR2, for purposes of the study of police discretion, is even less than its limited overall coverage. Furthermore, until the problem of under-reporting is resolved, statistics derived from the UCR2 on the extent of use of informal action and of pre-charge diversion will always be viewed with scepticism. This is a great pity, because in principle it is infinitely preferable to have quantitative data on police activity collected every year on a routine basis by a professional data collection agency, which can guarantee confidentiality under the Statistics Act, to having to collect it oneself on a one-shot basis, at great expense, and entirely dependent on the willingness of police to cooperate.

Any investment made now in immediate improvement of both the coverage and the data integrity of the UCR2 should provide large dividends to research on all aspects of police work under the YCJA, in the coming years