

## **Newfoundland and Labrador: Provincial Policing and Federal Youth Justice Legislation**

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### **Abstract**

In Canada, the practical application of youth diversion is rooted in an understanding of federal youth justice legislation and requires the consideration of police discretion. Yet, policing in Newfoundland and Labrador is shaped by localized practices, policies, and decisions. In the current article, we draw on online survey data to explore how Royal Newfoundland Constabulary (RNC) officers understand and apply Canada's current federal youth legislation — the Youth Criminal Justice Act (YCJA) — and identify what factors, if any, influence the YCJA's application. To unpack police officer attitudes towards youth and the YCJA and the actions police choose when handling matters involving youth, we draw from data collected from non-commissioned officers working in one of the three RNC detachments in 2016. Findings show that officers perceive a lack of YCJA resources available to front-line police officers in urban centres and a need for further training for officers who interact with youth. A desire for youth diversion services was evident among participants; however, the lack of availability of police-accessible pre-charge diversion options in Newfoundland and Labrador, including specific programs for youth, as well as police-specific training, are primary influencing factors affecting the understanding, implementation, and success of youth diversion in the province.

## **Introduction**

Police officers are often the first point of contact with the justice system for adults and youth in Canada, and they operate in an environment that allows for much discretion. Following the change in legislation from the Young Offenders Act (YOA) to the Youth Criminal Justice Act (YCJA) in 2003, police officers and justice workers received more specific direction regarding warning youth, charging youth, and using diversion practices than they were previously accorded under the YOA's alternative measures (Marinos and Innocente 2008). While the YCJA provides police officers with more possible routes of action than previous legislation, police officers maintain a high level of individual choice in the work they do through the practice of discretion in their daily duties. Pepinsky (1984, 251) describes police discretion as the “variance in [police officer] decisions an observer is unable to explain.” Discretion, an individualized process underpinning decision-making, is shaped by legal factors, officer characteristics, and sometimes, situational factors (Schulenberg 2015). Individual policing practice is a localized reality informed by context and culture (Mercer 2021). Thus, although the YCJA provides different pre-charge options for police officers interacting with youth (e.g., diversion, warnings, and cautions), these options may not be feasible within all provinces or territories (i.e., they may not exist). Diversion through warning or doing nothing is available everywhere; however, the practice of warning youth or choosing no action is rooted in discretion and local policy.

Despite being federal legislation, the YCJA implementation varies by province and territory (Ricciardelli et al. 2017). For example, Harris and colleagues (2004) reported variance in the use of pre-charge diversion by geographic area, even within the same province, due to police district differences. In this article, we strive to critically examine how non-commissioned front-line officers of the Royal Newfoundland Constabulary (RNC) understand and apply the YCJA. We explore police use of youth diversion practices and identify factors influencing the use of youth diversion in NL. Our focus is on the position

of the front-line police officers, exploring their attitudes regarding extrajudicial measures, extrajudicial sanctions, and diversion practices in the province, and what factors inform their knowledge, sources of information, and personal practices on the job. The influences of personal experience, education, and training in shaping discretion, choice of action, attitudes towards youth, youth diversion, and legislation more broadly among police officers are considered, as is how RNC officers understand and use the YCJA — specifically, pre-charge youth diversion. We briefly consider the provincial cultural component, recognizing that police knowledge and attitudes directly impact police discretion. Situated within the province of Newfoundland and Labrador, we explore how police officers perceive pre-charge diversion and interpret the law, which presents implications for the rights of youth in the province and provincial government spending.

### **Influences on Discretionary Use of the YCJA**

Our focus in this article is extrajudicial measures (EJMs) as utilized by police, specifically, police-directed diversion processes. The YCJA outlines police responsibilities pertaining to youth through Section 6 and requires officers to consider the adequacy of taking no further action, providing a warning, providing a formal caution, or referring the young person to alternative resources in the community (Department of Justice 2002). Police may also issue warnings, normally involving formal paperwork, parental involvement, and reasonable grounds for a charge to be laid (Department of Justice 2002). Alternative community programs can be employed; however, the permission of the young person is required for such referrals (Department of Justice 2002).

Researchers have explored police opinions on the use of the YCJA since its implementation in 2003. Youth accountability has been well-documented as a motivator for police involvement (Abramson 2003; Marinos and Innocente 2008). For many police officers, the decision to practice pre-charge diversion is based on their interpretation of whether or not the youth will be held accountable, as per the YCJA

(Marinos and Innocente 2008). For example, if an officer has any doubt about the acceptance of responsibility by a youth or the assurance of accountability of a youth, they may decide to formally charge the youth to *ensure* they are clearly and publicly held accountable — where the accountability of the youth lies in the perceptions of police, instead of opaque accountability resulting from pre-charge diversion. The YCJA states, however, that previous conduct, youth attitude, or previous charges and incarceration should not prevent additional use of extrajudicial measures (Marinos and Innocente 2008), and pre-charge diversion can be used as a method of holding youth accountable (Samuels-Wortley 2022).

Through 202 semi-structured interviews that had previously been collected by Carrington (2002) with police officers across Canada, including officers from the OPP and RCMP, Schulenberg (2006) investigated police culture and organizational factors relating to police discretion with youth who transgressed the law. She found police officers are more likely to arrest a youth if they have decided that the youth is “delinquent” (2006). Officers may deem a youth to be delinquent if they have a prior record, poor attitude, come from a difficult background, or have little parental participation (Carrington and Schulenberg 2005; Doob and Cesaroni 2004; Doob and Chan 1982; Marinos and Innocente 2008; Schulenberg 2006). Officers define a “non-delinquent” youth as a first- or second-time offender who is involved in extracurricular activities, has highly involved parents, exhibits a good attitude, socializes with other non-delinquent youth, and presents as “scared and remorseful” (Schulenberg 2006, 433). Schulenberg (2006) argues that police officers do one of two things: they use their discretion to a certain extent under specific circumstances, or they use practically no discretion at all. She remarks that police officers put forth two purposes in their decision-making process: “a. fulfilling the requirements of law enforcement and b. providing meaningful consequences through the delivery of an appropriate sanction” (Schulenberg 2006, 443). This duality in purpose may cause conflict for police officers when handling matters with youth, depending on how they understand

the legislation. If officers believe they must provide meaningful consequences regardless of diversion availability, there may be inconsistencies in how the legislation is applied by the police. Schulenburg argues legislative change must be integrated into the very culture of police to be successful in standardizing police actions.

Researchers surveying police in Canada contend that the seriousness of the offence, prior police contact, and the attitude exhibited by youth have the most influence on police attitudes and decisions about the use of youth diversion (Doob and Cesaroni 2004; Doob and Chan 1982; Marinos and Innocente 2008). In a 2005 study by Carrington and Schulenberg based on Uniform Crime Reporting Survey data (UCR), prior record was deemed a major factor by 96 per cent of officers, and a previous criminal record was deemed as important as offence seriousness (Carrington and Schulenberg 2005). Carrington and Schulenberg (2005) report prior conviction was not differentiated by the type of record held by youth or the type of previous offence with which the youth had been charged. This practice of past record consideration is contradictory to the recommendation within the YCJA, where past record is not a determining exclusion to diversion programs. Their research shows police officer attitude plays a role in how officers choose which action to take, although police officers may not be cognizant of that role or how strongly those attitudes influence their decisions.

## **Federal Legislation**

The YCJA, in replacing the Young Offenders Act (YOA) in 2003, attempted to improve fairness for youth, reduce incarceration rates for less serious offences, and emphasize helping youth through improved access and an increase in the promotion of extrajudicial measures and extrajudicial sanctions (Department of Justice 2013; Marinos and Innocente 2008). Under the YCJA, justice workers (e.g., police and Crown attorneys) can use alternative measures with youth — before they are criminalized — by referring youth who interact with the law

to external agencies such as community groups. These alternative methods are either *extrajudicial measures* (EJMs) used by police and Crown attorneys, or they are *extrajudicial sanctions* (EJSs), additional alternative methods used solely by the Crown (Barnhorst 2004). Understanding and differentiating between EJMs and EJSs requires caution and clarity, as they are separate but seemingly similar alternative measures with key differences.

Extrajudicial measures (EJMs), defined in Section 2 of the YCJA, are “measures other than judicial proceedings under this Act used to deal with a young person alleged to have committed an offence and includes extrajudicial sanctions” (Youth Criminal Justice Act). Part 1 of the YCJA outlines the principles and objectives of EJMs and promotes their appropriateness, effectiveness, and timeliness. The YCJA intends to repair harm, encourage youth participation, provide space for victim input, and respect rights and freedoms through EJMs. Objectives are achieved through police either completing no formal action or giving warnings (Section 6[1]) or cautions (Section 7), as well as through Crown cautions (Section 8) and referrals to programs in the community (section 6[1]).

In contrast, an extrajudicial sanction (EJS) is “a sanction that is part of a program referred to in section 10.” Section 10 outlines how sanctions should only be used when an EJM (warning, caution, or referral) is not applicable “because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.” Tied to the use of sanctions are conditions and restrictions, such as youth acceptance of responsibility, appropriateness of use, and youth consent (Youth Criminal Justice Act). Crown attorneys within the justice system can use both EJMs and EJSs; however, police can only refer to EJMs (Department of Justice 2002).

The YCJA states youth infractions permit both EJMs and EJSs if the measures “hold the young person accountable for his or her offending behavior” (Department of Justice 2002, 2013). The use of diversion for youth does not need to be limited to first-time “offenders” as

outlined in Section 4 of the Act; they can be used repetitively with youth who have “previously been found guilty of an offence” (Section 4, Youth Criminal Justice Act; Department of Justice 2002). The iterative use of EJMs and EJSs is unique to the YCJA, as the justice system in Canada considers adult criminal history during subsequent sentencing (Roberts 1996). The harsher punishment for repeat “offenders” follows a progressive discipline approach that tries to reduce recidivism. Progressive discipline is a response to undesirable behaviour, often in the workplace, with “penalties of increasing severity” (Eden 1992, 512). In a youth justice context, a youth apprehended for shoplifting may be given a warning by a police officer, followed by police or Crown diversion to an EJM on a second offence, proceeding to formal charges on a third occurrence. While this style of progressive discipline is permitted under the YCJA, attempting additional extra-judicial sanctions or programs is preferred as long as the criteria for EJMs or EJSs are met. Prior to laying formal charges for non-serious offences, EJMs should be the first consideration for police officers and Crown attorneys, followed by EJSs when appropriate, regardless of youth history. The intent, as we conceptualize, is to eliminate — or at least reduce — the criminalization of youth.

While the Youth Criminal Justice Act requires the consideration of diversion, the availability of programs is determined at the provincial and territorial level (Ricciardelli et al. 2017). In a local study of the implementation of the YCJA in NL (2016), Morris and Enström found a clear lack of resources for police in the province. The researchers reported no diversion options exclusively for police officers to utilize and that the province had no “formal police or crown cautions program” and no “formal police warning program” (Morris and Enström 2016, 162, 164). In addition, respondents reported inconsistent record-keeping for police warnings (Morris and Enström 2016). While their research drew from a small sample size of senior-ranking police officers (who are unlikely to work on the front line interfacing directly with youth), the respondents had favourable views of the YCJA but expressed frustrations with the system itself (Morris and

Enström 2016). Diversion programs must exist to create the possibility for police discretion — the availability of programs predicates the use of diversion. A major failing of the YCJA, however, is that regardless of police officer willingness to use diversion processes, these alternative methods are not mandatory or available in all jurisdictions — willingness does not equate to ease of use. Despite the legislation encouraging justice workers to consider and use diversion, no mandatory requirement for alternative methods is available to youth within each province or territory. Thus, young people all over Canada are subjected to irregular application of criminal charges, and justice officials continue to miss opportunities for meaningful non-criminalizing or less-criminalizing responses to youth criminal behaviour.

## **The Local Context**

### **The Royal Newfoundland Constabulary**

Within the province of Newfoundland and Labrador, the Royal Newfoundland Constabulary (RNC) is the provincial police service responsible for police operations in several urban areas (Royal Newfoundland Constabulary 2018). Referred to historically as the Newfoundland Constabulary, the Terra Nova Constabulary, or the Constabulary Force of Newfoundland, the police service was recognized by Her Majesty Queen Elizabeth II and bestowed the title “Royal” in 1979 (Browne 2008). The RNC has traditionally been a small police service tasked with many duties (Browne 2008). Often considered the oldest police agency in Canada, the RNC traces its origins back to 1729 (Harnum 1971). Within the coastal British colony, Constabulary officers functioned as customs and revenue officers, tide-waiters, relief officers, game wardens, and national registration officers while performing regular police duties (Browne 2008). A historically isolated area, Newfoundland has “created a distinct society” and unique individuality (Jones 1993, 65), and many Newfoundlanders consider themselves “Newfoundlanders first and Canadians second”



(Young, Davis, and Igloliorte 2003, 6). Although outside the scope of this study, the strong cultural ties to Newfoundland warrant further investigation to determine whether the “Newfoundland first” identity plays a role in RNC police officers’ interpretation and application of federal legislation.

### **Training**

Local police practices are shaped by local police training, and the RNC training program has been through several iterations in recent years. Between 2005 and 2018, nearly all RNC officers were trained through the 12-month Memorial University of Newfoundland (MUN) cadet program. Prior to 2005, the training program for the RNC was six months in duration and completed out of province. From 2018 to 2020, recruits completed a six-month training program with the police agency itself, with no university course requirements (RNC 2021). Currently, the RNC requires students to attend the Atlantic Police Academy at Holland College (RNC 2023) for a 36-week period (Holland College 2023).

### **The Province**

Finally, we must also situate the fiscal and demographic circumstances within the province of Newfoundland and Labrador, as these impact provincial decisions. Despite the provincial pride and distinct culture, the province has depended on federal equalization payments since 1957, with a brief period of self-reliance in the mid-2000s (Feehan 2014). The province has operated with a deficit for 85 per cent of its existence, as provincial revenues are largely tied to the oil industry (Locke and May 2019, 985). Provincial coffers have been impacted by net out-migration, an aging population, and a high number of per-capita public-sector employees (Locke and May 2019). With 23.6 per cent of the province aged 65 or older (Statistics Canada 2022), the average age is 43.7 and the median age is 46 (Statistics Canada 2021). The province also maintains

a low birth rate, facing the threat of population decline (Locke and May 2019). It is within the NL context of industry-focused politics, fiscal conservatism, and an aging population that we must evaluate the availability, or lack thereof, of youth diversion programs.

## **Current Study**

As suggested above, the implementation of the Youth Criminal Justice Act varies by province and territory, and its use changes shape across Canada despite being federal legislation (Ricciardelli et al. 2017). Drawing on survey data from police officers employed at an urban detachment in Newfoundland and Labrador (the North East Avalon area), we examine how the YCJA is used by police in the capital city area. We examine police familiarity with youth diversion to contextualize the complexity of police understanding and use of the YCJA and explore how external limitations on the practical application of the legislation impact its widespread adoption and use. In addition, we investigate police attitudes towards the YCJA and the barriers to the use of police discretion in NL.

## **Methods**

### **Participants**

Of the 340 officers employed by the RNC in 2016, study participation was restricted to the 120 non-commissioned front-line RNC officers who have some contact with youth in the regular execution of their job duties. A total of 25.8 per cent ( $n = 31$ ) of eligible officers participated in this voluntary study. Participants had between three and 32 years of policing experience with the RNC; 10 self-identified as female, 14 as male, and seven did not disclose their gender. Participants included 23 constables and eight sergeants, three of whom had worked in both Labrador and on the island of Newfoundland, while the remaining 28 had been stationed only on the island portion of the province.

## **Materials**

An 84-item online survey, with 76 close-ended and eight open-ended items, was created and administered. The survey questions analyzed the following areas relating to the use of the YCJA: (i) influencing factors; (2) knowledge and understanding; (3) use and action choice; and (4) police attitudes. Examples of items include: “The YCJA is intended to protect the public by holding youths accountable”; “police officers are accessible to youth”; and “I believe all youth can be rehabilitated.” Demographic information was also collected; however, many participants chose not to answer demographic questions.

## **Procedure**

Permission to conduct the study was awarded by the former RNC chief, William Janes, and ethical approval was provided by Memorial University’s Interdisciplinary Committee on Ethics in Human Research. Recruitment was twofold. First, direct solicitation was conducted through e-mail to all members of the RNC through the RNC list-serve, informing potential participants of the study. While the list-serve included members ineligible for participation, all members were e-mailed due to the lack of a “non-commissioned members only” list-serve. Second, posters were located at the RNC headquarters to notify possible participants of the study. Follow-up e-mails were sent every other week over a period of six weeks to ensure that all active and eligible members of the Constabulary would have the opportunity to participate (for example, to ensure receipt by those who may have been on vacation time, sick time, court time, or training time).

We conducted the survey over a period of six weeks, from 4 January to 15 February 2016, providing an anonymous means for disclosure. Participants were able to complete the survey by selecting the e-mailed link, which took approximately 30 minutes to complete.

## Analysis

Descriptive statistics are presented for all close-ended items (i.e., due to the small sample size) for Sections 3–7. The primary investigator compiled, coded, and analyzed the data using STATA. All open-ended qualitative data were coded for emergent themes (Strauss and Corbin 1990) so that codes were assigned topics self-reported by multiple participants. Open-ended items provided an opportunity for participants to voice their concerns or supplementary views.

## Results

### Knowledge of the Youth Criminal Justice Act

Participants were asked about their knowledge of the elements of Youth Criminal Justice Act to contextualize their survey responses. It was necessary, and invaluable, to ascertain whether incongruous responses were intentional by respondents (e.g., for a specific reason) or whether they were the result of misunderstanding or unintentional misapplication of the Act (e.g., lack of knowledge or confusion). These questions probed both officers' understanding of the YCJA as well as their understanding of youth diversion within the province.

Participants reported learning about the YCJA through the cadet training program at Memorial University ( $n = 9$ ), formal RNC training ( $n = 7$ ), self-learning ( $n = 5$ ), informal instruction with a coach officer ( $n = 4$ ), or the court system or Crown attorney ( $n = 3$ ), while no formal training was also reported ( $n = 6$ ). Overall, 16 of 28 of the respondents learned about the YCJA through an approved curriculum, while 12 respondents learned about the Act through self-education, experience, or word-of-mouth. This inconsistency in training on the YCJA is reflective of the frequent changes in police officer training programs at the RNC, and as noted above, further analysis is warranted to determine any links between an officer's knowledge of the YCJA and which police officer training program they attended. Such

knowledge would serve as a basis for targeted amelioration efforts at both personnel and program levels.

Nine participants, in response to being asked if they thought the YCJA was fully implemented in NL, believed the YCJA was not. Qualitatively, some officers tied this inadequate implementation to deficiencies in officer training on the YCJA. For example:

Police need more training on the YCJA and the possibilities it offers to weed youth from the CJS [criminal justice system]. For example, this past year, I noticed that there was several females charged with theft that had no prior records that were remorseful. Here, if I was the responder, the youth would have been given a Youth Warning but other officers decided to lay a charge which led to the youth diversion program and weeding from the CJS. I believe better use of warnings by Police, when applicable, would reduce the burden placed on the CJS when charges are considered first as opposed to warnings for minor crime. Again, Police need adequate training to understand this concept.

This participant emphasizes the need for consistency and adequate training for officers. In addition, this participant alludes to the burden on the justice system and shows an understanding of the legislation.

The range of participant responses suggests that the scope of knowledge about the YCJA among RNC officers is varied. Four respondents reported being unfamiliar with the YCJA, seven respondents reported there not being enough resources or education around youth matters, and three respondents reported being ill-informed regarding diversion in NL. One respondent stated in the open response field: "I'm not familiar enough with the entire Act. I am familiar with what is required of me as a police officer." This comment highlights the need for learning specifically aimed at police officers. Police officers require focused training on the pieces of legislation that pertain specifically to their job; it would be impractical to expect officers to know

every line of every Act. However, the lack of implementation of the YCJA in the province, coupled with its underuse by police, can lead to reduced knowledge and utilization.

A majority of officers reported being familiar with the YCJA and with diversion; 84 per cent ( $n = 26$  of 31) of respondents agreed with the statement, "I am knowledgeable about the YCJA," and 90 per cent ( $n = 27$  of 30 officers) agreed with, "I am familiar with youth release procedures." However, despite the self-reported knowledge of the YCJA, nearly half of the respondents did not believe an extrajudicial measure could be used with a youth who has previously been to court and only a third of the participants believed an extrajudicial measure can be used with a youth who had previously been directed to such a measure.

### **Use of the YCJA and Course of Action Choice**

To understand how participants consider diversion and use the YCJA, we asked several questions about decision-making and practical use of the Act. These questions were intended to illuminate police action processes as well as how diversion is used when handling matters involving youth.

Although the YCJA directs justice workers to consider the seriousness of the offence as the primary consideration when handling matters with youth, our findings reveal that for many police officers, other factors may play a larger role in decision-making. A majority of 61 per cent ( $n = 19$  of 31) agreed that they use a progressive discipline style of policing with youth, while 19 per cent ( $n = 6$ ) disagreed or strongly disagreed, and 13 per cent ( $n = 4$ ) neither agreed nor disagreed. Although the YCJA is clear on the point that EJMs are an available action choice even for a youth who has previous convictions or who has been diverted to EJMs in the past, the lack of available diversion resources in NL imposes limitations on how an officer can respond. One participant explained the process:

I check their criminal record and investigate fully. I consider if a youth has taken responsibility for their crime and show remorse. I also consider the crime, including its level of violence or premeditation. I also consider the impact on others that the crime has had. I also consider the youth's reason for committing the crime. The only way I direct a youth towards diversion is by stating my opinion in the crown brief. I am not aware of another way to recommend diversion for a youth, other than suggesting to them to get some counseling, etc. (I would provide contacts to them during this conversation).

The officer, in outlining this procedure for deciding a course of action, accounts for factors (e.g., remorse, motive, and impact) that are not criteria for decision-making under the YCJA; however, this individual's use of diversion is through recommendations to the Crown attorney through the Crown brief following a criminal charge. The participant remarks this is the only known method of referring youth to diversion due to a lack of police-accessible diversion options. While illuminating the lack of resources for front-line police officers in the province, this also shows the complex consideration police in the province apply to youth matters. Where pre-charge diversion options are available, a police officer could route a youth to a program and bypass the Crown. However, if no resources are available, officers must make a recommendation to the Crown with no assurance the Crown will agree with diversion and will not proceed with the criminal charge.

### **Police Attitudes**

Several survey questions explored police attitudes towards youth and the YCJA. This section investigated participant opinions, stressors, and roles through a youth justice context to unpack police perspectives regarding matters related to unlawful youth.

In total, 69 per cent of respondents ( $n = 22$  of 32) agreed or strongly agreed with the statement “I feel comfortable with the actions I take with youth,” while 15.5 per cent ( $n = 5$ ) disagreed or strongly disagreed that they feel comfortable with their actions. As such, the majority of participants appear comfortable with their actions, although it remains unclear if this comfort is due to their knowledge relating to the YCJA (or, as noted, perceived knowledge), resource limitations (e.g., they do what they can), training, or officer alignment with internal policies.

Many respondents (52 per cent: 12 of 23 for this specific question) agreed or strongly agreed that “the lack of programs is the primary obstacle to using youth diversion” — a finding consistent with the knowledge of diversion programs reported by the participants and the reported use of diversion programs by officers. The perception of the lack of implementation of youth diversion in the province may be due to the lack of police-accessible diversion programs, as reported by the participants and literature; however, the reasons behind the reduced response on this specific question are unclear ( $n = 9$  skipped this question), and further exploration is required.

Many police officers who responded reported feeling most like a social worker in their day-to-day job ( $n = 11$ ). This was closely followed by law enforcement professional ( $n = 9$ ), peacemaker ( $n = 9$ ), and administrator ( $n = 9$ ). Other emergent job descriptions (from most reported to least reported) were lawyer ( $n = 7$ ), psychologist ( $n = 6$ ), and teacher ( $n = 6$ ). Some respondents reported feeling stretched too thin in their daily job ( $n = 3$ ) and attributed the feeling to a lack of resources for police officers ( $n = 7$ ). Several respondents expressed frustration tied to the lack of resources on the job, with one person elaborating further:

I feel that the government does not have enough resources to adequately address the issues. . . . I am not a social worker and should not be expected to be a social worker when I run into a youth. I am a police officer and should deal with the criminal code more than getting a youth into



counseling. I agree that youth benefit from such programs, but the allocation of responsibility onto a Police Officer's shoulders far exceeds the strength of their legs. We cannot do it all, all of the time, yet it seems that more and more requirements are being demanded of us, with the same amount of resources (numbers of police officers).

Echoing the survey data, this individual's words show frustration with the government resources available to police. While the police agree that youth benefit from programs, they also believe too large a responsibility falls to them. The YCJA may require that diversion options be considered and promote their use; however, if the provincial government does not provide the programs, no diversion can exist, and an extra burden falls on police officers.

Just over half of the respondents (53 per cent,  $n = 17$  of 32) agreed or strongly agreed that "extrajudicial measures, such as youth diversion programs, are soft on crime." Comparatively, 34 per cent ( $n = 11$ ) did not agree that youth diversion programs are soft on crime. The open-ended text revealed that seven respondents believe youth diversion is ineffective in holding youth accountable for their actions. Five participants indicated they believed the YCJA is too lenient on crime. Participants were also asked if "I believe in being tough on crime," of which 63 per cent ( $n = 19$  of 30) strongly agreed or agreed, while 27 per cent ( $n = 8$ ) neither agreed nor disagreed, and 10 per cent ( $n = 3$ ) strongly disagreed or disagreed. In contrast, a total of 13 participants (42 per cent) agreed or strongly agreed with the statement, "extrajudicial measures are adequate for holding non-violent youth offenders accountable," while 19 per cent ( $n = 6$  of 31) disagreed or strongly disagreed and an additional 39 per cent ( $n = 12$ ) neither agreed nor disagreed. Further, 45 per cent of participants ( $n = 14$  of 31) agreed or strongly agreed with the statement, "I use verbal warnings as often as possible," while 13 per cent disagreed or strongly disagreed ( $n = 6$ ) and 42 per cent ( $n = 13$ ) neither agreed nor disagreed. Individuals who believe warnings are ineffective are not likely to prioritize their use. While the majority of respondents believe that it

is the duty of the police to hold youth accountable (65 per cent or  $n = 20$  of 31), these data suggest a prevailing negative attitude towards the legislation and the strength of the YCJA. The desire to be “tough on crime” requires further investigation, as attitudes may be tied to culture, education, and training or reflective of the overall frustration felt due to the lack of resources in this province and how front-line officers feel unsupported in their roles. In addition, this illustrates a split relating to the attitudes of the respondents. The presence of two groupings within the participant pool may be indicative of differences in training, education, tenure groups, experience, or social group; however, further data collection is required to fully investigate these findings.

Almost all ( $n = 30$  of 32, or 94 per cent) participants strongly agreed or agreed that “police working with youth in communities is an effective crime deterrent.” The survey asked participants on the same scale if participants believed that “cooperation between the police and the community is important to prevent crime.” Nearly all participants (97 per cent, or  $n = 31$  of 32) strongly agreed or agreed with this statement. Thus, a strong majority of participants believe that partnership between police, youth, and the community is necessary. This result shows that the barrier to using EJMs does not lie in police valuation of community collaboration, nor is the obstacle in police willingness to work with youth as a deterrent to crime.

The final question of the qualitative open-ended section asked respondents if there was anything important for the researchers to be aware of regarding their role in policing youth. Several respondents stressed the need for additional resources and supports, as well as better training and clearer policies involving youth. Five officers referred to the YCJA in a negative manner by calling it “a joke” or “a failure.” Nine officers believed the YCJA was not fully implemented in NL. Multiple respondents mentioned policy as a reason for diminished relationships between youth and police:

We waste far too much time with “missing persons” complaints from group home youth who are not missing, just

not home for curfew. This whole area of policy makes a lot of RNC officers hate dealing with youth and, in some cases, less likely to go out of our way to help them.

This participant response shows how frustrations with policy can impact police attitudes towards youth and how one aspect of a police officer's job can affect other areas and directly influence their day-to-day actions and motivations. Another officer remarked on the taxing effect of paperwork and the negative consequences of the procedure:

I feel as though the paperwork for police officers when arresting youth is an overburden. It can be intimidating for young police officers and is time consuming. There should be one release document for all offenders (adults included) which would eliminate a lot of confusion. Officer(s) would still take every measure to ensure youths' rights are protected. I feel as though the officers that I work with generally do this regardless but anytime you overburden officers with paperwork it has negative consequences.

The participant points to procedural issues as a source of confusion and inconsistency, while also noting the strain and resulting impact on police officers.

### **Influencing Factors**

When examining what factors influence police use of discretion in dealing with youth, four respondents reported being unfamiliar with the YCJA, seven reported there were not enough resources or education focused on youth matters, and three noted a lack of information regarding diversion in NL. Other emergent themes were organizational barriers (through policy, paperwork, or justice structure), mentioned by five participants. A majority of 61 per cent of participants ( $n = 19$  of 31) agreed or strongly agreed with the statement, "I would use referral services instead of formal charges if they were available to me"

while 10 per cent ( $n = 3$ ) disagreed. Findings reveal a desire for youth diversion services; however, the absence of diversion options in NL has a negative impact on the success of youth diversion in the province.

Of the participants, 29 per cent ( $n = 9$  of 31) agreed or strongly agreed with the statement, "I have the authority to make recommendations to the Crown," while 42 per cent ( $n = 13$ ) disagreed or strongly disagreed that they could make recommendations to the Crown. In addition, over one-third of respondents (39 per cent,  $n = 12$  of 31) strongly agreed or agreed that "Crown attorneys are the only justice workers who can make referrals to diversion," 26 per cent ( $n = 8$ ) strongly disagreed or disagreed that only the Crown can make referrals, and 35 per cent ( $n = 11$ ) of respondents neither agreed nor disagreed. Again, there is an array of beliefs in the role of the Crown attorney in youth matters. This split in understanding shows a need for clarification in the role of the police authority with the Crown and the relationship between the two departments. The limits to accessing diversion by both police and Crown may present barriers to establishing YCJA-positive organizational cultures when handling matters involving youth.

Throughout the open-ended answers, three respondents mentioned the Crown attorney as the only avenue for diversion for youth in Newfoundland and Labrador. At the time of this survey, the only available route to diversion programming was through the Crown attorney for frontline police officers with the Royal Newfoundland Constabulary. Another participant commented:

Diversion is only an option for less serious offences. If an officer recommends diversion, the Crown attorney has to agree to this. If the Crown attorney does agree and applies for youth diversion, it can be rejected by the people in charge of the programs. Therefore, a youth may never get to take part in the diversion program. If a serious offence is committed, the youth has to be charged formally. I have been told by Crown attorneys that charging a youth is the

only way to ensure that the matter will be dealt with, as they have to apply for diversion and it may not be accepted.

The participant reports being directly instructed by the Crown that charging youth is necessary to deal with youth believed to have committed an offence. The use of youth diversion is not exclusive to Crown attorneys; youth diversion is meant to be an available resource at all levels of the justice system. This also reinforces the sentiment that the Crown is gatekeeper to diversion and also that diversion is a chance venture by police in NL. If the only option for police is to make a recommendation for diversion, they have no assurance the Crown will accept their recommendation and route to alternative programming. Without police-accessible diversion options, the final decision rests with the Crown in NL.

## **Discussion**

Participants were often split on their beliefs about the YCJA, a split informed by a variety of factors. Police knowledge of the YCJA was largely inconsistent. Respondents varied in perceived knowledge versus actual knowledge; some were candid about their lack of experience and knowledge of the YCJA, while others believed they were very knowledgeable about the legislation, contrary to their answers regarding the actual Act. In several cases, participants were unaware they lacked knowledge; they reported that they are familiar with the YCJA and understand youth release procedures, but less than half of the group reported knowing the process for diverting youth to EJMs or the role of EJSs. Familiarity with the legislation is likely a function of diversion resource availability; the more diversion is used, the greater the level of knowledge about it is expected.

Respondents reported many different sources of training, with just over half of respondents learning about the YCJA through an approved curriculum, while the remainder of the respondents learned about the Act through self-education, experience, or word-of-mouth.

Without formal, police-specific training initiatives and approved lesson plans, officers do not receive pedagogic exposure to the legislation — a requirement if consistency in its practical application across diverse contexts and by different police officers is to be ensured.

A large percentage of respondents felt they were personally responsible to hold youth accountable for their actions, and this may be indicative of their feelings regarding the use of diversion. The YCJA stresses accountability throughout the Act, and RNC officers may view their actions as the only option to ensure that accountability, especially due to the lack of police-accessible programs. This sentiment may also echo the reported burden on the police service, as reported by participants. As one participant explained, officers must do their best with increasing demands but fewer resources. As well, respondents exhibited split attitudes regarding diversion and whether the YCJA was effective in holding youth accountable for their actions. The YCJA, however, may feel negotiable and “soft” compared to other pieces of legislation, which have apparent robust resources directed to them, as evidenced by the respondents’ attitudes about the YCJA being soft on crime. Consequently, resource scarcity may influence attitudes towards the YCJA. As federal legislation, the YCJA is arguably better suited and even designed for communities with specific resources that are unavailable in NL. Police officers may be focused on their perception of what is practically possible for the community they serve and pay little attention to legislation that is not applicable to their area; without resources available, there is little point in focusing on something you cannot use. The participants may believe they are knowledgeable about the YCJA, as they know the parts of the legislation they use every day (for example, warnings are possible); however, they may have little knowledge of the aspects of the YCJA that are not applicable or readily available to them, personally, on the front line in NL.

Police officers may be attempting to mitigate the risk they perceive from taking no action at all versus the risk of proceeding with formal charges due to the fact that there is no apparent middle ground for action in their area. Thus, balancing the risk of probabilities in how youth

will desist in their behaviour is nearly impossible within the current structures and lack of diversion options. Without better training, consistent education programs, and appropriate resources for police and the Crown, the YCJA cannot be consistently and adequately applied as intended. The majority of participants reported using a progressive discipline style when handling matters involving youth, contrary to the purpose of the YCJA — a finding that could be indicative of organizational culture, internal policy, inconsistent or ineffective training, performance management, or lack of programs, all of which require further research. The combination of the ability to use discretion with the perception of risk may lead police officers to pursue more formalized action, such as charges, when no middle ground is available in the area.

Many officers discussed and reported the lack of programs as the primary obstacle to using youth diversion — the impossibility of diverting youth when diversion is not available and there is a lack of options. Although the Crown attorney can divert youth to diversion programs, these resources are not readily available to the police we surveyed — a seeming inequity to youth and the people of NL. As one respondent illuminated, police can charge a youth they believe has committed an offence and leave the routing to diversion to the Crown. The burden of that redirection, then, lies solely with the Crown — and the youth is criminalized in the process. Police may be attempting to use diversion through the Crown in this manner, as mentioned by a respondent who requested diversion in a court brief. However, the use of diversion in this manner is not guaranteed, as a recommendation is not a requirement once the charge is recommended or laid. Respondents were also split regarding their authority to make recommendations to the Crown and whether the Crown alone could make referrals to diversion. This variance reflects a failure in police officer training about diversion referral processes in the province, where referrals to diversion are seen as only available to the Crown and not the police. However, the use of youth diversion is not intended as solely a Crown attorney responsibility; youth diversion is meant to be an available resource at all justice system levels.

The YCJA allows for diversion without discrimination or criminalization, and without those resources being available to police officers in NL the Act is inconsistently applied. The issue of whether the lack of diversion programs contributes to the absence of police-directed diversion or if the scarcity of diversion referrals drives the lack of diversion program resources is key. However, our study shows officers are unsure about using the limited processes that currently exist within NL, and additional resources are needed. Without the resources to use diversion with youth, front-line police officers in NL may feel they are forced to take formal action versus no action at all, as many participants reported frustrations with trying to do their jobs, especially with the lack of resources. When choosing between no action, a warning, or laying charges, officers may decide charges are the only choice when measured against the perception of their role in ensuring youth are held accountable for their actions. The lack of implementation of youth diversion in the province may be partly due to lack of diversion programs, as reported by the participants; however, it may also be reflective of the absence of police-directed diversion within the North East Avalon area of NL. More research is required to explore if the use is reduced due to a lack of programs or whether programs are lacking due to non-existent demand.

Overall, training, education, and leadership (in terms of increased supervision, leading by example, prioritizing knowledge, understanding and addressing training gaps, and performance management processes) are steps towards changing police attitudes and assisting police in making educated, informed decisions when dealing with youth in conflict with the law. The lack of resources, both actual and perceived, was a primary obstacle for front-line police officers with the Royal Newfoundland Constabulary, and the frustration the respondents experience in the absence of youth programs was evidenced throughout the survey. Respondents reported feeling overburdened, with numerous participants voicing negative views of the YCJA legislation. Despite this, respondents overwhelmingly agreed that police working with youth in communities is a deterrent to crime and valued cooperation between police and the community.



Increased awareness and development of diversion practices with culturally informed and localized youth diversion programs could be achieved through supplementary provincial legislation to fill in any gaps created by federal legislation in the province, as well as through increased supervision for files involving youth and more communication with the Crown. Internal policies on repeat warnings could decrease youth charges, and further, provincial government policies could be changed to allow police to refer to existing diversion programs previously held exclusively for Crown attorney referrals. The creation and use of diversion in NL is a topic that warrants further research to inform the development of clear policies, procedures, and remedial training in its proper use. Clear policies and procedures must be developed to maintain consistency throughout organizations, establish formal rules versus informal norms, and ensure equal access to programs. If federal legislation lacks the ability to ensure the availability of programs, provincial decision-makers may decide that other matters are more important when allocating funds, making budgets, deciding community needs, and determining local objectives. Ultimately, the Youth Criminal Justice Act is not fully implemented in the province of Newfoundland and Labrador, and police officers lack the resources to effectively use the Act as intended. Our study illuminates several gaps in training, resources, and understanding of youth matters in the province. A desire for youth diversion services was evident among participants; nevertheless, the lack of availability of police-accessible diversion in NL, including specific programs for youth, is a primary influencing factor affecting the understanding, implementation, and success of youth diversion in the province.

### **Limitations**

The current study is not without limitations. First, the sample is small, which requires caution regarding generalizability. Second, survey respondents were officers in NL, and all worked in the northeast Avalon area of the province. As such, differences between rural and urban policing

could not be unpacked, and there may be a significant difference in the access to youth diversion and how the YCJA is implemented between rural and urban areas in NL — an area requiring further investigation. Third, we did not study the relationship between the Crown and officers or the use of diversion solely by the Crown. An exploration of training received by Crown attorneys in the YCJA may be warranted, as well as how the Crown uses diversion and what resources are available. In addition, participants may have been reluctant to provide honest answers for fear of being seen in a negative light or through reluctance to represent the organization poorly, as the climate towards police organizations has been challenging over the last several years.

The survey itself had limitations. The survey was quite lengthy, and the participant group may have had time limitations or lost interest. In addition, the survey could not be restarted. Completion of the survey may have been a low priority, as the survey was completed during work hours, where the link was distributed through work e-mail. Participants may have also been cautious about completing the survey over the employer's network at the workplace due to concerns over confidentiality and privacy. Moreover, we did not explore the policies or procedures related to youth diversion of Crown attorneys, nor did we investigate provincial budgetary planning towards youth programming — both of which warrant further exploration to better illustrate the current situation in NL. Finally, we did not comparatively examine youth charge rates in NL with the rest of Canada or the Maritime provinces, and we did not explore pre-charge or post-charge diversion rates between provinces and territories. An examination of police use of diversion from an Atlantic provinces context could garner further information on the effectiveness and use of the YCJA in Canada.

## **Conclusion**

Both a perceived and actual lack of resources and a lack of awareness among front-line officers exist regarding youth diversion in Newfoundland and Labrador. Police officers in NL work in the difficult

position of having legislation that provides more meaningful and impactful options for matters involving youth but have no actual means with which to exercise those options, given the absence of programs. In addition, a lack of provincial programs, policies, direction, or collaboration with the Crown in support of the Youth Criminal Justice Act is evident. Thus, despite the legislated options as they appear in the YCJA, Royal Newfoundland Constabulary officers are, in practice, unfortunately still left with only the decision to charge, warn, or do nothing. A large gap exists in the knowledge that front-line police officers have, the training they receive, and the resources available to them. Findings reveal a desire for youth diversion services; however, the availability of diversion in NL and specific programs for youth are primary influencing factors affecting the implementation and success of youth diversion in the province. The findings of this study are consistent with previous literature reporting significant geographical differences in the ability to apply the YCJA across Canada, as a result of disparities in community resources, training, and experience producing differential application of legislation (Anderson 2007; Bala et al. 2009; Carrington and Schulenberg 2005; Harris et al. 2004; Moyer and Basic 2004; Nuffield 2003). Inequal application of the Act elucidates concerns regarding the rights of youth and the allocation of provincial funding. Additional resources could mitigate these disparities by increasing the ability of police to use all options available to them under the YCJA, as intended by the Act.

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