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THE YOUTH CRIMINAL JUSTICE ACT: SUMMARY AND BACKGROUND

Introduction

On February 4, 2002, the House of Commons passed Bill C-7, the *Youth Criminal Justice Act* (YCJA). The new law replaces the *Young Offenders Act* (YOA) and is proclaimed in force on April 1, 2003, following a period of preparation for its implementation. The YCJA builds on the strengths of the YOA and introduces significant reforms that address its weaknesses. The YCJA provides the legislative framework for a fairer and more effective youth justice system.

The introduction of the bill followed an extensive period of review and consultation, much of which is reflected in the following reports:

- A Review of the *Young Offenders Act* and the Youth Justice System in Canada, report of the Federal-Provincial-Territorial Task Force on Youth Justice (1996)
- Renewing Youth Justice, report of the House of Commons Standing Committee on Justice and Human Rights (1997)
- A Strategy for the Renewal of Youth Justice, Department of Justice Canada (1998)

In March of 1999, Bill C-68, the first version of the YCJA, was introduced. Parliament prorogued in June and the bill was reintroduced as Bill C-3, in October 1999. The bill proceeded through second reading and the Standing Committee on Justice and Human Rights held hearings on the bill. Prior to third reading, the federal election was called for November 27, 2000 and the bill was delayed. Bill C-7 was introduced in February 2001 and includes over 160 amendments that respond to suggestions and concerns raised in relation to C-3.

The purpose of this document is to explain the background to the YCJA, and provide a summary of its main provisions and the rationale behind them. Since the focus is on the changes, provisions of the YOA that are retained in the YCJA are not summarized.

The Need for New Youth Justice Legislation

There have been many concerns in Canada about the *Young Offenders Act* and the youth justice system. Some of these concerns have been based on misperceptions about youth crime, the legislation and how the system operates. Some concerns have been based on a misunderstanding of the limits of legislation and unreasonable expectations about what legislation can accomplish.

It is sometimes argued that new legislation is not needed, that the YOA is not flawed and that if problems exist, they are the result of inappropriate implementation. This position fails to take account of 17 years of experience that indicate that the YOA does not provide clear legislative direction to guide appropriate implementation in several areas.

The absence of clear legislative direction is an important factor, although not the only factor, that has contributed to the problems in the youth justice system.

Significant problems in the youth justice system include:

- The system lacks a clear and coherent youth justice philosophy.
- Incarceration is overused - Canada has the highest youth incarceration rate in the Western world, including the United States.
- The courts are over-used for minor cases that can be dealt with better outside the courts.
- Sentencing decisions by the courts have resulted in disparities and unfairness in youth sentencing.
- The YOA does not ensure effective reintegration of a young person after being released from custody.
- The process for transfer to the adult system has resulted in unfairness, complexity and delay.
- The system does not make a clear distinction between serious violent offences and less serious offences.
- The system does not give sufficient recognition to the concerns and interests of victims.

The YCJA addresses these problems. However, there are limitations as to what can be accomplished through legislative change alone. That is why the new legislation should be seen as only part of the Government's much broader approach to youth crime and the reform of Canada's youth justice system. Major non-legislative factors in this broader approach include: significantly increased federal funding to the provinces and territories, crime prevention efforts, effective programs, innovative approaches, research, public education partnerships with other sectors (such as education, child welfare and mental health), improvements to aboriginal communities, and appropriate implementation by provinces and territories.

Preamble and Declaration of Principle

One of the problems with the YOA has been the lack of clarity in the fundamental principles of the legislation. The Declaration of Principle is the primary source of principles to guide decision-making under the Act. It contains broad statements that reflect various themes, including the importance of accountability, the protection of society, the special needs of young persons and the rights of young persons. However, the principles do not provide real guidance to decision-makers under the Act because they lack coherence, are conflicting and are not ranked in terms of priority. Where principles are in conflict, there is no indication as to which one takes precedence.

The *Youth Criminal Justice Act* contains both a preamble and a declaration of principles to clarify the principles and objectives of the youth justice system.

The Preamble, while not legally enforceable, contains significant statements from Parliament about the values on which the legislation is based. These statements can be used to help interpret the legislation and include the following:

- Society has a responsibility to address the developmental challenges and needs of young persons.
- Communities and families should work in partnership with others to prevent youth crime by addressing its underlying causes, responding to the needs of young persons and providing guidance and support.
- Accurate information about youth crime, the youth justice system and effective measures should be publicly available.
- Young persons have rights and freedoms, including those set out in the United Nations Convention on the Rights of the Child.
- The youth justice system should take account of the interests of victims and ensure accountability through meaningful consequences and rehabilitation and reintegration.
- The youth justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on incarceration.

The Declaration of Principle sets out the policy framework for the interpretation of the legislation. Unlike the YOA, the YCJA provides guidance on the priority that is to be given to key principles. For example, the new legislation makes clear that the nature of the system's response to an offence should reflect the needs and individual circumstances of a young person. However, the needs or social welfare problems of a young person should not result in longer or more severe penalties than what is fair and proportionate to the seriousness of the offence committed.

The Declaration provides that:

- The objectives of the youth justice system are to prevent crime; rehabilitate and reintegrate young persons into society; and ensure meaningful consequences for offences. In these ways, the system can contribute to the long-term protection of society.
- The youth justice system must reflect the fact that young persons lack the maturity of adults. The youth system is different from the adult system in many respects, including: measures of accountability are consistent with young persons' reduced level of maturity; procedural protections are enhanced; rehabilitation and reintegration are given special emphasis; and the importance of timely intervention is recognized.
- Young persons are to be held accountable through interventions that are fair and in proportion to the seriousness of the offence.
- Within the limits of fair and proportionate accountability, interventions should reinforce respect for societal values, encourage the repair of harm done, be meaningful to the young person, respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal young persons and of young persons with special requirements.

- Youth justice proceedings require special guarantees to protect the rights of young people; courtesy, compassion and respect for victims; the opportunity for victims to be informed and to participate; and that parents be informed and encouraged to participate in addressing the young person's offending behaviour.

In addition to the Preamble and the Declaration of Principle, the YCJA includes other more specific principles to guide decisions at key points in the youth justice process: Extrajudicial Measures, Youth Sentencing, and Custody and Supervision. These additional principles are discussed below.

Extrajudicial Measures

Experience in Canada and other countries has shown that measures outside the court process can provide effective responses to less serious youth crime. One of the key objectives of the *Youth Criminal Justice Act* is to increase the use of effective and timely non-court responses to less serious offences by youth. These extrajudicial measures provide meaningful consequences, such as requiring the young person to repair the harm done to the victim. They also allow early intervention with young people and provide the opportunity for the broader community to play an important role in developing community-based responses to youth crime. Increasing the use of non-court responses not only improves the response to less serious youth crime, it also enables the courts to focus on more serious cases.

More cases could be dealt with effectively outside the court process. Most cases in youth court are non-violent. Minor assault makes up nearly half of the violent offences. More than forty percent of the cases in youth court fall into four categories of less serious offences: theft under \$5000 (e.g., shoplifting); possession of stolen property; failure to appear; and failure to comply with a disposition (e.g., breach of a condition of probation). (See Table 1)

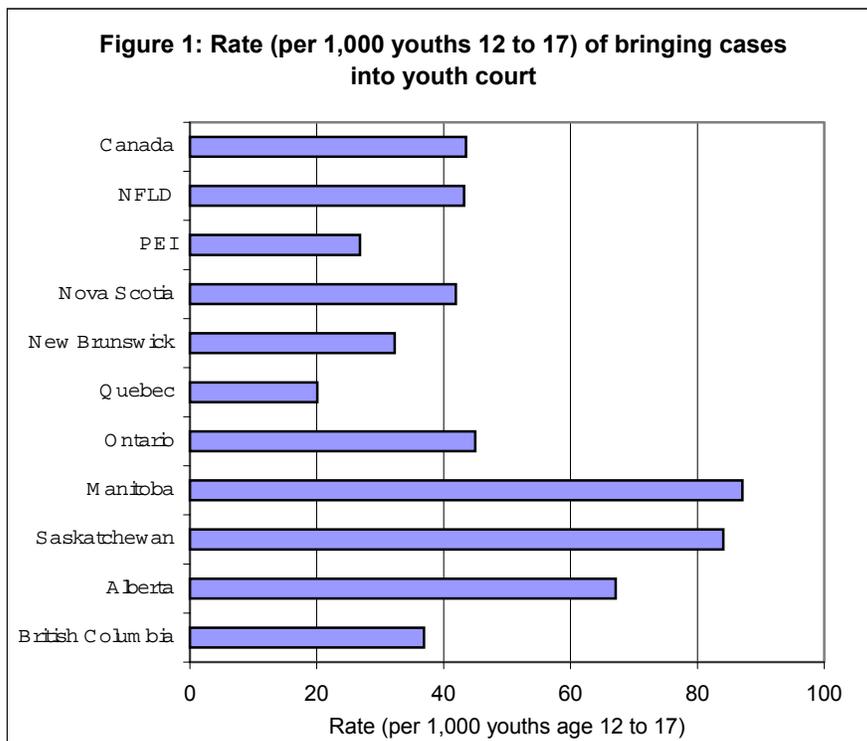
Table 1: Majority of cases (principal charge) in youth court (Canada, 1998-9)

	Total number of cases	Percent
Theft under \$5,000	15,801	15%
Possession of stolen property	5,208	5%
Failure to appear	11,597	11%
Failure to comply with a disposition	13,072	12%
Subtotal	45,678	43%
Other thefts	4,975	5%
Mischief/damage	5,336	5%
Break and enter	12,251	11%
Minor assault	10,545	10%
Total: Sum of eight offences	78,785	74%
All cases	106,665	100%

Source: Statistics Canada (2000). Youth Court Statistics 1998-99. Ottawa: Canadian Centre for Justice Statistics. (*)

* The tables and figures in this document are from *Background for YCJA*, a report prepared by Jane B. Sprott, University of Guelph, for the Department of Justice Canada.

Provinces vary considerably in their use of the youth court. For example, Quebec brings into court 20 youth for every 1000 youth in the population (or about one case for every 50 youth) and Ontario brings into court 45 youth for every 1000 youth in the population (or about one case for every 22 youth). (See Figure 1) Provinces that bring cases into court at a relatively high rate do not appear to have more serious cases in court compared to other provinces.



Source: Statistics Canada (2000). Youth Court Statistics 1998-99. Ottawa: Canadian Centre for Justice Statistics.

It also appears that measures outside the court process have been successful in terms of compliance by young persons. Nearly all of the young persons who participate in alternative measures programs under the *Young Offenders Act* successfully complete the required measure.

Youth court judges in every region of the country believe that a significant proportion of cases coming to court could be dealt with adequately outside of the youth court. A recent national survey of youth court judges found that 54% of judges believed that half or more of the cases coming before them could have been dealt with as adequately or more adequately outside of the youth court. Even in Quebec, which has the lowest number of cases brought to court, 27% of judges indicated that half or more than half of the cases they were hearing could be dealt with adequately outside of the youth court.

The *Young Offenders Act* permits the use of alternative measures. However, it provides little guidance as to the appropriate use of alternative measures, the types of alternatives and what their objectives should be. Seventeen years of experience under the YOA suggest that much greater use could be made of responses outside the youth court process and that stronger legislative direction is needed.

The *Youth Criminal Justice Act* contains many provisions to increase the appropriate use of extrajudicial measures for less serious offences, including the following principles:

- extrajudicial measures should be used in all cases where they would be adequate to hold the young person accountable.
- extrajudicial measures are presumed to be adequate to hold first-time, non-violent offenders accountable.
- extrajudicial measures may be used if the young person has previously been dealt with by extrajudicial measures or has been found guilty of an offence.

The YCJA also sets out clear objectives to guide the use of extrajudicial measures, including: repairing the harm caused to the victim and the community; providing an opportunity for victims to participate in decisions; ensuring that the measures are proportionate to the seriousness of the offence; and encouraging the involvement of families, victims and other members of the community.

The YCJA requires police officers to consider the use of extrajudicial measures before deciding to charge a young person. Police and prosecutors are specifically authorized to use various types of extrajudicial measures:

- *Taking no further action*
- *Warnings* are informal warnings by police officers.
- *Police cautions* are more formal warnings by the police. The YCJA authorizes provinces to establish police cautioning programs. Based on the experience in some jurisdictions, it is expected that police cautions will be in the form of a letter from the police to the young person and the parents or they may involve a process in which the young person and the parents are requested to appear at a police station to talk to a senior police officer.
- *Crown cautions* are similar to police cautions but prosecutors give the caution after the police refer the case to them. In one province where they are currently being used, the caution is in the form of a letter to the young person and the parents.
- *Referrals* are referrals of young persons by police officers to community programs or agencies that may help them not to commit offences. The referral may be to a wide range of community resources, including recreation programs and counseling agencies.
- *Extrajudicial sanctions*, the most formal type of extrajudicial measure, are what are known as alternative measures under the YOA. Unlike the other types of extrajudicial measures, they may be used only if the young person admits responsibility for the offence. The Attorney General of the province must determine that there is sufficient evidence to proceed with a prosecution of the offence. The sanctions must be part of an extrajudicial sanctions program designated by the Attorney General. The young person agrees to be subject to the sanction. If the young person fails to comply with the terms and conditions of the sanction, the case may proceed through the court process. Under the YCJA, an extrajudicial sanction can be used only if the young person cannot be adequately dealt with by a warning, caution or referral.

Conferences

In many parts of Canada, there is an increasing use of conferences to assist in the making of decisions regarding young persons who are involved in the youth justice system. In general, “conference” refers to various types of processes in which affected or interested parties come together to formulate plans to address the circumstances and needs involved in youth justice cases.

Conferences are not referred to in the YOA. They generally operate in an informal manner. They can take the form of family group conferencing, youth justice committees, community accountability panels, sentencing circles, and inter-agency case conferences. Conferences provide an opportunity for a wider range of perspectives on a case, more creative solutions, better coordination of services, and increased involvement of the victim and other community members in the youth justice system.

The YCJA authorizes and encourages the convening of conferences to assist decision-makers in the youth justice system. Under the legislation, a conference is defined as a group of people brought together to give advice to a police officer, judge, justice of the peace, prosecutor, provincial director or youth worker who is required to make a decision under the Act. A conference can give advice on decisions such as:

- appropriate extrajudicial measures;
- conditions for release from pre-trial detention;
- appropriate sentences; and
- plans for reintegrating the young person back into his or her community after being in custody.

A conference could be composed of a variety of people depending on the situation. It could include, for example, the parents of the young person, the victim, others who are familiar with the young person and his or her neighbourhood, community agencies or professionals with a particular expertise that is needed for a decision. A conference could be a restorative mechanism that is focused on developing proposals for repairing the harm done to the victim of the young person’s offence. It could also be a professional case conference in which professionals discuss how the young person’s needs may best be met and how services in the community can be coordinated to assist the young person.

Pre-trial Detention

Most of the provisions of the YOA related to pre-trial detention remain the same under the YCJA, including the application of the provisions of the *Criminal Code*. However, in response to concerns that pre-trial detention is over-used under the YOA, the YCJA includes the following changes:

- Pre-trial detention is not to be used as a substitute for child protection, mental health or other social measures.
- If the young person could not be sentenced to custody if convicted, the judge is required to presume that pre-trial detention of the young person is not necessary for the protection or safety of the public.
- If a young person would otherwise be detained, the judge is required to inquire as to whether a responsible adult is available who would be willing to take care of the young person as an alternative to pre-trial detention.

Youth Sentences

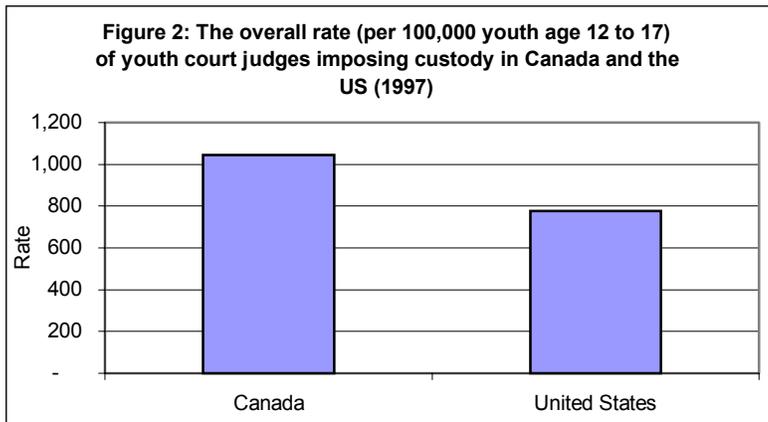
1. Purpose and Principles of Sentencing

One of the concerns about the *Young Offenders Act* has been that it does not provide clear guidance to judges on sentencing. It does not provide a specific purpose of sentencing. Its principles are general, inconsistent with each other, and not ranked in terms of priority. The result is an absence of clear legislative direction to judges and others in the youth justice system.

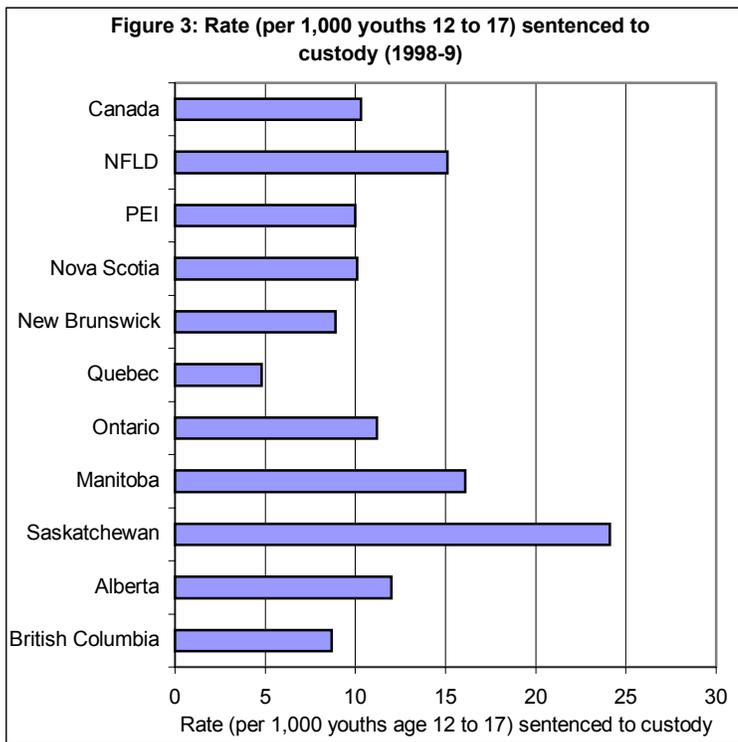
A related concern about the experience under the YOA is the very high use of custody as a sentence, particularly for less serious and non-violent offences and for young persons who are not serious repeat offenders:

- The youth incarceration rate is higher in Canada than other Western countries, including the United States. (See Figure 2)
- The youth incarceration rate is higher than the adult incarceration rate in Canada.
- Provinces vary considerably in their youth incarceration rates. (See Figure 3)
- For eight of the nine most common offences in youth court, youth receive longer periods of custody than adults who receive custody for the same offence; in addition, youth spend more time in custody than adults with similar sentences due to the adult conditional release provisions.
- About 80% of custodial sentences are for non-violent offences.
- Almost half of the cases resulting in a custodial sentence fall into four categories of less serious offences: theft under \$5000 (e.g., shoplifting); possession of stolen property; failure to appear; and failure to comply with a disposition (e.g., breach of a condition of probation). (See Table 2)

- Almost half of young persons whose most serious offence was failure to comply with a disposition (e.g., breach of a condition of probation) were sentenced to custody. (See Table 3)
- Many first offenders found guilty of minor theft are sentenced to custody. For example, 8% of such offenders in Ontario and over 7% in Quebec were sentenced to custody. (See Table 4)



Source: Statistics Canada (2000). Youth Court Statistics 1997-98. Ottawa: Canadian Centre for Justice Statistics.
Snyder, H., Finnegan, T., Stahl, A. and Poole, R. (1999). Easy Access to Juvenile Court Statistics (1988-97). Pittsburgh, PA: National Center for Juvenile Justice.



Source: Statistics Canada (2000). Youth Court Statistics 1998-99. Ottawa: Canadian Centre for Justice Statistics.

Table 2: Majority of cases sentenced to custody (Canada 1998-9)

	Total number of cases	Percent
Theft under \$5,000	2,289	9%
Possession stolen of property	1,522	6%
Failure to appear	2,822	11%
Failure to comply with a disposition	4,979	20%
Subtotal	11,612	46%
Other thefts	1,168	5%
Mischief/damage	788	3%
Break and enter	3,415	14%
Minor assault	1,691	7%
Total: Sum of eight offences	18,674	74%
All cases	25,169	100%

Source: Statistics Canada (2000). Youth Court Statistics 1998-9. Ottawa: Canadian Centre for Justice Statistics.

Table 3: Administration of justice offences: percent sentenced to custody (Canada 1998-9)

	Total found guilty	Total sent to custody	Percent (of guilty) that are sentenced to custody
Failure to comply with disposition (e.g. breach of probation)	10,547	4,979	47%
Failure to appear	6,946	2,822	41%

Source: Statistics Canada (2000). Youth Court Statistics 1998-9. Ottawa: Canadian Centre for Justice Statistics.

**Table 4: Effect of criminal record (1996-97)
Proportion receiving custody for a minor theft**

	Number of times previously sentenced:			
	None	One	Two	Three +
NFLD	3.6%	12.5%	42.9%	65.2%
New Brunswick	3.8%	13.5%	48.1%	63.6%
Quebec	7.2%	16.0%	26.5%	50.0%
Ontario	8.1%	26.2%	51.6%	64.1%
Manitoba	6.8%	7.8%	23.1%	52.6%
Saskatchewan	8.9%	13.8%	9.8%	50.0%
Alberta	3.5%	9.0%	19.8%	38.7%
British Columbia	3.6%	13.4%	24.7%	47.5%

Source: Statistics Canada (1998). Youth Court Statistics 1996-97. Ottawa: Canadian Centre for Justice Statistics.

The *Youth Criminal Justice Act* includes a specific purpose and set of principles to guide judges in deciding on a fair and appropriate youth sentence. Under the YCJA, the purpose of youth sentences is to hold young persons accountable through just sanctions that ensure meaningful consequences for them and promote their rehabilitation and reintegration into society.

Specific sentencing principles emphasize that the sentence must:

- not be more severe than what an adult would receive for the same offence;
- be similar to youth sentences in similar cases;
- be proportionate to the seriousness of the offence and the degree of responsibility of the young person;
- within the limits of proportionality, (a) be the least restrictive alternative; (b) be the sentencing option that is most likely to rehabilitate and reintegrate the young person; and (c) promote in the young person a sense of responsibility and an acknowledgement of the harm done by the offence.

Custody is to be reserved primarily for violent offenders and serious repeat offenders. A young person cannot be committed to custody unless:

- the young person has committed a violent offence;
- the young person has failed to comply with non-custodial sentences;
- the young person has committed a serious indictable offence and has a history that indicates a pattern of offences; or
- in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that it would be impossible to impose a sentence other than custody that would be consistent with the purpose and principles of sentencing. If a judge relies on this provision, the judge must give reasons as to why the case, in his or her opinion, is exceptional.

Before imposing a custodial sentence, the court must also have considered all reasonable alternatives to custody and must have determined that there is no reasonable alternative that would be capable of holding the young person accountable in accordance with the purpose and principles of sentencing discussed above. This means, for example, that although a young person has failed to comply with previous non-custodial sentences, he or she may receive another non-custodial sentence if the court determines that it would be adequate to hold the young person accountable.

Although the court must consider alternatives to custody for all offenders, the court must give particular attention to the circumstances of Aboriginal offenders.

2. Sentencing Options

In general, the sentencing options that are available to the court under the YOA are retained in the YCJA. However, the YCJA contains significant improvements regarding custody orders, non-custodial sentencing options, and sentencing for serious violent offenders.

Custody orders under the YOA do not include a period of community supervision after release of the young person from custody. This has been seen as a significant weakness of the YOA because it does not ensure appropriate supervision and support for the young person during the transition from custody back to his or her community.

The YCJA replaces the usual custody order with an order of custody and supervision. This new sentence requires that the custodial portion be followed by a period of supervision and support in the community.

The addition of other new sentences in the YCJA provides youth court judges with more options to deal with the full range of youth crime. These include:

- *Reprimand*. A reprimand is expected to be essentially a stern lecture or warning from the judge in minor cases in which the experience of being apprehended, taken through the court process and reprimanded appears to be sufficient to hold the young person accountable for the offence.
- *Intensive support and supervision order*. This sentencing option provides closer monitoring and more support than a probation order to assist the young person in changing his or her behaviour. It involves much smaller caseloads than probation and is particularly well suited for many offenders who under the YOA have been sentenced to custody.
- *Attendance order*. This order requires the young person to attend a program at specified times and on conditions set by the judge. It can be crafted to address the particular circumstances of the young person. For example, it might be focused on specific times and days when a young person is unsupervised and tends to violate the law.
- *Deferred custody and supervision order*. This sentencing option allows a young person who would otherwise be sentenced to custody to serve the sentence in the community under conditions. If the conditions are violated, the young person can be sent to custody. This order is not available to the court if the young person has been found guilty of a serious violent offence.
- *Intensive rehabilitative custody and supervision order*. This order is a special sentence for serious violent offenders. The court can make this order if:
 - a) the young person has been found guilty of murder, attempted murder, manslaughter, aggravated sexual assault or has a pattern of repeated, serious violent offences;
 - b) the young person is suffering from a mental or psychological disorder or an emotional disturbance;
 - c) an individualized treatment plan has been developed for the young person; and
 - d) an appropriate program is available and the young person is suitable for admission.

The Department of Justice Canada has set aside special funding for the provinces and territories to ensure that this sentencing option can be made available throughout the country.

Adult Sentences

For nearly 100 years, under both the *Juvenile Delinquents Act* and the *Young Offenders Act*, the law has allowed young persons who are 14 years of age or older to be transferred to the adult court under certain circumstances. If the young person is convicted in adult court, the court can impose an adult sentence. The *Youth Criminal Justice Act* does not lower the age at which a young person may be subject to an adult sentence.

Under the YOA, if a 16 or 17-year-old is charged with murder, attempted murder, manslaughter or aggravated sexual assault, it is presumed that he or she will be transferred to the adult court and, if convicted, will receive an adult sentence. The presumption does not mean that there will be an automatic adult sentence. It means that the young person must persuade the court that he or she should remain in the youth court.

Experience under the YOA has shown that:

- Relatively few young persons are transferred to the adult court.
- A large percentage of the transfers to adult court are for non-violent offences. For example, in the last three years, about 40% of the transfers were for non-violent offences. (See Table 5)
- Provinces vary considerably in the number of transfers to adult court. For example, in 1998-99, Manitoba led the country with 29 transfers. Quebec was next highest with 23 transfers which was nearly four times the number in Ontario (6 transfers) and more than twice the number in British Columbia (11 transfers). (See Table 6)
- The transfer hearing can be complex and can cause significant delays. Many consider it to be unfair because it takes place before a court has determined whether or not the young person is guilty of the offence.

Table 5: Types of cases that are transferred (Canada: 1996-7 to 1998-9)

	1998-9		1997-8		1996-7	
	Total cases	Transferred	Total cases	Transferred	Total cases	Total cases
Violence	22,284	54	23,711	41	21,737	52
Property	45,336	27	49,602	19	51,687	27
Other CC/YOA	34,290	9	33,021	13	31,399	11
Drugs	4,755	1	4,549	6	5,242	2
Total cases	106,665	91	110,883	79	110,065	92

Source: Statistics Canada (1997 through 2000). Youth Court Statistics. Ottawa: Canadian Centre for Justice Statistics.

TABLE 6: PROVINCIAL VARIATION IN THE USE OF TRANSFERS (1996-7 TO 1998-9)

	1998-9		1997-8		1996-7	
	Total cases brought to court	Total transfers	Total cases brought to court	Total transfers	Total cases brought to court	Total transfers
Canada	106,665	91	110,883	79	110,065	92
NFLD	2,142	1	2,197	1	2,853	0
PEI	324	0	376	0	4,58	0
Nova Scotia	3,158	0	3,472	2	3,549	0
New Brunswick	1,999	0	2,303	0	2,382	0
Quebec	11,297	23	10,881	23	11,427	26
Ontario	40,697	6	44,185	9	46,409	12
Manitoba	8,477	29	7,615	23	6,816	32
Saskatchewan	8,127	1	9,115	1	8,540	0
Alberta	17,510	20	16,579	14	15,863	10
British Columbia	11,764	11	13,059	5	10,642	11
Yukon	438	0	506	0	508	0
NWT	732	0	595	1	618	1

Source: Statistics Canada (1997 through 2000). Youth Court Statistics. Ottawa: Canadian Centre for Justice Statistics.

The YCJA contains some important changes regarding adult sentencing:

- The transfer process is eliminated. Instead, the youth court first determines whether or not the young person is guilty of the offence and then, under certain circumstances, the youth court may impose an adult sentence.
- A pattern of repeated, serious violent offences is added to the list of offences that give rise to the presumption of an adult sentence.
- The age at which the presumption of an adult sentence applies is lowered to 14. However, provinces have the authority to set the age at 15 or 16. The effect is that if a province chooses to set the age at 16, there would be no change from the YOA.
- If the Crown notifies the youth court that it will not be seeking an adult sentence for a presumptive offence, the court may not impose an adult sentence.
- The test for an adult sentence requires the court to determine whether a youth sentence would be of sufficient length to hold the young person accountable. The accountability of the young person must be consistent with the greater dependency of young persons and their reduced level of maturity. If a youth sentence would be of sufficient length to hold the young person accountable, the court must impose a youth sentence.
- A young person under age 18 who receives an adult sentence is to be placed in a youth facility unless it would not be in the best interests of the young person or would jeopardize the safety of others.

Custody and Reintegration

As mentioned, a significant weakness of the YOA is that it fails to ensure effective reintegration of a young person after being released from custody. Under the YOA, a young person can be released from custody with no required supervision and support to assist the young person in making the transition back to his or her community.

The YCJA includes many provisions to assist the young person's reintegration into the community. Underpinning the new legislation is the belief that young people can be rehabilitated and successfully reintegrated into the community. The focus of every custody sentence must be on reintegration and on measures aimed at assisting the young person not to re-offend.

1. Custody and Supervision in the Community

Under the YCJA, every period of custody is to be followed by a period of supervision in the community, as part of the sentence. This includes custody and supervision orders, intensive rehabilitative and supervision orders and youth sentences for murder.

The judge, at the time of imposing one of these custody sentences, must clearly state in open court the portion of the sentence to be served in custody and the portion to be served in the community.

The YCJA contains a list of mandatory conditions that apply to all young persons while under supervision in the community. Additional conditions can be imposed to support the young person and address his or her needs, as well as manage risk.

If a young person breaches a condition while under supervision in the community, reviews will be held that can result in a change in conditions or in the young person being returned to custody. If the provincial director has ordered the young person to be returned to custody, the court will conduct a review. If the court is satisfied that the young person has breached a condition, the court may order the young person to serve the remainder of the community portion in custody if the breach was serious. If the breach was not serious, the court may vary the conditions or impose new conditions.

It is also possible that a young person may not serve a portion of the sentence in the community following custody. Before the start of the community portion, the court can require the young person to remain in custody if the court is satisfied that there are reasonable grounds to believe that the young person will commit an offence causing death or serious harm before the end of the sentence.

2. Reintegration Plans and Reintegration Leaves

When a young person goes into custody, the YCJA requires that a youth worker work with the young person to plan for his or her reintegration into the community. The reintegration plan sets out the most effective programs for the young person in order to maximize his or her chances for successful reintegration into the community.

When the young person is serving the community supervision portion of the sentence, the youth worker will supervise the young person, and provide support and assistance to the young person in respecting conditions and implementing the reintegration plan.

Under the YCJA, a young person may be authorized to have a reintegration leave for the purpose of the young person's rehabilitation and preparation for eventual reintegration back into the community. Such leaves can also be used for medical, compassionate or humanitarian reasons. Leaves are for a period of thirty days, though the provincial director on reassessment of the case can renew them.

3. Administrative Determination of Custody Level

Under the YOA, a judge decides at the time of sentencing whether a young person is placed in the secure level or open level of custody. The judge also decides in most cases whether a young person should be transferred to a different level of custody during the course of the sentence.

One of the objectives of the YCJA is to streamline processes and provide officials with the discretion they need to effectively run the part of the system that they are responsible for in a fair and accountable manner. The YCJA authorizes youth correctional officials to determine whether a young person is placed in a more open or secure custody level, both at the time of committal to custody and for any subsequent transfers.

The YCJA sets out the criteria by which correctional officials are to make these decisions. The criteria include that the young person be placed in the least restrictive level of custody, taking into account the best possible match of programs to the young person's needs as well as security concerns. Young persons are entitled to an independent review of any decision that places them in the most secure custody level or that transfers them into a more secure custody level.

The YCJA also gives provinces and territories the option of choosing to retain the current system under which judges, rather than correctional officials, make these decisions.

4. Separation from Adults

The YCJA retains the general rule that a young person who is serving a youth custody sentence is to be held separate and apart from adults. The YCJA also creates a presumption that if a young person in a youth facility reaches the age of twenty, he or she should be transferred from the youth facility to an adult facility to serve the remainder of the sentence. This serves to further protect youth serving their sentences in the youth system.

When a young person serving a youth sentence reaches adult age, a judge may authorize the provincial director to place the young person in a correctional facility for adults if the court considers it to be in the best interests of the young person or in the public interest. If a young person is placed in an adult facility, the adult conditional release entitlements will apply to the young person. The privacy provisions associated with a youth sentence will continue to apply.

The YCJA also contains new provisions relating to placement of a young person who receives an adult sentence. Unless the judge is satisfied that it would not be in the best interests of the young person or would jeopardize the safety of others,

- a young person who is under the age of eighteen at the time of sentencing will be placed in a youth custody facility; and
- a young person who is over the age of eighteen at the time of sentencing will be placed in an adult facility.

Publication

A cornerstone of youth justice in Canada is that, as a general rule, the identity of a young person should be protected. The rationale is that publication of the name of a young person would impede rehabilitation efforts and detrimentally affect young persons and, in the long run, compromise public safety. However, there are certain exceptions.

Under the YOA, one exception is that the publication of information that identifies the young person is permitted if the young person is transferred to adult court. A result of this provision is that the identifying information can be published before a court has determined whether or not the young person is guilty of the offence. This result is considered by many to be unfair to the young person.

Under the YCJA, the identifying information cannot be published until a youth court has found the young person guilty of the offence and imposed an adult sentence. The YCJA also allows publication of identifying information where a youth sentence is imposed for a presumptive offence. However, there are limitations:

- The court may decide that publication is not appropriate, taking into account the importance of rehabilitating the young person and the public interest.
- Publication is not permitted if the prosecutor has notified the court that an adult sentence will not be sought for the presumptive offence.

Victims

The youth justice system has been criticized by some for not adequately recognizing the interests and needs of victims. Under the YCJA, the interests and needs of victims are clearly recognized and the role of victims at different stages of the youth justice process is specified. Key provisions include:

- The principles of the YCJA specifically recognize the concerns of victims. Victims are to be given information about the proceedings and given an opportunity to participate and be heard. They are to be treated with courtesy, compassion and respect for their dignity and privacy.
- Victims have a right of access to youth court records.
- Victims' participation in community-based approaches to responding to the offence is encouraged.
- If a young person is dealt with by an extrajudicial sanction, the victim of the offence has a right to be informed of how the offence was dealt with.

Conclusion

The *Youth Criminal Justice Act* sets out a new legislative framework for Canada's youth justice system. It builds on the strengths and addresses the weaknesses of the current system. The YCJA provides needed legislative direction to assist in achieving a fairer and more effective youth justice system. Key objectives of the YCJA include:

- 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;
- Reduction in the high rate of youth incarceration;
- Effective reintegration of young persons;
- Clear distinction between serious violent offences and less serious offences.

These objectives cannot be achieved by legislation alone. As noted earlier, the *Youth Criminal Justice Act* is an important part, but only a part, of the Government of Canada's broader approach to addressing youth crime and improving the youth justice system. The combination of the new legislation and important non-legislative elements - such as increased federal funding for programs, crime prevention, public and professional education, partnerships with other sectors, and appropriate implementation by provinces and territories – can achieve the objectives and thereby create a fairer and more effective youth justice system.