THE ROLE OF DEFENCE COUNSEL IN CANADIAN YOUTH JUSTICE

BY

HEATHER A. MILNE

A thesis submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements of the degree of

MASTER OF ARTS

ISBN 0-315-37331-8

The Role of Defence Counsel in Canadian Youth Justice

by

Heather A. Milne

A thesis
presented to the University of Manitoba
in partial fulfillment of the
requirements for the degree of
Master of Arts
in
Sociology

Winnipeg, Manitoba

I hereby declare that I am the sole author of this thesis.

I authorize the University of Manitoba to lend this thesis to other institutions or individuals for the purpose of scholarly research.

Heather A. Milne

I further authorize the University of Manitoba to reproduce this thesis by photocopying or by other means, in total or in part, at the request of other institutions or individuals for the purpose of scholarly research.

Heather A. Milne

The University of Manitoba requires the signatures of all persons using or photocopying this thesis. Please sign below, and give address and date.

ACKNOWLEDGEMENTS

There are several people who helped me throughout graduate school and in the completion of this thesis. I thank my committee members, Rick Linden, Rod Kueneman and Len Kaminski for their guidance. I also thank the lawyers who gave their time to participate in the interviews. I am grateful to my colleagues, especially Tracy Lewis and Dino Altieri, whose friendship I value greatly. I am indebted to my parents whose love and sense of humour has always been a source of strengh and encouragement. Finally, I thank Barry, for his love and emotional support.

ABSTRACT

The purpose of this study was to examine the perceptions of defence counsel toward their role the youth justice system. The variable 'role' was conceptualized by two ideal types and was examined in relationship to the structural 'model' of the court organization and the attitude of defence lawyers toward the Young Offenders Act.

The research included the analysis of attitudinal data from a national study which measured the attitudes of defence counsel toward the youth court and various aspects of the Young Offenders Act (The National Study on the Functioning of the Juvenile Court, Solicitor General of Canada, 1982). In conjunction with the attitudinal research, in-person interviews were conducted with fifteen Winnipeg defence lawyers.

Due to the inconsistency in the responses in the attitudinal data, the variable 'role' could not be differentiated according to the pre-defined ideal types. In addition, the lack of jurisdictional variation in attitudes toward the provisions of the Young Offenders Act, precluded the examination of the relationship among the variables 'model', 'role-type' and 'attitudes toward the legislation'. The degree of inconsistencies observed in the attitudinal research were substantiated by the interview findings.

It was concluded that lawyers did not perceive of or adhere to a consistent role that could be identified as a specific type. In addition, on the basis of the attitudinal data, it was concluded that the court 'model' or orientation did not have the predicted effect on the perceptions of the role of counsel or their attitudes toward the legislation. However, this conclusion was complicated by the interview findings which suggested that the ability of defence lawyers to function in youth court was affected by organizational variables. Suggestions for the direction of future research are discussed.

CONTENTS

LIST OF TABLES

Chapter I

CONCEPTUALIZING THE RESEARCH PROBLEM

1.1 INTRODUCTION

At the time of implementation, the Young Offenders Act was described by some legal commentators as being, " among the most significant social legislation enacted by the Parliament of Canada during the last few years" (Archambault, 1983:3). The legislation was the result of more than twenty years of political and legal debate over the inadequacies of the Juvenile Delinquents Act and represented parliament's response to the criticism that had been directed toward the juvenile justice system.

The incorporation of the philosophical and procedural changes however, has provoked a diverse response from members of the legal communities and social sciences. Much of the literature has focused on the shift of philosophical orientation underlying the principles of the legislation. It has been suggested that the Declaration of Principles represents an explicit attempt to depart from the traditional parens patriae philosophy and to incorporate a due process model of juvenile justice. The implications for such a movement are significant in that, theoretically, the nature of the relationship between the state and the child is changed which ultimately effects the role and procedures performed by those in the system. As such, it is not simply a Preamble to the legislation, but is critical to the subsequent interpretation of the entire Act (Bala and Lilles, 1984).

Section 11 of the Young Offenders Act, establishing the right to counsel, is another significant legislative change. Historically, lawyers were not considered necessary in juvenile proceedings since, under the parens patriae philosophy, the court was understood to act in the best interests of the child. This situation may change substantially as a result of the shift from the welfare approach and the incorporation of section 11 of the Young Offenders Act. Depending upon the interpretation of the principles of the Act, the assumption that the child's interests are identical to that of the state is questionable. Legal representation, therefore, is necessary to ensure that the interests of the child are presented. By establishing the right to retain and instruct counsel, the state has acknowledged the necessity for independent representation of the child's interests in court. Under the new legislation the presence of defence counsel, has the potential to become a more prominant and influential factor in determining the direction and outcome of juvenile proceedings. Under these circumstances, understanding the the nature and role of defence counsel becomes increasingly important.

While it has been argued that the legislation defines the role of counsel as that of an advocate, the debate as to whether this is the appropriate role continues. The controversy is due, in part, to the ambiguity with regard to the principles of the leglislation. Specifically, while there is a recognition that young offenders should be held responsible for their actions, there is also a stipulation that young persons should not always be held accountable for their behaviour like adults and consequently require guidance and assistance (Bala and Lilles, 1984).

If the young person is to be held responsible and accountable for his actions, he is also entitled to all the procedural safeguards afforded to adults. Contradictions emerge in that the principles emphasize supervision, discipline and control while simultaneously recognizing the special needs of young persons requiring guidance and assistance (Bala and Lilles, 1984). The result of this type of contradiction has been observed most recently in Manitoba, where in two decisions, the right of a young person to retain and instruct independent counsel has been questioned by judges still operating under a treatment model of juvenile justice (R v. Whincup, 1985; R v. Hardisty, 1985). The absence of legal precedent or developed case law to serve as interpretive guidelines in applying the principles will result in continued debate over the appropriate role of the lawyer in the context of section 11.

Also contributing to the problem of role definition, are the significant provincial disparities in administering juvenile justice created as a result of the Juvenile Delinquents Act. While enacted as federal legislation, the administration of juvenile justice, correctional and other social services provided in the Juvenile Delinquents Act were the responsibility of each provincial government (Bala and Corrado, 1985; Corrado, et.al., unpublished). The nature of the juvenile justice process is therefore largely determined by the interaction of federal and provincial legislation and its implementation by local agencies and institutions which often differ from one another in orientation and practice (Bala and Corrado, 1985).

Attempts at the federal level to revise or replace the outdated and inadequate aspects of the Juvenile Delinquents Act were not successful.

Subsequently the provinces, operating autonomously, introduced legislative and procedural changes that created considerable disparity in the structure and administration of juvenile justice. "The result was a juvenile justice system, despite the uniformity provided by the Juvenile Delinquents Act, evolved markedly over the years into a highly complex system characterized by very significant geographical variation" (Bala and Corrado, 1985:1).

Based on the parens patriae philosophy, juvenile courts in Canada were characteristically informal regarding policy and procedure. Quite often, procedure did not follow explicit guidelines and, in some cases, was known only to local practitioners (Bala and Corrado, 1985:1). Consequently, to provide an analysis of the juvenile justice system was a difficult task considering the degree of diversity in practice and procedure from one locality to another (Bala and Corrado, 1985).

Understanding the operation of the juvenile justice system as it was structured under the Juvenile Delinquents Act is important in providing a framework within which the impact the Young Offenders Act may be assessed. More specifically, given the distinctive provincial and local character of Canadian juvenile courts, it has been anticipated that the effect of the Young Offenders Act will vary significantly in different localities (Bala and Corrado, 1985). It is within this framework that the role of the defence counsel in juvenile justice was examined.

1.2 REVIEW OF THE LITERATURE

Until the enactment of the Young Offenders Act, the elements of due process characteristic of the criminal justice system were not considered appropriate for dealing with 'misguided' children. The Juvenile Delinquents Act did not refer to the defence lawyer and despite the established right to counsel contained in section 11 of the legislation, controversy as to the advisability of legal representation and the role defence counsel should adopt in court continues (Bala, Lilles and Thomson, 1983).

During the last fifteen years there has been a notable increase in the number of lawyers acting on behalf of juveniles. Their function in that capacity, however, has been a neglected subject of discussion in juvenile justice research (Catton, 1978; Williamson, 1980; Thomson, 1983). Only a very limited body of empirical research specifically addresses the issue of role definition. Contributions to this topic have largely been made by members of the legal profession, and typically represent legal opinion rather than research results.

1.2.1 Defence Counsel Role Types

Opinion varies regarding whether a single role is appropriate for the lawyer acting in juvenile proceedings. Some lawyers suggest that a combination of roles are required in order to provide effective representation. The type of role adopted will depend on the type and stage of the proceeding as well as the the capacity of the child (Treadwell, 1965; Leon, 1978; McHale, 1980; Williamson, 1980).

From the literature, two opposing perspectives emerge that describe the role and functions of defence counsel in either social or purely legal terms. Between these extremes, role types are distinguished varying in degree of orientation from the formal legalistic to the the helping or social work position. Although the terminology used to describe counsel's role may vary according to the type and context of the dispute, there are essentially three representational stances that counsel may assume when defending a juvenile client in delinquency proceedings (Leon, 1978). Each of these roles describe the lawyer's task, " in terms of increasing or decreasing emphasis on the elements of traditional advocacy, and in terms of various degrees of movement toward the 'treatment' or 'conciliatory' functions of the youth court" (McHale, 1980:219).

The role of advocate is that taken when representing an adult. The primary objective is to win an acquittal or reduction of charges in the adjudicatory process. In pursuit of this goal the lawyer presents factors and applies techniques that will ultimately persuade the decision-maker in his favour (Besharov, 1974). Of major concern are the, " protection of the client, observance of proper procedures, arguing technical questions of law, testing of evidence, representation of the child's wishes and rigorous promotion of the child's strict legal rights" (McHale, 1980:219).

The advocate would confront the client with his findings and advise him in terms of recommendations. Any disagreement between the lawyer's recommendations and the client's preference would result in a cooperative effort in a re-evaluation of those preferences (Leon, 1978).

This common position would be argued before the court to the extent that the evidence permits. However, if a conflict between the lawyer and his client is evident, "it would be the lawyer's duty to represent the child's position with zeal" (Leon, 1978:42).

The 'guardian' role involves a shift from a neutral position as officer of the court to a 'helping' or 'social work' role (Leon,1978; Dickens, 1978; McHale, 1980). Theoretically, this role resembles the functions performed by the guardian ad litem in a civil proceeding, where the child is either represented by the parents or natural guardians, relative, friend or person appointed by the court.

Historically, the common law made a provision for representation because it was assumed that children, as a result of their incapacity to make contracts and instruct counsel, were perceived as being under a legal disability, similar to an adult who is determined insane. Subsequently, the child could only act through a competent adult who made decisions on their behalf (Maczko, 1979).

Adopting similar principles in the context of delinquency proceedings, the lawyer as guardian acts as a 'surrogate parent', who independently identifies and then advocates to the court his judgement in regards to the child's best interests (Costello, 1980). The objective of the guardian lawyer is not necessarily to achieve the result which the child desires but one that reflects the best interests of the child or the least detrimental desposition (Leon, 1978; McHale, 1980). In determining his client's best interests, the lawyer operates on the basis of the treatment philosophy or child welfare model and

recommends what the child 'needs' in order to be successfully 'rehabilitated'.

Under these circustances, the lawyer would determine whether to take into account the juvenile's expressed desires, and if so, how much emphasis to place on them. The factor disinguishing the guardian role from others is that it is, " the lawyer's view as informed by expert opinion or otherwise, that is the position placed before the court" (Leon, 1978:43). It is his function to accurately, "present the true needs of the child, and thereby, establish the 'best interests' tests as a suitable formulation for insuring a child's welfare" (Leon, 1978:43; Leven, 1974:362).

Acting as guardian, a lawyer may exercise traditional adversarial skills to the degree that, "in doing so will accomplish the result he has identified as desirable for his client" (Costello, 1980:259). This might involve the presentation of evidence and the cross examination of witnesses. It may also require the lawyer to assert or waive the client's rights, decline to raise priviledges and objections, or not to obtain an accquittal or the least burdensome disposition (Leon, 1978; Costello, 1980). The lawyer may pursue a strategy or advocate to the court a disposition to which the juvenile objects (Costello, 1980). More importantly, where there appears to be a conflict between the lawyer and the client regarding the determination of best interests, the lawyer's viewpoint would be considered over that of the juvenile's by the court (Leon, 1978).

The rationale underlying the guardian role for defence counsel is similar to the reasoning of the common law in civil proceedings. Juveniles are perceived to be legally disabled due to the lack of or limited capacity to identify and effectively communicate their own best interests (Costello, 1980). For this reason the guardian role has been recommended for lawyers defending cases where the client is very young and does not have an appointed guardian or where there is a perceived conflict of interest between the parent and the child which prevents the lawyer from seeking instructions from the parent (Costello, 1980).

Under provincial jurisdiction, the Juvenile Court may exercise the power to appoint a party as amicus curiae, where a defendant on a charge of any gravity lacks counsel (Dickens, 1978). Consistent with the doctrine of parens patriae, the lawyer acts as "friend of the Court", rather than as counsel on behalf of a person before the court (Maczko, 1979). Assuming a 'neutral' stance, the lawyer functions as and intermediary between the court and the offender (Leon, 1978; McHale, 1980). Assisting the court in the decision-making process, the amicus curiae would be responsible for placing before the court any factual or legal information considered necessary for the court to arrive at an informed decision. Other responsibilities might include interpreting court procedure to the client and parents or advising the judge on points of law (Leon, 1978). Depending on the jurisdiction, the amicus curiae may be restricted with respect to procedure and may be discharged from his duty by judicial discretion at any point during the proceedings (Leon, 1978; Maczko, 1980).

As with all other evidence, the amicus curiae may inform the court of the child's and parents opinions. In some cases, "this could involve disclosure of information to the court which a lawyer following an adversarial role would regard as confidential" (Costello, 1980:258; Zenoff, Courtless & Snethan, 1971:388). The rationale for this function is that by providing such information, the lawyer increases the liklihood of obtaining an appropriate and beneficial disposition for his client. As a 'neutral' officer of the court the lawyer could not attempt to advocate one disposition over another, nor would the child's or parent's viewpoint be argued before the court. If, by the decision of the amicus curiae the child's wishes are made known to the judge, he would determine the issue by assessing, "the face value of the child's opinion, with or without further consultation with the child" (Leon, 1978:43). In summary, the lawyer who functions as amicus curiae operates as a legal resource person who plays a facilitative role in court proceedings (McHale, 1980).

Proponents of this role believe that the court is acting in the best interests of the juvenile. The primary justification of the amicus curiae role, is the presumed, "benevolent orientation of the court rather than the competancy of the juvenile to assist an attorney in representing him" (Costello, 1980:250; Platt, Schecter & Tiffany, 1968:619,624). Other supporters of this role assume that the accused juvenile, regardless of guilt or innocence, will benefit from some type of 'treatment' which an adversarial lawyer through acquittal would prevent them from receiving (Besharov, 1974; Costello, 1980).

There is no consensus in the literature as to which of these role 'types' are most appropriate for defence counsel. Criticism has been directed toward the guardian and amicus curiae roles because they do not adhere to the goals and ojectives delineated by law. While it is more 'pschologically attractive' to have lawyers present in the court in order to interpret and aid in the rehabilitative process, this was not what the law intended as their purpose (Costello, 1980).

It has been suggested that these roles are based on the assumption that, regardless of whether the charges are proven, the juvenile client is in need of social services in order to be deterred from future involvement or ideally rehabilitated (Ferster, Courtless, and Snethan, 1971; Costello, 1980). Juvenile justice personnel have been criticized for 'shaping the charges to fit' the action desired by the state rather than the facts of the case (Costello, 1980).

Additionally, these roles require the lawyer to perform functions that are essentially judicial in nature. If the lawyer assumes that the juvenile will ultimately benefit under juvenile court jurisdiction rather than by gaining an acquittal, the decision-making function is transferred from the judge to defence counsel. By adopting either role, the lawyer indirectly waives the right to defence, not in the interests of the client, but by definition of the role itself.

In contrast, sanctions in the criminal jurstice system regardless of their perceived benefit to society, are considered in a negative light by both counsel and client (Costello, 1980). Therefore, strong procedural measures are implemented to avoid unjust application of these

sanctions, including requiring the state to prove its case. As an advocate, the role of the lawyer is to offer, "mitigating factors and suggested dispositions which clearly are intended to serve the client's best interests, or only secondarily, if not at all, the state's" (Costello, 1980:261). The role of the judge is to balance the state and the client's interests. It is a judicial responsibility to decide, "whether a less restrictive sentence may in fact preserve the state's interest in preventing the repetition of the offence" (Costello, 1980:261). Adherence to the amicus curiae and guardian roles, creates an imbalance in that the lawyer usurps the role of the judge, and facilitates an informal atmosphere where legal safeguards are no longer considered necessary for the protection of the rights of the client.

Proponents of the advocate role base their argument on the premise that the legal system has conferred a variety of rights and powers upon children under the age of majority and, as a reflection of moral autonomy, entitles them to make certain decisions regarding their own lives (Guggenheim, 1984). As such, they are entitled to direct the course of their attorney's actions.

It has been suggested that this is the basis of the argument established in Gault where despite the court's intention to be rehabilitative rather than punitive and act to further the child's best interests, this was insufficient to deny the accused juvenile of the right to due process (Gault, 381, U.S.1, 1967). Therefore to assert that the child is either incapable of knowing or not entitled to determine his/her own best interests and thereby deny him/her an active part in the litigation in order to assure the outcome most beneficial to

him/herself, is contrary to the spirit of Gault and simply replaces the paternalism of the state with that of the lawyer (Guggenheim, 1984).

Part of the amicus curiae and guardian functions are to disclose all relevant information, about the client, in an attempt to assist the court in the decision-making process. It has been argued that this function negates the possibility of defeating the charges at adjudication and subsequently places more importance on the disposition (Costello, 1980). The main purpose of the proceeding becomes the disposition, which supports the, " unspoken assumption that the hearing is chiefly or solely to determine what to do about (or for) the client" (Costello, 1980:263).

The departure from the legally defined role of defence counsel, establishing the appropriate obligations and functions of an attorney, indirectly defrauds the client. It is suggested that the legal profession has defined the appropriate role of the defense lawyer, not only as an exercise of self-definition but as a way to inform the public about legal services. When counsel represents an accused, there is an agreement between the two parties as to what function and role the lawyer is to perform. Replacement of the role defined by the rule of law with another, based on emotional reaction to the client or pschological convenience, removes the standard by which the client is able to measure the lawyer's efforts (Costello, 1980).

Those who are opposed to the incorporation of a strict advocate role suggest that the apparent failure of the treatment philosophy of the court and the informality of procedure, does not warrant the use of

legal technicalities to get their clients 'off', if help or treatment is needed. This argument perceives delinquency as an illness requiring treatment in order that the person may return to a state of normalcy. As such, there is little difference between a child who is physically ill as opposed to behaviourally or emotionally 'sick'. Therefore the child should not be encouraged to deceive the doctor nor the judge (Bala, Lilles and Thomson, 1983; Newman ed., 1967).

It is argued by some proponents of the guardian role that counsel should not be guided by the child's instructions or counsel's opinion as to the child's bests interests but by the wishes of the parent (Goldstein, Freud and Solnit, 1979). To support their position, proponents of this role suggest that the Gault (1967, 387 U.S. 1, 18 L. Ed.(2d) 527, 87 S. Ct. 1428) decision adcknowledges that a child will not be deprived of the right to counsel due to financial constraints. However this right is a collective rather than a personal one in that it is meant to protect family autonomy. It is argued that the Gault decision reaffirms the right of parents to make decisions regarding their children's needs without the necessity of state interference (Goldstein, Freud and Solnit, 1979).

The Manitoba Court of Appeals has opposed the advocate role and maintained that, " the appropriate practice is for the lawyer to receive instructions from the guardian, next friend or guardian ad litem than from the youthful offender" (R v. W.W.W.,[1984] 6 W.W.R. 447, per Matas, J.A. and O'Sullivan, J.A., at pp.5,9; R v. Hardisity, 1985). In Re Whincup., it was held that despite the explicit right to retain and instruct independent counsel in Section 11(1) of the Young Offenders

Act., it, " was not intended to replace the traditional mechanisms for the lawyer to receive his instructions ..." and that a twelve year old child cannot be expected to, " ... shoulder the adult responsibilities," involved in decisions regarding his defence.

The law governing section 11(1) has been amended and presently conforms to the original intent of the provision which establishes that the lawyer is to receive instructions from the young person.

The controversy is exacerbated by the contribution of the Sub-Committee of the Law Society of Upper Canada on Professional Conduct. Their report on the Representation of Children (1981) explicitly supported the traditional solicitor and client role for counsel in youth court. Further, the committee suggested that it was not appropriate in a quasi-criminal proceeding, for counsel to argue for what he/she considers to be in the child's best interests (Bala and Lilles, 1984).

Traditionally, the determination of how defence counsel will represent a client has been the responsibility of the individual lawyer. In arriving at this decision several factors may be considered, most importantly, the capacity and best interests of the child. The term capacity is defined by combining several variables including the age, maturity level and individual development of the client (Maczko, 1979; McHale, 1980). In the traditional solicitor-client role, there is an assumed level of capacity which presupposes the ablility of the client to understand the nature of the proceedings and to articulate, in some form, his/her own interests and to instruct counsel.

Determining whether or not a child is legally capable involves the consideration of two prerequisites. First, the child must be able to communicate with the lawyer either directly through specific statements, or indirectly by expressing general attitudes or feelings reflecting his/her opinion regarding the case. Also, the child must be able to arrive at a competent decision with respect to the dispute. Theoretically if the lawyer believes that both of these criteria are satisfied he/ she ought to feel confident in receiving instructions from the juvenile client (Leon, 1978). Controversy arises however when the lawyer doubts the competancy of the child to reach a critical decision, as in the example of delinquency proceedings, where a decision regarding a plea must be made (Catton, 1978; Thomson, 1983).

The American Bar Association has established guidelines for defence lawyers representing cases where the client is deemed legally incapable. Counsel may refuse to adopt any particular posture and limit all activity to investigation, presentation and examination of evidence including the expressed wishes of the client. Counsel may also seek the assistance of an appointed guardian in determining the best interests of the child. In such cases, counsel is required to take responsibility for the choice of plea. The standards require that following an extensive investigation as to the child's desires, needs and all other matters that reasonably bear on the child's interests in the proceedings, counsel will adopt the least intrusive intervention justified in accordance with the particular circumstances (A.B.A., Institute of Juvenile Administration, 1980). In Canada, apart from the report from the Law Society of Upper Canada (1981), there are no

guidelines to assist lawyers in matters where the capacity of the juvenile client is in doubt (McHale, 1980).

In conjunction with the absence of established guidelines, the criteria used to ascertain capacity and best interests is vague and the conclusions vary according to the personal attitudes and bias of the lawyer (Maczko, 1979). In addition, the legal presumptions associated with the determination of capacity are not consistent in each case. The level of difficulty of the test used to evaluate capacity can be increased or decreased depending on the presumptions that form the basis of the argument (Thomson, 1983). To some extent then, the test may be used to simply legitimate preconceived assumptions pertaining to the legal competancy of children in general.

Those who contend that juvenile offenders lack the maturity to instruct counsel tend to equate competence with the capacity to accurately weigh all immediate and remote benefits and costs associated with the available options. This standard is significantly different than that required of an adult where it is sufficient that the client understands the nature, purpose and consequences of the proceedings as well as to be able to fomulate their desires concerning the proceeding with some degree of clarity (A.B.A., Institute of Juvenile Administration, 1980).

Despite the criticism of the test criteria and the attempts to clarify the issues related to the assessment of capacity and best interests, the task of determining the role of the lawyer remains a problem to be resolved by each lawyer who represents children.

Prior to 1967, representation of children in custody and child protection proceedings was rare. In juvenile delinquency cases the presence of counsel was dependent upon parental authority and willingness to obtain a lawyer. In a proceeding where the interests of the state and the accused were assumed to be identical, the necessity of counsel was debatable (Dickens, 1976). The proceedings were informal and intended to be rehabilitative and nonpunitive. Consequently the environment created did not facilitate the lawyer's traditionally adversarial role. The structure and content of the proceedings were more compatible with the objectives of social workers and probation officers. Dispositions relied more upon their assessment of the juvenile's behaviour and recommendations than the sufficiency of evidence (Costello, 1980).

1.2.2 The Effects of Organizational Variables on Role Types

Research focusing on the extra-legal factors affecting role definition indicate that the philosphy and structure of the court as well as the expectations of other court personnel are significant determinants of the role adopted by counsel (Catton, 1978; Stapleton and Teitelbaum, 1972). The findings suggest that methods of representation vary considerably depending on the organization of the particular court. Consequently, establishing the policy-perspective of an organization may allow predictions to be made regarding the existance of particular role 'types' (Thomson, 1983).

Research in juvenile justice has examined the effect of court orientation on the structural organization and the roles of key

participants in the court context. Stapleton and Teitelbaum (1972) studied the differences in style of representation, procedure and case outcome in two juvenile courts in the United States. Working with the assumption that the structural features of the organization influences the form and manner of the actor's behaviour, they hypothesized that the role of defence counsel and consequently the impact on the outcome of cases is largely determined by the circumstances of the forum in which the lawyer operates (Stapleton and Teitelbaum, 1972).

In a structural comparison, Stapleton and Teitelbaum reported that the two courts differed significantly in orientation and procedure to the extent that they could be considered 'distinct systems'. They concluded that the tendency to refer to the collectivity of the juvenile courts as a 'system' is misleading in light of the variation in organization and structure between the two courts (Stapleton and Teitelbaum, 1972).

The orientation of the two courts were reflected in their organizational structure. The criteria used to measure the types of structural models in operation included the type of prosecution, form of hearing and availability of transcript. On this basis the courts were measured on a 'traditional-legalistic' continuum. The court which was defined as 'traditional' in orientation did not have a prosecutor present during the proceedings, combined the three stages of arraignment, adjudication and disposition into a single hearing and a transcript of the proceedings was not available (Stapleton and Teitelbaum, 1972:107). Conversely, the court that reflected a 'legalistic' model, the state's attorney appeared at all stages of the

proceedings which were separated into three stages and transcripts were taken at each hearing.

The organizational variation apparent in the courts studied suggested that the orientation of the particular court would be important in determining the defence lawyer's role. The findings indicated that the court procedure and the role of the lawyer were affected by the type of model operating in each court. To analyze the prevalance of particular role 'types' the number of contested cases and the entrance of guilty pleas served as indicators of 'adversariness'. The findings indicated that the court defined as 'traditional' in orientation had fewer numbers of contested cases and that the incidence of adversarial defense was reduced (Stapleton and Teitelbaum, 1972:116).

Since court orientation was reflected in terms of the types of 'approved' procedures in each court, Stapleton and Teitelbaum expected that differences regarding the manner in which cases were handled and the type of defense presented would also be evident. The number and kinds of motions made by defence counsel and the type of defense served as indicators to analyze the conduct of the defense (Stapleton and Teitelbaum, 1972:139).

The findings revealed that the court defined as 'legalistic' in orientation used a significantly higher number and type of motions which indicated a greater willingness of defence counsel to use legal remedies in the conduct of their cases. These findings imply that this court granted more favourable dispositions because of counsel's request for dismissal, as opposed to the 'traditional' court model, where leniency

was a court initiated decision rather than by defence counsel (Stapleton and Teitelbaum, 1972:140).

Stapleton and Teitelbaum concluded that the difference in conduct and strategy of the defence counsel could be attributed to the variation in the structure of the proceedings in accordance with the particular orientation of the court and not the 'unwillingness' or inability of defence counsel 'traditional' court to use or respond to violations of due process (Stapleton and Teitelbaum, 1972: 143). However, they were less inclined to 'initiate' legalistic grounds and base the defense on them because of the organizational and attitudinal restrictions of the forum in which they operated.

The researchers concluded that it was the organization of the 'legalistic' court which allowed lawyers to, " ... apply different criteria in deciding how to handle cases - criteria both universalistic and more suited to the maintenance of an adversarial posture" (Stapleton and Teitelbaum, 1972:149). The successful advocacy in the 'traditional' court also meant that the lawyers compromised their position in order to abide by the implicit rules of the traditional juvenile court.

Duffee and Seigel (1972) argue that rather than re-organizing the structure of juvenile court to accommodate legal counsel, some attempt would be made to 'incorporate' lawyers into the existing organizational structure. In this way, the minimal requirement of counsel would be satified without re-structuring the court organization.

They anticipated that lawyers participating in the system would be rewarded for 'cooperative behaviour'. Based on the premise that

organizations are more sensitive to the needs of self- maintenance than to change, Duffee and Siegel proposed that juveniles who are represented by counsel would be subjected to 'state control' more often than those who waive their rights. In formulating the hypothesis, rates of incarceration and the presence of a lawyer were directly related, that is, juveniles without counsel were more likely to be released.

The findings supported the hypothesis that with nature and seriousness of offence held constant, the presence of counsel provided a significantly greater number of incarceratory sentences and reciprocally smaller frequencies of dismissals. Explaining these findings, Duffee and Siegel concluded that where a lawyer was present, the system was more likely to subject the juvenile to further processing because the 'appearance' of due process had been demonstrated. The general organizational characteristic of self-maintenance, explained why lawyers would be 'incorporated' into the existing organizational structure rather than re-structuring the organization to meet due process requirements.

The researchers argued that the legislation can set out minimally accepted standards governing the behaviour in an organization, yet a common occurrence is that the rules prescribing the minimal required effort become the organizational norm (Duffee and Siegel, 1979). In other words, while court personnel allow participation by defence counsel and officially recognize juveniles' rights to legal representation, they limit their effectiveness through official policies as well as informal activities (Bortner, 1984).

Research has concentrated on disparities in dispositions as a means of ascertaining the ideology or orientation of juvenile courts and its effect on the roles of those involved with processing cases. The findings indicated significant disparity in the range and type of dispositions reflecting a variation in the application of juvenile justice legislation. This result was explained by the particular orientation or ideology upon which the court based its objectives procedures and roles of its actors (Priestly, et.al., 1977; Anderson, 1978; Parker et.al., 1981).

Studying the position of the juvenile defendant in court, Anderson (1978) emphasized the importance of understanding the activity of the principal actors and the way their roles are perceived and performed. He suggested that roles are not predetermined or delivered 'ready-made' to the court, but are developed within it as part of an ongoing, interactive process contingent upon the combination of particular organizational variables. The court is, " ... the arena within which any discussion of representation and the relative roles of its prominent contribution become meaningful. The character of the court is in turn greatly determined by these contributions and is a product of the interaction between its constituent members" (Anderson, 1978:2).

Comparing two juvenile courts, Anderson reported that they differed in their approach to the court process as well as the defined aims and attitudes toward the interpretation of the governing legislation. These differences were exhibited in the sentencing policy of the two courts. While cases coming before the courts were similar in terms of range of age and the distribution and incidence of offence type, one court used a wider, more severe range of dispositions than the other.

The variation in methods of disposing cases was correlated with the court's perception of its role. The sentencing policy reflects general policy in that it demonstrates the court's resolution of the case in relation to the philosophy toward the nature of delinquency. Disparity in sentencing between the two courts illustrated the way in which each court discriminated among offenders and assigned disposition based on its assessment of the degree and character of the delinquent behaviour.

Anderson concluded that the way in which juvenile cases were handled as an indicator of the philosophy of the court toward the nature of delinquency reflected the ideological orientation of each of the courts studied. Court A was primarily concerned with the containment of delinquency. The organization of the court, its procedure and its policies indicated a preference for traditional legal standards. The dominant concern in Court B, was that of individual needs, and focused on defining needs and applying methods to meet them. The organization and procedure of Court B followed a social welfare approach where the deterrence of delinquency and giving assistance to the needs of the child were perceived to accomplished through rehabilitative measures.

Explaining the effect of court orientation or context on the role of defence counsel, Anderson found that where the court emphasized 'culpability' and closely adhered to a legal model, the lawyer was accorded a relatively high status whose contribution was considered more relevant than that of the social worker. However, the lawyer's role was not deemed as effective or as necessary in a court which emphasized the social or psychological need of the offender and placed less emphasis on the offence.

In their comparison of an urban and a rural court, Parker et.al.(1981) reported a significant variation in attitude toward lawyers and in the emphasis placed on due process. Seventy percent of 'city' juveniles were represented by lawyers, mainly because the court believed representation to be desirable as it ensured that justice appeared to have been done (Parker et.al., 1981:49). The researchers explained that by encouraging legal representation, the 'city' court fulfilled two objectives: first the court runs more smoothly and efficiently with represented defendants; and second, due process was more easily secured and justice was seen to be done when defence solicitors were employed (Parker, 1981:50).

The most significant aspect of the role of the defence lawyer in 'city' court was the mitigation function performed at the point sentencing. (Parker et.al., 1981). The lawyers developed mitigation rules in relation to the operational rules of the particular court. They operated strategically so as to produce a version of the event in terms of their interpretation of the 'way the bench thinks' (Parker et.al., 1981:55). Based on experience and an understanding of the court's sentencing policy, the lawyers structured their pleas concerning dispositions according to their perceptions of the 'ideological' criteria considered considered relevant by the judge.

Based on these findings, Parker et.al. concluded that the organization of 'city' court reflected a version of juvenile justice that was not imposed , but created or produced out of a 'local' context. The size and high case volume of 'city' court required the development of a bureaucratic and cooperative structure that would enable the court

to operate efficiently. Out of the structure emerged a consistent policy for dealing with delinquency that was influenced ideologically and organizationally by court personnel.

The organzation of 'countyside' court differed from 'city' court in that the rules of due process were not as stringently enforced and were 'interpreted' in order to achieve bureaucratic goals rather than justice. Parker et.al. concluded that the interpretation of due process undermined legal safeguards and allowed court officals to adopt personal interpretations of what was relevant and acceptable in the administration of justice (Parker et.al.,1981: 82). It was found that in 'countyside' court magistrates were inconsistent in advising defendants of the right to representation and wanted to resolve cases quickly even if it meant that the rights of the defendant were not observed.

Fewer lawyers appeared in 'countyside' court than in 'city' court. They were not established as normal and routine court 'workers' and their input was not perceived as important compared to the influence and presence of the 'city' court lawyers.

The apparent differences in procedure between these courts was attributed to the way in which each court approached and interpreted the meaning of due process which produced and orientation or culture particular to each court (Parker et.al., 1981). This development subsequently affected the representational style or role of defence counsel.

In the United States, research on the role of public defenders reported that rather than the client's interests constituting the central focus upon which defence strategy and posture were formed, lawyers assimilated or coopted their style of representation to the ideological, bureaucratic requirements of the court and the needs of other court personnel (A.B.A., Juvenile Justice Standards, 1980). Lemert (1970) suggested that lawyers exercised 'client-control' as a method of operating comfortably within the court's structure. As a result they operated as appendages of the court organization. Blumberg (1967) concluded that lawyers become enmeshed in and part of their organizations and therefore adopt an 'agent-mediator' role rather than the traditional role established by law.

Related to the definition and analysis of the role of defence counsel, research has also focused on the factors contributing to role conflict. One source of conflict has been attributed to the pressures created by different participants in the proceedings expecting lawyers to perform opposing roles in court (Dootjes, Erickson and Fox, 1972; Catton, 1978). Trained as advocates, lawyers experienced conflict due to the informality of the juvenile court and the necessity of modifying their role to that of a social worker (Dootjes, Erickson and Fox, 1972). Erickson (1974) reported that role conflict was evident as a result of contradictory 'intra-role' expectations expressed by judges and social workers. Expectations also varied according to whether the lawyer was retained privately or worked as duty counsel. According to the judges and social workers in the study, private lawyers were expected to be more legalistic that duty counsel.

The implications of the findings about the expectations of the private lawyers were threefold. External role conflict was created because the sample was indecisive regarding which activities should be performed by lawyers. Activities that received unanimous positive or negative reactions by social workers, reflected role expectations that were incompatible with the lawyer's own position (Erickson, 1974).

1.3 THE RESEARCH PROBLEM

The nature of the relationship between the child and defence lawyer and the role the lawyer is expected to play in the juvenile justice system remains a controversial issue. In part, this problem continues due to the lack of clarification with respect to the relationship between the child and the state. Under the Juvenile Delinquents Act the interests of the child and the state were presumed to be identical. Subsequently a cooperative relationship existed where the protection of the child's interests through legal representation was not necessary. With the Y.O.A. and the incorporation of a legalistic philosophy, a more adversarial relationship between the child and the state may be anticipated. As a result there may be significant changes required regarding the role of defence counsel.

To compensate for the lack of baseline data on the operation of the juvenile justice system as well as to be able to measure the impact of the Y.O.A., the Solicitor General funded a National Study on the Functioning of Juvenile Court. The data collected as a result of this study provides a means to study the role of defence counsel in youth court.

Preliminary analysis of the data describing the functioning of the juvenile justice system at each of the study sites reveals significant ideological, structural and procedural variation among provincial jurisdictions (Bala and Corrado, 1985; Corrado et.al., unpublished). A comparison of the major stages of the court process showed that while all of the courts operated within the statuatory framework of the Juvenile Delinquents Act, the procedure with which young offenders were handled in each province varied considerably (Bala and Corrado, 1985).

The extent to which the provinces vary in terms of philosophy, structure and procedure regarding the processing of young offenders reflects the response of the provinces to the federal legislation. The majority of administrative matters came under the direction of provincial legislation and were implemented by local agencies and institutions which were distinctive in their philosophies and practices (Bala and Corrado, 1985). The interaction of these levels of legislation and the way in which it becomes incorporated into the existing structure and organization determines the precise nature of the court process in each province.

In practice the formal process as prescribed by the legislation and the informal process as implemented by the court organization in response to legislative change are often contradictory in the establishment of procedures and goals. Therefore in assessing the roles of court personnel, attention must be focused on the interaction of these two systems which influence the operation of the court organization (Hackler, unpublished).

The purpose of this thesis was to examine the perception of defence counsel with regard to their role in the Canadian Youth Court. Incorporating an organizational perspective, the study concentrated on the variation among defence counsel regarding the perception of appropriate roles by emphasizing the organizational dynamics of the court 'workgroup' and the utilization of informal rules and procedure that may vary among provinces. The research also addressed several related questions including:

1. How do defence counsel perceive their role in the system?
2. Do jurisdictions vary in terms of lawyer's perceptions of appropriate roles?
3. What factors affect their perceptions?
   a) Attitudes toward the causes of delinquency?
   b) Attitudes toward the objectives of the court?
4. Do perceptions of defence counsel toward their role have an affect on the handling of juvenile cases or decision making?

Using data collected as part of the National Study on the Functioning of Juvenile Court (Solicitor General of Canada, 1982), the analysis combines the observational and file data from six principal study sites with the data obtained from the survey questionnaire administered to a sample of defence counsel measuring attitudes toward the Young Offenders Act. Incorporating the descriptive and quantitative research within an organizational paradigm provides a theoretical and methodological framework within which the differences in perceptions regarding appropriate roles can be explained and understood as reflecting the variation in ideological, structural and procedural organization that facilitates the development of informal policy and practice.

1.4 THEORETICAL FRAMEWORK

Contemporary literature and empirical investigation on juvenile courts has generally focused on concepts such as "treatment" and has reflected an overall disenchantment with the potentially repressive implications of the welfare philosophy underlying juvenile justice (Williamson, 1979). In way of response to this criticism there has been a growing body of literature advocating a legalistic philosophy, focusing on concepts such as "due process" and "legal rights for young offenders." Much of this work has been non-empirical and only recently have researchers attempted to merge the empirical with the theoretical to provide a complete understanding of "what is going on" in youth court.

The concepts and methods developed within organization theory provide a means of explaining and understanding social interaction within a judicial setting. Consequently, the theoretical framework of this thesis has incorporated contributions from several researchers who have analyzed the criminal and juvenile justice system based on this perspective. While the terminology used by each researcher varies, the assumptions and principles forming the basis of the theory creates a common link upon which a framework may be constructed.

The point of departure in the analysis of criminal justice has been to conceptualize the system and specifically the court as a formal, legalistic structure. Research has focused on several types of legal and extra-legal factors which have failed to provide a comprehensive explanation regarding the nature of the justice process (Eisenstein and

Jacob, 1977). Explanations have focused on the characteristics of the defendants or the decision-makers while others have focused on the type of legal procedures which have been applied. Yet none have adequately explained the process in its entirety or the reasons for the variation among and within jurisdictions and courts.

This type of conceptualization does not capture the complex nature of the court as a 'social system' or a network of community relations (Blumberg, 1974). A more comprehensive understanding requires an a analysis of the organizational variables that define its 'social system' and its inter-related occupational and bureaucratic networks. An organizational conception of the court provides a paradigm that incorporates the social nature of the court organization and structure. In doing so, the role of personnel within the court organization can be examined in light of the structural context.

This perspective conceptualizes the court as an organization and courtroom work as a group activity that is directed by legal boundaries and structurally organized procedures (Eisenstein and Jacob, 1977). Each courtroom 'workgroup' is characterised by a network of relationships and patterns of influence and authority that are created and constrained by the organizational structure. The principal actors operate in a common task environment which provides common resources an imposes common constraints on their actions. The interaction of these persons in common tasks determines the outcome of the case and in the process, reveals the nature of criminal procedure and the role of each of the principal actors.

Blumberg's (1974) study of the single court system has become the standard for the analysis of the court using an organizational paradigm (Eisenstein and Jacob, 1977). Blumberg argues that the criminal court is similar to other bureacracies in that it has established occupational and organizational goals that often contradict those prescribed by the rules of traditional due process. Blumberg compares the stated goals of criminal justice to the operative realities of the court and reveals the compromise of justice by due process to justice by negotiation. He argues that the context and procedure of due process and the rule of law exist to create the appearance of justice while in reality, the pursuit of organizational goals via bureaucratic due process compromises and undermines these ideals. They become part of the ideology or rationale that legitimates the disparity between principle and practice (Blumberg, 1974).

The techniques and procedures that facilitate the roles of the key actors are structured in accordance with organizational goals and values (Blumberg, 1974; Eisenstein and Jacob, 1977). In fulfilling their role defence counsel has a legal responsibility to both the client and the court. The lawyer must protect the interests of the client while preserving the proper communication among other court personnel. To a large extent, the defence role is determined by the necessity to maintain influence and lines of communication with other members of the organization (Blumberg, 1974).

Blumberg refers to this role as that of an 'agent mediator' whose primary function is to maintain an equitable balance between the court organization and the client. In this sense the lawyer appears to

function as an agent of the criminal control network. This, in part, is the effect of the constraints of the defence lawyer's structural position within the organization as well as a reflection of the enabling rules and procedures that provide the basis to act to further the client's and lawyer's interests (Ericson and Baraner, 1982).

The power and autonomy of criminal control agents to act emanates from the institution of law itself as well as the ability to access organizational resources that structurally produce the position of court personnel (Ericson and Baraner, 1982). The ability for the defence lawyer to gain access to these resources which enables him/her to fulfill a designated role is largely determined by the structural and procedural organization of the court. This ability will vary according to the characteristics of the workgroup within each court jurisdiction and the conditions under which the process operates (Eisenstein and Jacob, 1977; Ericson and Baraner, 1982).

In this sense, two systems influence the role of defence counsel. The formal system establishes a basis for policy and procedure. The informal system may enable or hinder the defence role due to the interference of organizational variables (Anderson, 1978; Hackler, unpublished). Therefore courts guided by the same statuatory framework may differ in structure and procedure due to distinctive orientations toward the legislation. The contributions of each of the principal actors will vary accordingly. (Anderson, 1978)

The orientation of a particular court is reflected in the procedural and structural organization and is exhibited in several ways including

the degree of formality of courtroom proceedings, trends in sentencing policy, the attitude of court personnel regarding the nature and causes of delinquency (Stapleton and Teitelbaum, 1972; Anderson, 1978).

Chapter II

METHODOLOGICAL FRAMEWORK

2.1 THE NATIONAL STUDY ON THE FUNCTIONING OF THE JUVENILE COURT

In order to compensate for the lack of knowledge and information on Canadian Juvenile Justice and to assist in the process of legislative reform as well as to evaluate the effect of the Y.O.A., the federal Ministry of the Solicitor General funded and directed a study beginning in 1979 on the functioning of the juvenile courts in Canada.

The developmental stage of the study (1979-80) was followed by data collection in 1981-82. The major component of the Study was a court observation and file study of juvenile cases from the selected courts across Canada. The principal metropolitan sites were Halifax-Dartmouth, Montreal, Toronto, Winnipeg, Edmonton and Vancouver. In order to obtain comparative data from rural courts, the sample also included three communities in the Eastern townships of Quebec (St. Hyacinthe, Granby and Cowansville); twelve towns in Alberta where Juvenile Court Judges from Edmonton presided and in Kelowna in Central British Columbia (Moyer et. al.,1984; Bala and Corrado, 1985). This sample represents courts handling over one fifth of all juvenile charges in Canada at that time (Bala and Corrado, 1985).

At each site court proceedings were observed and documented on an 'Observation Schedule' with approximately 863 items, containing largely

pre-coded responses. Information not available from court observation was obtained from court files, court dockets and agency files and was entered on a 'Dossier Control Module'. Court observations were conducted from May 1981 to April 1982 and were divided into a 'sample period' and a 'follow up period'. During the sample period every juvenile who had a first appearance on a new charge was observed and these cases were observed at all subsequent appearances during the follow up period. A total of 8,741 hearings were observed. The cases of 2,534 juveniles appearing on 7,939 charges were observed from initial appearance to final outcome (Bala and Corrado, 1985).

The second component of the National Study was a questionnaire which was administered to a sample of 'key actors' including judges, crown counsel/attorneys/agents, defence counsel, probation and police officers in Nova Scotia, Quebec, Ontario, Manitoba, Alberta and British Columbia. The survey was designed to measure attitudes toward objectives of the court; provisions of the Y.O.A.; legal representation in the Juvenile Court; police handling of juvenile offenders; the Juvenile Court and the community; structure of the juvenile justice system and decision-making in Juvenile Court. A related objective was to provide an overview of the variation in attitude toward the legislation according to the role of the key actor and the jurisdiction. It was anticipated that attitudes would vary according to the role of justice personnel within the system in relation to the ideological and structural model of the court organization in each jurisdiction (Bala and Corrado, 1985; Corrado et.al., unpublished).

2.2 CHARACTERISTICS OF THE DEFENCE COUNSEL SAMPLE

In five out of the six jurisdictions, the sample for defence counsel (n=244) was drawn from court observation. During the data collection phase of the study, the names of defence counsel appearing in the study courts were collected by court observers (Moyer and Carrington, 1985). With the exception of Quebec, where the survey attempted to include a wider range of public defenders and lawyers, the defence sample was comprised of urban lawyers, who had appeared as retained representatives or as duty counsel (Moyer and Carrington, 1985).

The response rate of defence lawyers was the lowest of all the key actor groups, at 48% and varied from 38% in British Columbia to 59% in Manitoba (Moyer and Carrington, 1985). While this is an adequate response rate, there is no available data to assess the representativeness of the responding defence counsel (Moyer and Carrington, 1985). The low response rate might be attributed to the fact that many of those in the defence sample initially contacted may have had limited experience with juvenile matters and were not in a position to respond to the survey items. In addition lawyers who were used to billing for their time and who had busy schedules may have been reluctant to respond to the questionnaire.

The study confirmed that juvenile court serves as a means of training inexperienced defence lawyers. The findings indicated that almost two thirds of the lawyers were under the age of 35 and over 50% had practised law for less than 5 years. With regard to the percentage of their workload constituting juvenile matters, the study reported that, "

With one exception, 80% or more of defence counsel in the sample worked in juvenile court less than 20% of their time. One third of the Quebec respondents worked 30% or more of their time in juvenile court ... while counsel from Nova Scotia, Alberta, British Columbia had minimal contact with the court, 75% spent less than 10% of their time on juvenile matters" (Moyer and Carrington, 1985:A.5).

2.3 CONCEPTUALIZATION AND OPERATIONALIZATION OF THE VARIABLES

The initial component of the research involved the descriptive statistical analysis of the attitudinal data obtained from the survey questionnaire. Specific sections of the questionnaire were used to operationalize the variables or concepts that were identified in the specified research questions. The first question pertained to the way in which the sample of defence counsel perceived their role in the juvenile justice system.

For the purposes of this research, the variable 'role' was expressed or conceptualized by two ideal types that were identified in the literature and were utilized in previous research. The advocate role, based on the assumption that minors are competent to retain and instruct counsel, proposes that lawyers should have a high degree of concern in protecting the rights of the client and to argue the case within the limits of due process. Conversely, the guardian role, based on the assumption that due to the legal incompetence of juveniles, the lawyer decides upon and argues in the best interests of the client.

The opposing perspectives and philosophies regarding the nature of the relationship between the child and the state as well as that of the lawyer and client are encompassed within the advocate-guardian role type. Since these considerations contribute to the way in which lawyers formulate individual ideology in defining their role, it was anticipated that this type of classification would adequately differentiate and explain the concept of role (Fabricant, 1983).

Research that has addressed the issue of role, using a variety of methods including court observation and records (Stapleton and Teitelbaum, 1972; Priestly et.al., 1977; Anderson, 1978; Parker et.al., 1981), survey questionnaires and interviews (Platt, Schecter and Tiffany, 1968; Cayton, 1970; Brennan and Khinduka, 1971; Walker, 1971; Dootjes, Erickson and Fox, 1972) has applied the advocate-guardian role typology in the description and explanation of their findings.

Platt et.al.(1968), based on data collected through participant observation and file analysis, concluded that the role of public defender incorporated the 'child-saving ethic' of the social worker with the lawyer's 'craft of advocacy' (Platt, Schecter and Tiffany, 1968:624). Similarly, research conducted by Cayton (1970) also explained the differing attitudes of defence lawyers toward their role in terms of advocate versus the traditional 'rehabilitative' role types.

Further research on actual and perceived role conflict measured responses of lawyers and social workers toward activities or functions performed during three phases of juvenile proceedings (pre-adjudication, adjudication, post-adjudication). Brennan and Khinduka (1971) reported

that considerable disparity of opinion concerning role definition was prevalent between lawyers and social workers. Social workers perceived some of the 'legalistic' tasks as their primary responsibility, while lawyers perceived some of the tasks defined as 'therapeutic' in nature as their primary responsibility (Brennan and Khinduka, 1971:198).

Finally in classifying lawyers according to orientation, Dootjes et.al. (1972) concluded that the lawyers in juvenile court combined the legalistic as well as the amicus curiae roles. Dootjes et.al. (1972) reported that lawyers experienced confusion as a result of conflict between individual role perceptions and the perceptions of the expectations of other court participants. In addition they concluded that their findings supported previous research which suggested that defence counsel in juvenile court were likely to develop orientations that coincided with particular situations and their own individual predisposition (Dootjes, Erickson and Fox, 1972:147).

The findings of these studies suggested that distinct role types were evident from the pattern of responses in the data and that the advocate-guardian typology adequately accounted for and explained the disparity in role. Further, the findings confirmed that there was a considerable degree of role ambiguity (Platt, Schecter & Tiffany, 1968), and that the confusion experienced by lawyers in the fulfillment of either of these role types was attributed to the influence of organizational variables associated with the orientation of the court and the conflict in perceptions of expectations of significant others within the system (Brennan & Khinduka, 1971; Stapleton & Teitelbaum, 1972; Erickson, 1974; Catton, 1978; Anderson, 1978; Parker et.al., 1981).

However, Farrington (1979) has criticized much of this research on methodological grounds. He noted that most of the research used small, unrepresentative samples, had failed to report tests of statistical significance, had failed to control for extraneous variables and had subsequently failed to eliminate many alternative explanations of the observed effects.

2.3.1 The Research Design

In order to focus the research several questions were formulated which related to the identification of the perceptions of lawyer's toward their role and the variation of these perceptions across jurisdiction or province. Additional questions addressed role-related issues such as attitudes toward the nature of delinquency and the objectives of the court. The final question concerned the effect of role perceptions on attitudes toward the handling of juvenile cases and the decision making process.

Addressing these questions initially involved the analysis of the attitudinal data collected in the national study on the Functioning of the Juvenile court. In the present study, the concept 'role' was operationalized using two sections of the questionnaire. The first section, the Philosophy of the Young Offenders Act (Appendix A), was designed to measure the attitudes of defence counsel toward the principles of the new legislation established in the Declaration of Principle.[1]

---

[1] Young Offenders Act R.S.C., 1984, Section 3(1)(2).

Principles underlying social policy reflect the beliefs and assumptions about man, society and the state (Miller, 1973; George and Wilding, 1976:16-20 cited in Reid and Reitsma-Street, 1984). It has been suggested that the principles of the Y.O.A. represent a significant departure in philosophy and ideology from that of the J.D.A. (Lilles, 1983), as well as a " ... new set of assumptions reflecting the evolution of cultural values and attitudes toward criminal justice" (Archambault, 1983:3). Due to the significance or the principles section and the expectation that responses to these items would be indicators of the values and assumptions that contribute to the formulation of the role of defence counsel, this section of the questionnaire was used of differentiating role types.

The second section of the questionnaire, concerning Legal Representation in Juvenile Court, was also included in the operationalization of the variable role. As a direct measure of defence counsel attitudes toward legal representation of youths, the items dealt with the importance and quality of representation as well as the appropriate conduct of lawyers acting on behalf of young offenders (Appendix B).

Of particular importance and interest were the items that specifically measured the attitudes of the sample toward the appropriate conduct of the lawyer (Appendix B Questions 5 b & c). The content of these items refers to the fundamental legal assumptions and rationale underlying the lawyer-client relationship in criminal justice as it would apply in the youth court context. As such, the type and frequency distribution of the reponses would be a more overt indication of role type.

The concept 'model' was introduced in relation to the second research question referring to the variation among jurisdictions in terms of laywer's perceptions of appropriate roles. In order to address this question, several propositions were constructed that predicted the relationship between the three key variables of model, perceived role type and attitudes toward the Young Offenders Act.

A model is defined as a " ... general mental construct about a social phenomenon ... constructed to generate propositions about the relationships between phenonmena" (Djao, 1983:8). Research in criminal and juvenile justice have employed the term model to summarize systematically common pattern of beliefs between various members of society (Packer, 1964; Reid and Reitsma-Street, 1984). Opinions regarding policies or programs for young offenders that are predicated on a set of assumptions can be classified into two models of juvenile justice.

The Justice Model emphasizes that procedures for interference with freedom are specifically limited and based primarily on individual consent. In this model, " ... priority is given to predictable social control processes administered by judicial bodies independent of political and economic influence" (Reid and Reitsma-Street, 1984:3). Youth are perceived as rational, responsible and to an extent, in control of their behaviour. Behaviour defined as threatening to social and economic relationships is codified into legal categories or offences with fixed, proportionate punishments. Emphasis is placed on the rule of law and due process including the right to a fair and impartial trial, access to legal counsel and the requirement that the Crown prove its

case. The focus of the Justice Model is on deterrence and social defence (Reid and Reitsma-Street, 1984).

The Welfare Model assumes that youth are primarily shaped by their environment and are not rational individuals. (Reid and Reitsma-Street, 1984). The focus of this model is prevention through modifying the environment which fosters the antisocial behaviour and rehabilitating deviant youth. Based on a Welfare model, the judicial process emphasizes the investigation of the youth's social history in conjunction with the legal facts of the case so that the disposition meets the needs and circumstances of the young offender.

Models of juvenile justice have been used in research on the Young Offenders Act as a means of explaining the inconsistencies in philosophy and ideology reflected in the principles of the new legislation (Reid and Reitsma-Street, 1984). In an analysis of the Declaration of Principles, Reid and Rietsma-Street (1984) used four models of juvenile justice to examine the underlying values and assumptions that guide the implementation of legislation and social policy.

In a study using data form the National Study on the Functioning of the juvenile court, Corrado et.al (unpublished), have applied the justice and welfare models as ideal types to examine the attitudes of juvenile justice personnel toward the objectives of the juvenile court. Specifically the study addresses the variation of these perceptions across the provinces. Responses to the questionnaire items measuring attitudes toward court objectives were analyzed and were found to reflect the values expressed within the predicted ideal types (Corrado et.al., unpublished).

The findings indicated that punishment, deterrence and speedy justice were central aspects of the justice model, while rehabilitation was the focus of the welfare model. Attitudes toward court objectives varied according to key actor groups and provinces indicating that organizational variables influenced the actor's opinions. For example, in fulfilling the objectives of the court, judges preferred the welfare or treatment model as opposed to the justice model objectives. Provincially, respondents in British Columbia considered justice model objectives to be a higher priority than personnel in Manitoba (Corrado et.al., unpublished).

For the purposes of this research, the application of the construct 'model' was to be used in order to distinguish the structural organization of the juvenile courts included in the National Study. In this sense, 'model' referred to the structural and procedural organization of the juvenile courts prior to the implementation of the Young Offenders Act. The observational and file data collected at each site and incorporated into descriptive site reports were used in a descriptive analysis of the major stages of the juvenile justice process.

The objective, in distinguishing court structure in terms of the justice-welfare models, was to focus on the differences among jurisdictions at various stages of the process. In this way court organizations could be placed on a justice-welfare continuum according to the structural model in relation to the corresponding role of defence counsel. Given the apparent structural variation, indicating the influence of informal organizational variables, it was anticipated that

the approach and perception of defence counsel to their role would vary accordingly (Bala and Corrado, 1985; Corrado et.al., unpublished).

It was expected that the variation between structural model and perceived role type would be reflected in the attitudes of defence counsel toward the provisions of the Young Offenders Act, which constituted the third component or variable of the proposition. This variable was operationalized by the section of the questionnaire pertaining to the Substantive and Procedural Measures under the Young Offenders Act (see Appendix C).

Questionnaire items in this section were arranged by subsection according to the various substantive or procedural subject areas within the legislation. This included items concerning: Alternatives to Judicial Proceedings (Diversion); Bail and Detention; Notice to Appear; Counsel; Fingerprints/Photographs; Dispositions; Review of Disposition; Appeal; Public Hearings and Availability of Youth Records.

As a direct measure of the attitudes of the defence counsel sample toward the actual provisions contained in the legislation, this section of the questionnaire was used as an indication of the level of agreement or disagreement with the provisions of the Young Offenders Act. The response categories ranged on a scale from 'Strongly Approve' (1.0) to 'Strongly Disapprove' (6.0). In relation to the propositions, attitudes toward the Young Offenders Act were measured in terms of the level of agreement (approval) or disagreement (disapproval) indicated by the responses of defence counsel.

To examine the correlation among these variables two main propositions were constructed that predicted the relationship between the structural 'model' of the court, the perceived 'role type' of defence counsel and the attitudes of defence counsel toward the Young Offenders Act. It was hypothesized that in a province where the structural model of the court organization was oriented toward a treatment model, defence counsel would perceive their role in social welfare terms as prescribed by the guardian role. Conversely in a province where on a legalistic continuum the structural model of the court was illustrative of the justice model, defence counsel would perceive their role in traditionally adversarial terms, as outlined by the advocate role. On this basis several related propositions were formulated.

1. In a jurisdiction where a 'welfare' structural model of court organization is in operation, defence counsel will perceive their appropriate role as that of guardian.
   a) Where defence counsel perceive their appropriate role to be that of a guardian, they will be less likely to agree with the provisions of the Young Offenders Act.
   b) In a jurisdiction where a 'welfare' structural model of court organization is in operation, defence counsel will be less likely to agree with the provisions of the Young Offenders Act.
2. In a jurisdiction where a 'justice' structural model of court organization is in operation, defence counsel will perceive their appropriate role as that of an advocate.

a) Where defence counsel perceive their appropriate role to be that of an advocate, they will be more likely to agree with the provisions of the Young Offenders Act.

b) In a jurisdiction where a 'justice' structural model of court organization is in operation, defence counsel will be more likely to agree with the provisions of the Young Offenders Act.

The remaining research questions concerned the factors affecting the perceptions of defence counsel with respect to their role and the effect of their role perceptions on their attitudes toward the decision making process in the court and the handling of juvenile cases.

To examine the factors affecting role, the analysis included the sections of the questionnaire that measured the attitudes of defence counsel toward the Nature of Delinquency (Appendix D) and the Objectives of the Juvenile Court (Appendix E). It was anticipated that attitudes toward the nature, extent and causes of delinquency would be correlated with how defence counsel perceive their role. Similarly the attitude of defence counsel toward the objectives of the juvenile court would be important to the way lawyer's view their function or role in the system. For example, it was suggested that lawyers who view delinquency as a 'part of adolescence' and consider the primary objective of the court is rehabilitation would perceive their role in the system differently than lawyers who were of the opinion that it is the purpose of the court to appropriately punish delinquents who pose a genuine threat to society.

In addressing the question related to the effect of the role perceptions of defence counsel on their attitudes regarding decision making in the court and the handling of juvenile cases, the sections of the questionnaire measuring attitudes toward Juvenile Offenders and the Handling of their Cases (Appendix F) and Decision Making (Appendix G) were analyzed. It was anticipated that the responses to these items would indicate a correlation between perceived role and attitudes toward case disposition. Further, it was proposed that the perception of defence counsel with respect to their role in court would have an effect on the way in which the cases were handled and the criteria used in the decision making process.

2.4 DEFENCE COUNSEL INTERVIEWS

Initially, in-person interviews with a sample of defence counsel who practised in the Manitoba Youth Court were proposed as a means of compensating for the limitations of the attitudinal data as well as to further investigate inconsistencies that emerged from the analysis of the survey data. A related interest was to examine what affect, if any, the Young Offenders Act had on the role of defence counsel.

However, unanticipated findings from the analysis of the attitudinal data necessitated substantial changes in the purpose, focus and structure of the interviews. The interviews became an exploratory method of obtaining additional information from defence lawyers in order substantiate, clarify and, if possible, explain the findings from the attitudinal survey. In addition, the interviews also incorporated and addressed factors that were identified by defence lawyers that

contributed to the explanation of the findings. In this sense, the interviews remained a "follow-up" to the survey. However due to unanticipated results of the survey analysis, the interviews assumed increased importance in providing a comprehensive conclusion to the research.

In view of its exploratory nature, the interview combined a 'standardized' and 'reflexive' approach (Hammersley & Atkinson, 1983). There were several issues that were directly based on the results of the analysis of the survey data and were established prior to conducting the interviews. Additional issues, identified by the lawyers, were incorporated into the interview guide. In addition, there were questions that emerged from the process of interaction during the interview which were not anticipated in advance.

The questions were open-ended and were accompanied by a series of probes which provided variations of the question or related questions in order to stimulate the interviewee into discussing a particularly broad area (Hammersley & Atkinson, 1983). Furthermore, the interviewees were treated as 'informants' (Hammersley & Atkinson, 1983) rather than respondents in that they were informed as to the nature and purpose of the interview and were given a complete explanation regarding the questionnaire results which served as part of the rationale for conducting the interview. This served as an introductory statement for the interview as well as an attempt to secure the cooperation of the interviewee.

In this sense it was considered to be more advantageous to collaborate with the defence lawyers in order to clarify and explain the survey findings as well as to gain insight and understanding from the perspective of the actor (Schwartz & Jacobs, 1979). In addition, by adopting a non-directive approach to the interviews, the influence of the researcher is minimized and subsequently facilitates, "... open expression of the informant's perspective" (Hammersley & Atkinson, 1983:110).

A total of seventeen defence lawyers were contacted for interviews. The list of defence counsel who regularly appeared before the Manitoba Youth Court was obtained by contacting two Crown Attorneys currently practising in the Youth Court Division. Out of the seventeen lawyers contacted, fifteen were interviewed. Two lawyers cancelled their appointments for interviews due to time and scheduling constraints. None of the lawyers contacted refused an interview. Of the fifteen lawyers, there were five women and ten men.

The lawyers interviewed were not statistically or randomly selected and therefore this list did not constitute a representative sample. However, the number of lawyers interviewed represents the majority of the population of lawyers currently appearing before the Manitoba Youth Court for juvenile matters on a regular or frequent basis.

The interviews were conducted over a three and a half week period. The lawyers were contacted by telephone, given a brief explanation regarding the purpose of the interview and appointments were arranged according to their time schedule. All of the interviews were conducted

in the lawyers' offices and thirteen of the fifteen interviews were recorded on tape. The interviews varied in length from thirty five minutes to almost two hours with the average interview lasting approximately one hour in duration.

2.5 ANALYZING THE DATA

The analysis of the questionnaire data involved the use of descriptive statistics including simple frequency distributions; measures of central tendency; crosstabulations to further examine the relationship between two variables; correlation coefficients were used as measures of association to infer the strength and direction of the relationships among variables; summary measures were created as a means to analyze a large number of items that focused on similar topics; and finally, factor analysis was used in order to summarize patterns of intercorrelations among variables.

Items in the survey were answered on a six-point Likert scale: 'Strongly Agree' (1.0) to 'Strongly Disagree' (6.0). Subsequently the raw responses to these items measured 'strength of disagreement' (Moyer & Carrington, 1985). The majority of the items were designed as closed-ended questions and were coded according to the scaled response. With the exception of the items based on a continuous variable where responses were coded according to the value that was indicated, the open-ended questions were not included in the analysis.[2]

[2] The scheme used in coding the open-ended questions in the survey was not available to the researcher. Further, the lack of information available regarding the reliability of this portion of the data in conjunction with the unusually high number of missing observations for these questions, made the analysis of the open-ended items unfeasible.

In order to analyze the findings according to the six metropolitan sites, the data collected from the rural sites were recoded and combined with the appropriate data from the metropolitan sites. This procedure was performed for the data collected in Nova Scotia, Alberta and British Columbia.

Since the six point scale contained valid distinctions among the levels of strength of disagreement/agreement that could be obscured or distorted by applying binary recoding schemes while also preserving the most information, the original coding scheme was retained for the analysis.[3]

To distinguish 'types' by analyzing the perceptions of defence counsel toward their role, a factor analysis was conducted using the variables from the philosophy and legal representation sections of the questionnaire (see Appendix A & B). The purpose of applying this technique was to discover if the variables in the data formed coherent subgroups that were relatively independent of one another.

For this research factor analysis was used as statistical tool in order to determine if distinct role types emerged from the pattern of responses in the data. In this case it was predicted that the grouping of responses would be intercorrelated to the extent that two factors

[3] In testing the reliability of three possible recoding schemes, Moyer & Carrington (1985) used two methods in comparing the three recodes with each other and the original scale. The internal validity of the recodes were considered by comparing the strengths of intercorrelations among the items and by comparing the success of the factor analysis of the subsections of items. External validity of the recodes were tested by comparing their statistical associations with several independent variables that were predicted to correlate with the attitudes these items measured (Moyer & Carrington, 1985: Appendix D).

reflecting the role types of advocate and guardian would emerge. Due to the stucture and content of some of the questions in the legal representation section of the survey, these variables were not appropriate for the purpose of this technique and were excluded from the analysis.[4]

In order to reduce the number of variables into a smaller set as well as to describe and perhaps explain the pattern of interrelationships among the observed variables, a principal component factor analysis was conducted. A varimax rotational scheme was applied which minimizes the complexity of the factors (simplifies columns of loading matrix), by maximizing the variance of loadings on each factor. In other words, by rotating the factors loading matrix in this manner the high correlations are inflated to the highest level while the low correlations are deflated to the lowest level. In this way the number of factors obtained are orthogonal to or independent of each other and provides a basis upon which the significance of the factor loadings can be interpreted (Tabachnick & Fidell, 1983).

The criteria used in interpreting the results of the analysis included the determination of the importance of each factor in contributing to the variance (proportion of variance explained), in conjunction with the significance of the eigenvalues. The

[4] Most application of principal component and factor analysis are exploratory in nature and are used as a means to reduce the number of variables or examining the patterns of correlations among the variables without serious consideration of testing theory. Under these circumstances, both the theoretical and the practical limitations of these techniques may be relaxed in favour of an exploration of the data. Decisions about the number of factors and rotational schemes are based on pragmatic rather than theoretical criteria (Tabachnick & Fidell, 1983).

interpretation of the findings are discussed in the Presentation and Discussion of the Attitudinal Data section.

For the analysis of the section concerning the Substantive and Procedural Measures under the Young Offenders Act (Appendix C), summary measures were created for the subsections that dealt with the same topics in order that topics rather than individual items could be discussed. The criteria for the creation of valid summary measures[5] which include several items requires that, " ... responses to these items follow a similar pattern, that is, that each respondents 'profile' of responses be similar to the 'profiles' of other respondents although the actual responses do not need to be identical" (Moyer & Carrington, 1985; Appendix D:D8).

Items were selected for individual analysis where the content of and and responses to the item deviated from the pattern of responses and therefore distorted the summary measure. In addition, where the summary measure for a particular subsection indicated a degree of opposition to the provision, that is, the overall measure of central tendency and the most frequent response were substantially higher[6] in comparison to other summary measures, the item(s) that influenced the summary measure were

[5] Using the identical data set, Moyer & Carrington (1985) tested the validity of the summary measures used in this research. The consistency of the response patterns for these items were analyzed by examining the intercorrelations among these items, based on unrecoded reponses, and factor analyses based on these intercorrelations. The results of the factor analyses indicated substantial loadings on the common factor for most of the items in a subsection. This result suggested that valid summary measures could be constructed for these subsections by excluding particular variables and analyzing them individually (Moyer & Carrington, 1985: Appendix D).

[6] This represented on a six point scale, an average response in the 'mildly approve' (3.0) to 'strongly disapprove' (6.0) range.

analyzed individually according to study site or province.

Since the unrecoded variables were used in the analysis, as opposed to binary recodes, the subsection summary scores were computed by summing the unrecoded responses and dividing them by the number of items in the subsection that were to be included in the summary measure. Using this method of calculation preserved more information since by summing the unrecoded responses rather than summing the binary recodes, the average strength of agreement/disagreement was calculated rather than simply counting the number of items with a 'disagree' type of response (Moyer & Carrington, 1985). Finally these measures were rounded to the nearest scaled category in order that they could be readily identified with the original six point scale.

The initial analysis of the sections of the questionnaire examining the factors affecting role and the correlation between role perception and attitudes toward decision making in juvenile court and the handling of juvenile offenders, consisted of item by item simple frequency distributions measures of central tendency and median responses according to province. However to facilitate the presentation and discussion of the data, the findings will be presented according to the total sample with the exception of where there is significant variation in response according to province which would warrant a more detailed discussion.

Since an attempt was made to correlate role types with attitudes toward the handling of juvenile offenders, an additional factor analysis was conducted in order to determine if the attitudes of defence counsel

toward these items would divide into two factors that could be correlated with the two factors reflecting the predicted role types.

Consistent with the purpose and exploratory nature of the interviews, the data generated were analyzed qualitatively. Since the interview schedule incorporated a combination of largely unstructured and semi-structured questions as well as unanticipated questions, responses were initially transcribed and classified according to each question which constituted general categories or themes.

The categories that were developed in order to classify the responses were patterned in accordance with the questions and probes outlined in the Defence Counsel Interview Schedule (refer to Appendix H). The majority of questions referred to a particularly broad subject area and as a result, responses were often classified in more than one category. However attention was paid to the precise content and implication of the responses so as to categorize responses consistently in order to provide a basis for a coherent explanation of the findings.

The interview findings are discussed according to the general themes.[7] However for the purpose of presentation, the results are not discussed according to the exact order in which the subject areas appear in the Defence Counsel Interview Schedule.

---

[7] For a comparative analysis of the interview and attitudinal survey findings refer to the Discussion of the Findings and Conclusions.

Chapter III

PRESENTATION AND DISCUSSION OF THE ATTITUDINAL DATA

The presentation and explanation of the findings of the National Study Questionnaire are organized with reference to the research questions that established a framework within which the role of defence counsel was examined. The results were analyzed according to jurisdiction to enable a comparison of the variation in attitude of the respondents within and across jurisdictions or provinces.

3.1 PHILOSOPHY OF THE YOUNG OFFENDERS ACT & LEGAL REPRESENTATION

In an attempt to describe and to explain the perception of defence counsel toward their role in the juvenile justice system, the analysis included the nine items from the questionnaire pertaining to the principles or Philosophy of the Young Offenders Act and the items concerning Legal Representation in Juvenile Court (Table 10 & 11). These sections of the questionnaire were used to operationalize role in order that the variation in response could be used as a way to differentiate perceptions of the respondents toward their role according to the advocate-guardian typology. The section concerning the Philosophy of the Y.O.A. measured attitudes toward the Declaration of Principles section.[8] This part of the legislation emphasizes the rights of young persons, their special needs due to their youth and degree of

[8] The Declaration of Principles are contained in section 3 (1)(2) of the Young Offenders Act R.S.C. 1984.

maturity and also incorporates the principles of accountablility, responsibility and the protection of society.

In response to the provision of accountability, the majority of defence counsel (87.3%) responded, across jurisdiction, in the 'strongly' (1.0) to 'mildly agree' (3.0) categories. Approximately 12% of the total sample disagreed (responded in the mildly to strongly disagree categories) with this item. The mean scores which ranged from 1.4 (Nova Scotia) to 2.8 (Quebec) with the most frequent responses in the 'strongly agree' (1.0) or 'agree'(2.0) category, were indicative of the high level of agreement to the principle of accountability.

The principle that young persons should not in all circumstances suffer the same consequences for their illegal behaviour as adults was similar in response to that of accountability. The majority of the total sample (93.4%) responded in the agree categories (strongly to mildly agree). The only province that indicated a significant level of disagreement was that of Quebec where 26.2% of the sample responded in the 'mildly' to 'strongly disagree' categories. This was an unexpected response since Quebec has traditionally exhibited through legislative policy and procedure, a substantial degree of commitment to the treatment or welfare philosophy (Corrado, et.al., unpublished). The mean responses for the majority of the provinces ranged between the 'strongly agree' (1.0) and 'agree' (2.0) categories with the exception of Quebec where the mean score, indicative of the level of disagreement, was 2.5 (between agree and mildly agree).

There was a consistently high level of agreement among defence counsel regarding the principle of mitigated responsiblity. An overwhelming majority (98.4%) of the total sample responded with moderate or greater agreement. Provincially the mean responses ranged from 1.8 (between strongly agree and agree) in Alberta and British Columbia, 1.9 in Manitoba and Ontario to 2.1 in Quebec and 2.6 in Nova Scotia. The most frequent responses for all provinces were 2.0 (agree) or greater.

There was significant variation in response, within and across jurisdictions, regarding the principle of the protection of society as a priority over the protection of the young person. Overall, 63.8% of the total sample of defence counsel agreed[9] while 36.3% disagreed.

On a provincial level, the majority of defence counsel in each jurisdiction agreed with this principle (71.4% Nova Scotia; 57.1% Quebec; 72.2% Ontario; 59.6% Manitoba; 61.3% British Columbia). However as illustrated by the results, there was a significant percentage of respondents within each province who disagreed with this provision. For example, over 35% of the respondents in Quebec (42.9%), Manitoba (40.4%), Alberta (40.6%) and British Columbia (38.7%) responded to this item in the 'mildly' to 'strongly' disagree categories. The strength of the level of disagreement was somewhat reflected by the mean responses for each province which ranged from 2.7 (between agree and mildly agree) in Ontario to 3.5 (mildly agree to mildly disagree) in Quebec.

---

[9] Although the variables were not recoded as binary variables, the findings are described in terms of agreement, referring to the response scales 'strongly agree'(1.0) to 'mildly agree' (3.0), and disagreement in reference to the 'mildly disagree'(4.0) to 'strongly disagree'(6.0).

With respect to the special needs of young persons as result of their state of dependency and level of maturity, the majority of defence counsel (88.0%), across jurisdictions, were in moderate or greater agreement. Quebec was the only province where a significant proportion

TABLE 1

Attitudes toward the Special Needs of Young Offenders

SPECIAL NEEDS

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	1 14.3	4 57.1	2 28.6				7 2.9
QUEBEC	9 21.4	11 26.2	11 26.2	10 23.8		1 2.4	42 17.3
ONTARIO	16 20.3	41 51.9	15 19.0	3 3.8	4 5.1		79 32.5
MANITOBA	17 33.3	21 41.2	7 13.7	1 2.0	3 5.9	2 3.9	51 21.0
ALBERTA	8 25.0	18 56.3	5 15.6	1 3.1			32 13.2
BRITISH COLUMBIA	5 15.6	19 59.4	4 12.5	2 6.3	2 6.3		32 13.2
COLUMN TOTAL	56 23.0	114 46.9	44 18.1	17 7.0	9 3.7	3 1.2	243 100.0

(26.2%) of the sample disagreed with this provision (Table 1). This represents a substantial proportion of the Quebec sample and is unusual since this type of response would seem to contradict the legislative history of the province.

The provision asserting the right of young persons to participate in the processes that lead to decisions that affect them was agreed upon by a considerable majority (97.1%) of the total sample. This result was consistent according to jurisdiction where at least 90% of the sample in each province were in moderate or greater agreement regarding this principle. The mean responses, which ranged from 1.5 (Quebec) to 2.1 (British Columbia), were indicative of the strength of the level of agreement.

The attitudes toward the provision establishing special guarantees for the preservation of young persons rights and freedoms varied considerably within and across jurisdiction. Overall, 72.5% of the total sample responded in the mildly to strongly agree categories. Although the majority of defence counsel, on a provincial level, agreed with this principle there was notable disagreement in British Columbia (38.7%), Alberta (34.4%) and Ontario (31.6%) (Table 2). The disparity in attitude according to province was reflected in the mean responses which ranged from 2.0 (agree) in Nova Scotia to 3.1 (between mildly agree and mildly disagree) in British Columbia.

The majority of the total sample of respondents (60.5%) agreed with the provision of least interference (Table 3). Although there was a significant proportion of the respondents who disagreed with this principle, the findings were contradictory to what might have been expected. For example, one might have predicted that the strongest degree of opposition toward this principle would be in provinces that have exhibited a commitment to the welfare philosophy. However the results in the provinces of Quebec and Manitoba indicated the lowest degree of opposition (34%) toward the provision of least interference.

TABLE 2

Attitudes Toward Special Guarantees of Rights and Freedoms

SPECIAL GUARANTEES

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	2 28.6	3 42.9	2 28.6				7 2.9
QUEBEC	18 42.9	6 14.3	9 21.4	5 11.9	2 4.8	2 4.8	42 17.3
ONTARIO	18 22.8	23 29.1	13 16.5	5 6.3	18 22.8	2 2.5	79 32.5
MANITOBA	15 28.8	19 36.5	8 15.4	4 7.7	4 7.7	2 3.8	52 21.4
ALBERTA	9 28.1	5 15.6	7 21.9	3 9.4	4 12.5	4 12.5	32 13.2
BRITISH COLUMBIA	5 16.1	11 35.5	3 9.7	4 12.9	5 16.1	3 9.7	31 12.8
COLUMN TOTAL	67 27.6	67 27.6	42 17.3	21 8.6	33 13.6	13 5.3	243 100.0

Conversely provinces including British Columbia and Alberta that have traditionally been more legalistic in philosophy (Corrado et.al., unpublished; Moyer & Carrington, 1985), indicated higher or stronger levels of opposition. In these two provinces, 48.4% and 43.7% (respectively) of the respondents disagreed with this principle (Table 3). The disparity in attitudes were reflected in the The disparity in attitudes, according to jurisdiction, were reflected in the considerable range of mean and most frequent responses. The mean scores ranged from

TABLE 3

Attitudes Toward the Right to Minimal Interference

LEAST INTERFERENCE

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	1 14.3	3 42.9	1 14.3	2 28.6			7 2.9
QUEBEC	5 12.2	13 31.7	9 22.0	10 24.4	2 4.9	2 4.9	41 17.1
ONTARIO	12 15.2	21 26.6	13 16.5	8 10.1	20 25.3	5 6.3	79 32.9
MANITOBA	9 18.0	16 32.0	8 16.0	8 16.0	7 14.0	2 4.0	50 20.8
ALBERTA	5 15.6	6 18.8	7 21.9	4 12.5	8 25.0	2 6.3	32 13.3
BRITISH COLUMBIA	4 12.9	4 12.9	8 25.8	2 6.5	8 25.8	5 16.1	31 12.9
COLUMN TOTAL	36 15.0	63 26.3	46 19.2	34 14.2	45 18.8	16 6.7	240 100.0

2.6 in Nova Scotia to 3.7 in British Columbia, while the most frequent responses ranged from 2.0 (agree) to 5.0 (disagree).

Interpreting these findings becomes increasingly difficult since it has been noted that this principle signifies a departure from the parens patriae role of the court and the treatment orientation (Bala & Corrado, 1985). Without further analysis, one could only speculate as to why these inconsistencies were observed. It has been suggested that the

questionnaire item was not identical to section[10] 3(1)(f) qualifier, "consistent with the protection of society" was not included (Moyer & Carrington, 1985). It is possible that the inclusion of this portion of the principle may have provoked a different response.

However the analysis of the responses from other actor categories within this province substantiated that the responses of defence counsel were similar to those of the judges, probation and police who were less supportive of this provision than their counterparts in other jurisdictions (Moyer & Carrington, 1985:15). Consequently an explanation regarding the variation in attitude according to jurisdiction would have to incorporate all of the key actors in British Columbia. Further it is reasonable to assume that since the findings were not specific to a particular actor category that a possible explanation might be found in the 'local character' (Hackler, 1984) of the court organization or operation of the system that is unique to the province.

The final question regarding the principle of the legislation concerned the removal of a young person from parental supervision. Nationally, the majority of the sample (88.4%) at leas moderately agreed with this provision. On a provincial level there was no significant opposition to this principle, with the exception of Quebec and British Columbia where a percentage of the samples (21.4% and 19.4%

---

[10] The complete section in the Declaration of Priniciple of the Young Offenders Act reads, " ... in the application of this Act, the rights and freedoms of young persons include a right to the least possible interfence with freedom that is consistent with the protection of society, having regard to the needs of young persons and the interests of their families."

respectively) indicated a level of disagreement. The mean responses which ranged from 1.7 in Nova Scotia to 2.5 in British Columbia, were indicative of the level of agreement. This was further substantiated by the median responses which were in the 'strongly agree' (1.0) or 'agree' (2.0) category.

Items concerned with Legal Representation in Juvenile Court were also used in this part of the analysis. These questions measured attitudes toward the importance, extent and quality of legal representation as well as the necessity of counsel and the nature of the lawyer-client relationship.

The first question in this section refers to the importance of legal representation at various stages of the juvenile justice process including arrest, diversion, bail, transfer and arraignment hearings, trial and adjudication as well as disposition and review hearings. The response categories for these items ranged from 'of very great importance'(1.0) to 'of no importance' (5.0) (Appendix B, Question #1a to i).

With the exception of the importance of legal representation at the diversion stage, a large majority of defence counsel across jurisdiction responded in either the 'of very great importance' or 'of considerable importance' categories for all stages of the proceedings (Arrest 73.9%; Diversion 54.0%; Bail 95.1%; Transfers 95.5%; Arraignment 81.3%; Trial 99.5%; Adjudication 94.2%; Disposition 94.1%; Review of Disposition 89.7%). The findings were consistent when the responses to these items were compared according to jurisdiction. The consistency in response

was reflected by the mean scores for each province which ranged from 1.1 (of very great importance) to 2.3 (of considerable importance).

The item regarding the importance of legal representation at diversion varied in response compared to the other items in that overall, a higher percentage (30.3%) of the total sample responded in the 'of moderate importance'(3.0) category. On a provincial basis, a lower percentage of the respondents considered legal representation to be of very great or considerable importance at the diversion stage (Nova Scotia 28.6%; Quebec 47.6%; Ontario 59.5%; Manitoba 51.0%; Alberta 66.7%; British Columbia 46.9%). The lower level of importance attributed to legal representation at this stage was exhibited in the 'higher' average response which ranged from 2.2 (Alberta) to 2.9 (Nova Scotia). Finally this item received a higher percentage of responses in the little or no importance categories. This was particularly notable in the provinces of Alberta (23.3%), Manitoba (21.6%) and British Columbia (18.7%).

In reference to the proportion of juveniles receiving legal representation, the total sample estimated that, on average, 51.5% of juveniles obtained counsel (refer to Table 11). There was a considerable degree of variation in response to the item regarding the percentage of juveniles receiving legal representation at any stage of the proceedings. The average responses, according to jurisidiction, for the percentage of those receiving representation at the time the questionnaire was administered were as follows: Nova Scotia 25.0%; Quebec 64.3%; Ontario 57.7%; Manitoba 45.2%; Alberta 45.6% and British Columbia 41.6%.

When these findings were compared to the actual proportion of juveniles represented, according to the observational data from the National Study there was minimal discrepancy between the perceived and actual percentage of juveniles represented. The only significant variation in these figures was observed in Ontario where defence counsel estimated that 57.8% of received representation in comparision to the actual proportion of 98.0% (Bala & Corrado, 1985:62).

The extent of this variation can be explained in that of the 98% of the juveniles that received representation, 50.1% were represented by duty counsel. It is questionable whether the presence of duty counsel constitutes satisfactory or effective representation (Report of the Committee on the Representation of Children in the Provincial Court [Family Division], 1977 cited in Ontario Ministry of the Attorney General, 2nd report of the Attorney General's Committee on the Representation of Children, 1978).

The estimates by defence counsel and the actual proportion of percentage of juveniles receiving representation in 1982, indicated a considerable lack of legal representation at all sites particularly in the rural courts (Bala & Corrado, 1985). This apparent lack of representation particularly in provinces that have, in terms of organization and practice, exhibited a more legalistic orientation was an unexpected finding. For example, in British Columbia the juvenile justice process had remained distinct from the child welfare system and the role of Crown Counsel in juvenile court was similar to their function in the criminal justice system (Corrado et.al., unpublished). In consideration of this type of organization or structure, one might

have predicted that defence lawyers would have been involved at an earlier stage of the proceedings and the practice of representing youths would have been more routinely and formally established.

Furthermore, in Quebec, defence counsel estimated that, on average, 64.3% of young offenders received legal representation at some point during the proceedings. A higher proportion of juveniles represented in both the Montreal and Eastern Townships was corroborated by the observational data in the National Study (Bala & Corrado, 1984:62). This appears to be inconsistent in that Quebec had established a structure and procedure that was illustrative of the welfare or treatment model. The adherence to this model has traditionally implied the absence of lawyers in juvenile justice proceedings. However this may reflect the effect of the former Youth Protection Act which was, at that time, the only provincial legislation that provided juveniles with the right to independent representation.[11]

Across jurisdictions the majority of defence counsel (42.1%) rated the quality of legal representation obtained by juveniles to be 'very good' (1.0) or 'good'(2.0) and 39.6% rated the quality as 'adequate'(3.0) (Table 11). This finding was consistent on a provincial level, with the exception that in the provinces of Nova Scotia, Ontario and Alberta, at least 20% of the respondents rated the quality of representation as being 'poor'(4.0). The range in perception of quality was reflected by the average response for each province. Alberta had the lowest quality rating with mean response of 3.0 (adequate) and

---

[11] Sections (5),(78),(80) of the Youth Protection Act. Also cited in Bala & Corrado, 1985:59.

Quebec rated the highest in terms of quality of legal services with a mean response of 2.3 (between good and adequate).

Included in this section of the analysis were the questions from the survey that measured the attitudes of defence counsel with respect to the necessity of legal representation under various circumstances including cases involving serious charges against a young offender, cases in which the interests of the parents and the young offender are in conflict and cases where secure custody is a possible disposition (see Table 11).

For each of the three types of cases the majority of defence counsel responded in the 'all such cases' (1.0) or 'most such cases' (2.0) categories (Table 11). Of the total sample, at least 95% of defence counsel responded that, under all three sets of circumstances, legal representation was necessary in all or most such cases.[12] This response pattern was consistent when these items were analyzed according to jurisdiction. The mean responses for each province were indicative of the level of agreement in that they ranged, for all three types of cases, between 1.0 and 1.7.

The final section of the questionnaire pertaining to legal representation measured the attitudes of defence counsel toward the arrangement of payment of legal services by the state and the conduct

---

[12] The exact percentages were as follows: For cases involving serious charges, 97.1% of the sample responded in the all or most such cases categories. For cases in which the interests of the juvenile and parent are in conflict, 95.8% of the sample responded in these categories. For cases in which secure custody was a possible disposition, 98% of defence counsel responded in the first two categories.

considered appropriate for the lawyer acting on behalf of young offenders. Defence counsel were asked their opinion toward the payment of legal services by the state regardless of the parent's ability to pay for such services. Overall the majority of defence counsel (66.3%) were in moderate or greater disagreement toward this item (Table 11). The responses were similar on a provincial level with the exception of Quebec, Ontario and Manitoba. In two of the provinces, the respondents indicated a split between those who agreed (42.9% in Quebec and 41.2% in Manitoba) and those who disagreed (57.1% in Quebec and 58.8.5 in Manitoba) with this item. In Ontario, however, the percentage of those who were in agreement with this item was somewhat lower at 37.2%.

In response to the questions concerning the conduct of the lawyer when acting on behalf of juveniles, the majority of defence counsel indicated that privately retained (82.6%) and legal aid lawyers (79.7%) should represent juvenile clients in the same manner as adult clients (Table 11).

In a comparison of the responses to these two items, there was a degree of variation according to province (Table 4 & Table 5). Although the majority of defence counsel in each province agreed with both of the statements regarding the conduct of the private and legal aid lawyer, disagreement was observed in Nova Scotia, Quebec and British Columbia. In these provinces at least 25% of the samples disagreed with both items regarding the conduct of privately retained and legal aid lawyers.

Furthermore the strength of the disagreement increased, in Quebec and British Columbia, in reference to the appropriate conduct of legal aid

TABLE 4

Attitudes toward the Conduct of Privately Retained Lawyers

CONDUCT OF PRIVATE LAWYER

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA		4 57.1	1 14.3	1 14.3		1 14.3	7 2.9
QUEBEC	16 39.0	5 12.2	10 24.4	5 12.2	3 7.3	2 4.9	41 17.1
ONTARIO	27 34.6	31 39.7	9 11.5	3 3.8	6 7.7	2 2.6	78 32.5
MANITOBA	23 45.1	14 27.5	7 13.7	1 2.0	6 11.8		51 21.3
ALBERTA	12 38.7	9 29.0	6 19.4	2 6.5		2 6.5	31 12.9
BRITISH COLUMBIA	9 28.1	15 46.9		6 18.8	2 6.3		32 13.3
COLUMN TOTAL	87 36.3	78 32.5	33 13.8	18 7.5	17 7.1	7 2.9	240 100.0

lawyers. This was an unexpected finding in that Quebec and British Columbia were opposed in terms of philosophical orientation (Corrado et.al., unpublished). It would appear however that approximately 30% of the respondents disagreed with this item (see Table 5). The range of mean responses for these items did not accurately reflect the degree of opposition in these provinces. Average responses for both items range from 1.0 (strongly agree) to 3.0 (mildly agree).

TABLE 5

Attitudes toward the Conduct of Legal Aid Lawyers

CONDUCT OF LEGAL AID LAWYER

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA		4 57.1	1 14.3	1 14.3		1 14.3	7 2.9
QUEBEC	16 39.0	5 12.2	6 14.6	6 14.6	4 9.8	4 9.8	41 17.1
ONTARIO	26 33.3	32 41.0	8 10.3	3 3.8	7 9.0	2 2.6	78 32.5
MANITOBA	23 45.1	16 31.4	5 9.8	2 3.9	5 9.8		51 21.3
ALBERTA	12 38.7	9 29.0	6 19.4	1 3.2	1 3.2	2 6.5	31 12.9
BRITISH COLUMBIA	6 18.8	15 46.9	1 3.1	7 21.9	2 6.3	1 3.1	32 13.3
COLUMN TOTAL	83 34.6	81 33.8	27 11.3	20 8.3	19 7.9	10 4.2	240 100.0

With regard to the interests served in the process of plea bargaining, 64.7% of the total sample of defence counsel moderately or strongly agreed that priority should be given to the long term interests rather than the short term satisfaction of the client (Table 6).

There was significant variation in attitude among provinces particularly in Quebec, Manitoba and British Columbia where at least 40% of defence counsel disagreed with this item. This degree of opposition might have been predicted in British Columbia, since the structure of

TABLE 6

Attitudes toward the Interests served in Plea-Bargaining

INTERESTS IN PLEA-BARGAINING

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	1 14.3	3 42.9	2 28.6	1 14.3			7 2.9
QUEBEC	11 26.2	11 26.2	9 21.4	5 11.9	5 11.9	1 2.4	42 17.6
ONTARIO	12 15.4	22 28.2	12 15.4	13 16.7	12 15.4	7 9.0	78 32.8
MANITOBA	10 19.6	9 17.6	10 19.6	8 15.7	9 17.6	5 9.8	51 21.4
ALBERTA	8 27.6	8 27.6	10 34.5		2 6.9	1 3.4	29 12.2
BRITISH COLUMBIA	5 16.1	5 16.1	6 19.4	2 6.5	7 22.6	6 19.4	31 13.0
COLUMN TOTAL	47 19.7	58 24.4	49 20.6	29 12.2	35 14.7	20 8.4	238 100.0

the system resembled a justice model (Corrado et.al., unpublished), however it is difficult to explain such a high level of disagreement in Manitoba. Furthermore, one might have predicted a stronger degree of opposition in the provinces of Quebec and Nova Scotia. The mean responses for each province reflected the disparity in attitude toward this item with British Columbia indicating the strongest opposition (3.6) followed by Manitoba and Ontario (3.2) and Alberta and Nova Scotia (2.4).

The initial analysis of these sections of the questionnaire provided a description of the attitudes of defence counsel toward the philosophy of the Young Offenders Act as well as the legal representation of juvniles in court. The descriptive statistics were adequate measures of strength of level of agreement or disagreement toward the attitudinal items. Generally the results of analysis illustrated disparities in attitudes of defence counsel toward specific items according to jurisdiction.

Responses to the attitudinal items were used as a means whereby the perceptions of defence counsel toward their role in the system could be identified and explained. It was predicted that, in distinguishing patterns of responses in terms of strength of agreement and disagreement regarding the questionnaire items, perceptions of specific role types could be differentiated according to the predefined types. However the analysis of the frequency distributions, median and mean responses revealed a high degree of inconsistency in response to these sections of the questionnaire. Distinctions in attitude could be identified when the patterns of responses to specific items were compared on an individual basis. The extent of the inconsistency in response however precluded the generalized classification of role type according to jurisdiction.

The problems this degree of inconsistency creates in the interpretation of the findings can be illustrated by an example. The majority of defence counsel were consistent in their agreement regarding the appropriate conduct of the lawyer when representing a juvenile. (see Table 4 & Table 5) This result might have established a basis to

predict that defence counsel would have also consistently agreed with the principle of least interference. However there was considerable disagreement (39.6%) toward the item (Table 10).

Moreover, one might have predicted a higher level of disagreement toward giving precedence to the long term interests rather than to short term client satisfaction in plea-bargaining (Table 11). The responses to these questions are contradictory in that in serving the long term interests of the client, defence counsel may be violating the right to least possible interference. The implication of this contradiction would be illustrated in a case where custody is a possible disposition. Acting in the long term interests of the client, counsel might agree to a disposition involving custody which may not constitutes the least restrictive disposition possible considering the circumstances of the case.

Further, to represent a juvenile client as if the client were an adult involves a degree of client control over the direction of the proceedings (Guggenheim, 1984). Formally, the lawyer is required to accept the instructions of the client or minimally to acquire consent of the client before any action is taken (Manning, 1981; Guggenheim, 1984).

In the case of plea-bargaining, the objective is to attain the sentence involving the least possible interference by the state. This is assumed to be in the best interests of the client and simultaneously represents the client's wishes. It is therefore a contradiction to represent the juvenile client as an adult but not to take into account the client's wishes and further to argue for, what in the lawyer's

opinion, constitute the long term interests of the juvenile without the necessary consent.

As a means of clarifying the relationship between the variable of interests in plea-bargaining and least interference, a crosstabulation

TABLE 7

Crosstabulation of Least Interference with Plea-Bargaining

	INTERESTS IN PLEA-BARGAINING						
COUNT / ROW PCT / COL PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
1 STRONGLY AGREE	9 25.0 20.0	5 13.9 8.6	2 5.6 4.1	10 27.8 34.5	5 13.9 14.3	5 13.9 26.3	36 15.3
2 AGREE	8 12.9 17.8	14 22.6 24.1	14 22.6 28.6	7 11.3 24.1	13 21.0 37.1	6 9.7 31.6	62 26.4
3 MILDLY AGREE	7 15.6 15.6	14 31.1 24.1	13 28.9 26.5	1 2.2 3.4	6 13.3 17.1	4 8.9 21.1	45 19.1
4 MILDLY DISAGREE	8 24.2 17.8	5 15.2 8.6	9 27.3 18.4	6 18.2 20.7	5 15.2 14.3		33 14.0
5 DISAGREE	10 23.3 22.2	15 34.9 25.9	9 20.9 18.4	3 7.0 10.3	4 9.3 11.4	2 4.7 10.5	43 18.3
6 STRONGLY DISAGREE	3 18.8 6.7	5 31.3 8.6	2 12.5 4.1	2 12.5 6.9	2 12.5 5.7	2 12.5 10.5	16 6.8
COLUMN TOTAL	45 19.1	58 24.7	49 20.9	29 12.3	35 14.9	19 8.1	235 100.0

of these variables was performed (Table 7). The results indicated that there was no significant relationship or association between these variables (Chi-square 36.28 p=.06). The fairly even distribution of responses verified that those lawyers who favoured long-term interests in plea-bargaining are not most likely to disagree with the least possible interference. In other words, there was no consistency in the response pattern to these items.

Based on these findings it would seem that, due to the degree of disparity in the attitudinal data, the advocate-guardian typology does not provide an adequate description or explanation of the perceptions of defence counsel toward their role. Moreover it is questionable whether role types can be distinguished based on the attitudinal data.

In order to further examine the plausibility of identifying two distinct role types from the data, a factor analysis was conducted based on a correlation matrix of the variables[13] in these sections of the questionnaire for the entire sample. While the advocate-guardian typology may not be identical to the way in which defence counsel might perceive or describe their role in the system, it was anticipated that the responses toward the questions concerning the Philosophy of the Y.O.A and Legal Representation in the Juvenile Court would divide into two factors that would reflect these two ideal role types.

The results of the factor analysis established that it was not

---

[13] Due to the content and the way in which this item was coded, the variable pertaining to the percentage of juveniles receiving legal representation at any stage of the proceedings (Appendix B question #2), was omitted from the factor analysis.

possible to derive two factors based on the interrelationships of the variables that would explain the perception of defence counsel toward their role in terms of the advocate-guardian typology. Moreover, the interpretation of the results of the analysis were complicated in that out of the number of variables included (26), a total of nine factors with eigenvalues of 1.00 or greater were extracted. Out of these, the first three factors are shown in Table 8 to illustrate the problems associated with the interpretation of such complex findings.

Table 8 'Factor Analysis Toward the Philosophy of the Y.O.A. and the Legal Representation of Juveniles' Orthogonal Varimax Rotated Factors*

FACTOR 1		FACTOR 2		FACTOR 3	
Legal Representation at Disposition	.85	Legal Representation at Diversion	.75	Conduct of Legal Aid Lawyer	.94
Legal Representation at Adjudication	.78	Legal Representation at Arrest	.74	Conduct of Private Lawyer	.93
Legal Representation at Trial	.74	Conflict of Interests	.55	Representation at State's Expense	.37
Legal Representation at Review	.64	Legal Representation for Serious Charges	.51		
Legal Representation at Bail Hearing	.59	Legal Representation at Bail Hearing	.44		
Legal Representation for Serious Charges	.44	Legal Representation for Secure Custody Disposition	.36		
Legal Representation at Arraignment	.43	Legal Representation at Review Hearing	.32		
Legal Representation for Secure Custody Disposition	.37				
Right to Participate	.31				
Legal Representation at Transfer Hearing	.31				
Conflict of Interests	.30				
Eigenvalue	Factor 1 5.31	Factor 2 2.37		Factor 3 1.95	
Percent of Total Variance	Factor 1 20.4	Factor 2 9.1		Factor 3 7.5	(37.1%)

Note: *Factors shown had the highest eigenvalues. There were a total of nine factors extracted with eigenvalus greater than 1.00 that explained 64.6% of the variance.

The factors shown in Table 8 had the highest eigenvalues as well as explained the highest proportion of the variance. However when the variables with the highest factor loadings on each of the three factors were examined, there was no substantive or conceptual explanation for the findings. For example the variables that have significant factor loadings on Factor 2 (see Table 8) correspond to the questionnaire items concerning the importance of representation at arrest and the necessity of representation at diversion.

The interrelationship of these variables with the factor could be attributed to the correlation among the variables rather than their relation to the factor. Upon examining the content of these variables it was discovered that their correlation was due to the fact that they were not distinct variables, that is conceptually, they were the same variable (Tabachnick & Fidell, 1983). In this case the variables that appeared to be related to Factor 2, reflected the similarity (correlation) among the variables which was the importance or need for representation.

The findings were similar when the variables with significant factor loadings for Factor 1 and 3 were examined. The variables constituted part of the same questionnaire items (see Appendix B) and subsequently the factor loadings reflected the correlation among the variables rather than the relation to the factors.

Furthermore several variables had significant factor loadings for two factors. This result indicates the complexity of the variables. Complexity is, " ... related to the number of factors with which a

variable is associated" (Tabachnick & Fidell,1983:378). Complex variables are associated with more than one factor. When variables of differing complexities are included in the same analysis, those with similar complexity levels may overlap with factors that have no meaning in terms of underlying structures. This may explain why these variables were associated with more than one factor. In other words, due to the similarity in complexity, these variables may be correlated with each other, " ... because of their complexity and not because they are related to the same factor" (Tabachnick & Fidell, 1983:378).

In an attempt to simplify the interpretation and solution of the analysis, some the complex variables were omitted and a second factor analysis was performed. Of the total number of variables included in the analysis (16), six factors with eigenvalues of 1.00 or greater were extracted, explaining 63.8% of the variance (Table 9).

The problems associated with the second factor analysis were similar to those observed in the first attempt. Variables that had significant factor loadings were essentially the same variable and the factor loading reflected the extent of the correlation among these variables as opposed to the relation of these variables to a common factor.

Table 9 'Factor Analysis of Attitudes Toward the Philosophy and the Legal Representation of Juveniles'*

Variables	F1	F2	F3	F4	F5	F6	
Conflict of Interests	.78	-.01	-.05	-.02	.01	-.13	
Representation for Serious Charges	.77	.08	-.06	.10	.09	.20	
Representation for Secure Custody Disposition	.70	.01	.17	.11	.11	-.23	
Right to Participate	.45	.06	.17	.43	.15	.16	
Conduct of Legal Aid Lawyer	.01	.95	-.07	.06	.03	-.07	
Conduct of Private Lawyer	.03	.94	-.06	.05	.00	-.03	
Suffer Consequences	-.02	-.06	.89	.07	.09	-.02	
Accountability	.06	-.00	.85	.03	.09	-.11	
Parental Supervision	-.06	.07	-.04	.73	-.23	-.05	
Least Interference	.15	.08	.12	.68	.27	-.12	
Special Guarantees	.21	.08	.05	.49	.37	-.01	
Special Needs	.07	-.11	.45	.46	-.09	.08	
Protection of Society	-.11	.06	-.07	.03	-.78	.07	
Representation at State's Expense	.11	.35	.11	.11	.49	.19	
Interests in Plea-Bargaining	-.13	-.14	-.16	.03	.11	.79	
Responsiblity	.10	.15	.13	-.32	-.40	.56	
Eigenvalue	3.05	2.08	1.57	1.30	1.13	1.05	
Percent of Total Variance	19.1	13.1	9.8	8.1	7.1	6.6	(63.8%)

Note: * Variables referring to the importance of representation at stages of the proceedings (Appendix B question 1) as well as the percentage of juveniles represented (question 2) and the quality of representation (question 3) were excluded from the analysis.

Table 10
Attitudes Toward the Philosophy of the
Young Offenders Act

Questionnaire Item	(1) Strongly Agree	(2) Agree	(3) Mildly Agree	(4) Mildly Disagree	(5) Disagree	(6) Strongly Disagree	Mean
Accountablilty	35.7	39.3	12.3	4.1	5.7	2.9	2.1
Suffer Consequences	45.5	38.5	9.4	3.3	2.0	1.2	1.8
Responsibility	29.2	51.9	17.3		1.6		1.9
Protection of Society	11.5	28.8	23.5	13.6	16.5	6.2	3.1
Special Needs	23.0	46.9	18.9	7.0	3.7	1.2	2.3
Right to Participate	50.6	33.3	13.2	.4	2.5		1.7
Special Guarantees	27.6	27.6	17.3	8.6	13.6	5.3	2.7
Least Interference	15.0	26.2	19.2	14.2	18.8	6.7	3.2
Parental Supervision	33.5	38.4	16.5	4.5	6.2	.8	2.1

Note: Respondents were asked to what extent they agreed/disagreed with the statements pertaining to some of the principles established in the Young Offenders Act. For complete statements see Appendix A.

Table 11
Attitudes Toward Legal Representation
in the Juvenile Court

Questionnaire Item	(1) Very Great Importance	(2) Considerable Importance	(3) Moderate Importance	(4) Little Importance	(5) No Importance	Mean
Arrest	48.3	25.6	17.4	5.0	3.7	1.9
Diversion	27.0	27.0	30.3	13.7	2.1	2.4
Bail Hearing	74.5	20.6	4.5	.4		1.3
Transfer Hearing	85.6	9.9	2.9	1.6		1.2
Arraignment Hearing	64.2	17.1	13.7	4.2	.8	1.6
Trial	94.2	5.3	.4			1.1
Disposition Hearing	81.7	12.4	5.0	.4	.4	1.3
Review of Disposition Hearing	68.7	21.0	9.5		.8	1.4

Note: Respondents were asked the importance of legal representation at each of the specified stages.

Table 11
Attitudes Toward Legal Representation
in the Juvenile Court (continued)

Questionnaire Item	10 to 20%	30 to 50%	Over 50%	Mean
% of Juveniles Represented	18.1	39.3	42.5	51.5

Note: Respondents were asked to estimate the percentage of juveniles receiving legal representation in their community.

Questionnaire Item	(1) Very Good	(2) Good	(3) Adequate	(4) Poor	(5) Very Poor	Mean
Quality of Representation	10.4	31.7	39.6	16.7	1.7	2.7

Note: Respondents were asked to rate the quality of the legal representation received by juveniles.

Table 11
Attitudes Toward Legal Representation
in the Juvenile Court (continued)

Questionnaire Item	(1) All Cases	(2) Most Cases	(3) Half of Cases	(4) Few Cases	(5) No Cases	Mean
Cases involving serious charges	82.3	14.8	2.9			1.2
Conflict of Interest	62.1	33.7	3.3	.8		1.4
Secure Custody Possible Disposition	84.4	13.6	1.2	.8		1.2

Note: Respondents were asked to consider the necessity of representation in each of the specified types of cases. For complete statements refer to Appendix B question 4 a,b,c.

Table 11
Attitudes Toward Legal Representation
in the Juvenile Court (continued)

Questionnaire Item	(1) Strongly Agree	(2) Agree	(3) Mildly Agree	(4) Mildly Disagree	(5) Disagree	(6) Strongly Disagree	Mean
Legal Representation at State's Expense	12.0	11.2	10.4	17.4	29.0	19.9	4.0
Conduct of Private Lawyer	36.2	32.5	13.7	7.5	7.1	2.9	2.3
Conduct of Legal Aid Lawyer	34.6	33.7	11.2	8.3	7.9	4.2	2.3
Interests in Plea-Bargaining	19.7	24.4	20.6	12.2	14.7	8.4	3.0

Note: Respondents were asked to what extent they agreed/disagreed with the specified statements pertaining to the legal representation of juveniles. For complete statements refer to Appendix B question 5 a,b,c.

3.2 SUMMARY

In general the analyses performed on the two sections of the questionnaire used to operationalize the concept of role were not successful in differentiating role types according to the predefined typology. The descriptive analysis indicated a level of inconsistency in the responses of the sample to the majority of the questionnaire items to the extent that role types could not be identified based on the patterns or frequencies of response according to jurisdiction.

As a means of verifying the preliminary findings, two separate factor analyses were performed. The results confirmed the findings of the descriptive analysis in that the number of variables were not reduced to at least two factors that could explain, statistically or substantively, the attitudinal data in terms of the advocate-guardian typology. While the factor analyses does not solely constitute conclusive evidence[14] that no role types exist, the findings verify the high level of inconsistency observed in the response patterns of the sample which has precluded the differentiation and explanation of perceived role types.

There are two possible implications that emerge from the findings. The first concerns the adequacy of the established definitions of role types. It is possible that the traditional role types delineated by law

---

[14] The criteria recommended in determining the suitability of the data for factor analysis are that the sample size be large enough so that the correlations are reliably estimated and that the matrix includes several sizeable correlations of at least .30 (Tabachnick & Fidell, 1983:379). According to this criteria, the sample size in this analysis is considered to be fair. Further, while there are several correlations that exceed .30, there are some problems associated with the complexity of the variables. For these reasons the factor analyses were not done according to province.

and identified in the literature do not accurately define the actual function of children's lawyers and do not reflect the complex nature of the relationhip between the lawyer and the child. In this case, perhaps it is not desirable to continue to apply this typology and attempt to label the role of defence counsel by restrictive or limited ideal types.

The second possible implication of the findings concerns the issue of whether defence counsel, when defending youths, actually adhere to or perceive a particular role that can be identified and defined as a specific type. It might be that the role of defence counsel is not consistent but varies on an individual client to client basis and is determined by legal and extra-legal factors including the circumstances of the case as well as the lawyer's individual philosophical or ideological orientation to juvenile justice.

This implication is supported by the empirical evidence. The inconsistency in responses observed in the attitudinal data appears to confirm the conclusion that defence counsel in juvenile justice have either experienced confusion in the ability to define their role which has resulted in role ambiguity or there is no consistency in the way in which defence counsel perceive of or approach their role in the system.

3.3 SUBSTANTIVE AND PROCEDURAL MEASURES UNDER THE ACT

The second research question addresses the extent and nature of the jurisdictional variation with respect to lawyer's perceptions of appropriate roles. The analysis involved the formulation of several propositions that predicted the relationship between the structure of

the court organization, the perceived role types of counsel and the level of agreement toward the Young Offenders Act. The propositions were constructed as a means whereby the relationship between the three key variables of model, role and attitudes toward the Y.O.A. could be examined.

In order to examine the relationship between model and role, a comparative analysis that combined the observational data describing the structural and procedural organization of the courts in each province with the findings of the questionnaire that operationalized the concept of role was proposed. The third component of the proposition, the attitude of defence counsel toward the Y.O.A., was to be examined through the analysis of the questionnaire section concerning the Substantive and Procedural Measures under the Young Offenders Act (Appendix C).

In this way, each province could be described in terms of the 'model' of the court structure and the 'type' of role perceived by the responding defence counsel. The anticipated variation in role type, reflected in the perceptions toward the Y.O.A., could then be attributed, at least in part, to the effect of the structure of the court organization on role development.

Due to the inability to differentiate role types on the basis of the attitudinal data, the second and most important component of the propositions could not be examined by the method proposed. In consideration of this result, the third element of the propositions, dealing with the attitudes toward the legislation which required the

analysis of the substantive and procedural meausures section of the questionnaire was conducted. It was anticipated, despite the inability to examine the relationship between model, role and attitudes toward the Y.O.A., that the association between model and the attitudes of the sample toward the legislation could still be examined. In this sense the varied levels or strengths of agreement (disagreement) could be partially explained in the context of the structure of the court organization.

In order to establish the level of agreement or disagreement of defence counsel toward the Young Offenders Act, the section of the questionnaire that measured the attitudes toward the substantive and procedural measures under the legislation were analyzed. Items in the questionnaire were grouped into subsections where they concerned the same topic. Subsequently summary measures were created in order to, where possible, discuss topics rather than individual items.

Section 4 of the Young Offenders Act establishes the provisions regarding the use of Alternative Measures or diversion. Items from the questionnaire measuring the attitudes of defence counsel toward the conditions under which these provisions may be applied were included in the summary measure for this subsection (refer to Appendix C).

The majority of the items in this subsection were concerned with the requirement of consent of the young offender to participate in the alternative measures program, the sufficiency of evidence with respect to the offence and the conditions under which the charges would be dismissed. However one questionnaire item, regarding the implementation

of judicial proceedings in addition to alternative measures, was omitted from the summary measure and is discussed separately.

Overall there was a high level of agreement with the provisions of alternative measures across jurisdiction (Table 27). In terms of categorical response, the most frequent response of defence counsel across jurisdiction was 'approve' (37.2%) and 'mildly approve' (35.6%). Of the total sample approximately 88% of defence counsel responded in the strongly to mildly approve categories. The overall mean response (2.5) fell in between these categories.

The responses according to jurisdiction indicated a similar result. Defence counsel in Nova Scotia, Quebec, Ontario, Manitoba and Alberta most frequently responded in the 'approve'(2.0) category with the exception of British Columbia where counsel responded in the 'mildly approve' (3.0) category. Over 80% of the samples in each province responded in the 'strongly' to 'mildly' approve range. This level of agreement was reflected in the mean response for each province which varied between the 'approve' to 'mildly approve' categories.

The item omitted from this measure referred to section (4)(g) of the Young Offenders Act, and asked the sample whether the use of alternative measures does not preclude judicial proceedings regarding the alleged offence (Table 12). In general 60.7% of the sample ranged in response from 'mildly' to 'strongly' disapprove, while the remainder of the sample responded in the approve categories.

On a provincial level, attitudes toward this provision varied considerably among the eastern and western provinces. For example, the

TABLE 12

Alternative Measures Not Precluding Judical Proceedings

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA		1 14.3	1 14.3	1 14.3	2 28.6	2 28.6	7 2.9
QUEBEC	4 9.8	1 2.4	2 4.9	10 24.4	6 14.6	18 43.9	41 16.9
ONTARIO	10 12.7	14 17.7	5 6.3	12 15.2	21 26.6	17 21.5	79 32.6
MANITOBA	5 9.8	11 21.6	4 7.8	5 9.8	13 25.5	13 25.5	51 21.1
ALBERTA	6 18.8	11 34.4	6 18.8	1 3.1	6 18.8	2 6.3	32 13.2
BRITISH COLUMBIA	5 15.6	6 18.8	3 9.4	4 12.5	2 6.3	12 37.5	32 13.2
COLUMN TOTAL	30 12.4	44 18.2	21 8.7	33 13.6	50 20.7	64 26.4	242 100.0

majority of the response in Nova Scotia (71.5%), Quebec (82.9%) and Ontario (63.3%) ranged between 'strongly' and 'mildly' disapprove. However in Manitoba, while the majority of counsel responded in these categories (51.0%), there was a significant proportion that approved of this provision (39.2%). This level of approval increased in Alberta (71.9%) and British Columbia (43.8%).

The extent of this variation was reflected in the frequency of the response categories. For Nova Scotia, Ontario and Manitoba defence counsel most frequently responded in the 'disapprove' (5.0) category

while in Quebec and British Columbia the median category was 'strongly disapprove' (6.0). However in Alberta defence counsel responded most frequently in the 'approve' (2.0) category.

The unexpected finding in Alberta may be explained, in part, as a result of the existing child welfare legislation which stipulated that offenders who had received custodial dispositions may be brought before the court for further prosecution. Considering that this particular provision of the Y.O.A. extends the procedure practised in Alberta prior to the new legislation, it may not be suprising that the attitude of the Alberta sample differs significantly from the other provinces.

With respect to the provisions for bail and detention, the majority of the total sample across jurisdiction responded in the 'strongly approve' (1.0) or 'approve' (2.0) category (Table 27). For all of the study sites, defence counsel indicated a high level of agreement toward the separation of young and adult offenders while in detention and the use of the rules and criteria established in the Criminal Code to deal with bail applications in the Youth Court.

The subsection of the questionnaire pertaining to the Notice to Appear measured the attitudes of defence counsel with regard to the requirement and conditions of parental notice of the proceedings. More specifically the questionnaire items focused on the importance of the attendance of the parent/guardian in ensuring the involvement and participation of the family in the proceedings.

Included in the summary measure for this subsection were items directed at what point in the process the parent/guardian should be

notified and the content of the notice as well as the conditions under which the proceedings would be adjourned or invalidated as a result of failure to give notice.

The findings indicated a high level of agreement to the provisions established in the Y.O.A. with respect to the conditions and requirements of parental notice. Across jurisdictions, the most frequent response by defence counsel to these questionnaire items was 'approve' (2.0) (Table 27). This was also the result on a provincial basis and approximately 95% of the total defence counsel sample responded in the 'mildly'(3.0) to 'strongly' (1.0) approve categories.

The questionnaire item from this subsection that was omitted from the calculation of the summary measure was the question pertaining to judicial dispensation of notice. This question refers to section (9)(10)(b) of the Y.O.A. that stipulates that a judge, having regard for the circumstances, may dispense with the notice without rendering the proceedings invalid (Appendix C question #12). Defence counsel, across the six study sites, responded to this item in the 'approve' category, indicating a high level of agreement to judicial dispensation of notice (Table 13). The result was similar according to province with the exception of Nova Scotia where the sample moderately approved of this provision. In general approximately 79.0% of defence counsel across jurisdiction ranged in response from 'mildly' to 'strongly' approve to the provision of judicial dispensation of notice.

The items included in the subsection of the questionnaire pertaining to the right of counsel measured the attitudes of counsel toward the

TABLE 13

Judicial Dispensation of Notice

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA			3 42.9	3 42.9		1 14.3	7 2.9
QUEBEC	8 19.0	13 31.0	9 21.4	5 11.9	3 7.1	4 9.5	42 17.3
ONTARIO	20 25.3	37 46.8	7 8.9	2 2.5	6 7.6	7 8.9	79 32.5
MANITOBA	8 15.4	25 48.1	10 19.2	2 3.8	3 5.8	4 7.7	52 21.4
ALBERTA	6 19.4	11 35.5	8 25.8	1 3.2	2 6.5	3 9.7	31 12.8
BRITISH COLUMBIA	5 15.6	19 59.4	3 9.4	1 3.1	3 9.4	1 3.1	32 13.2
COLUMN TOTAL	47 19.3	105 43.2	40 16.5	14 5.8	17 7.0	20 8.2	243 100.0

right of the young offender to retain and instruct independent counsel, the informing of that right by police upon arrest as well as the opportunity to obtain counsel (Appendix C questions #15 to #19).

Since the sample for this research consisted of practising defence lawyers who had appeared in juvenile court during the course of the specified observation period (Moyer & Carrington, 1985), it was not surprising that 98% of the sample responded to these provisions in either the 'strongly' approve (1.0) or 'approve' (2.0) category. The majority of respondents (79%) strongly approved. This finding was consistent when the provinces were considered on an individual basis.

The questionnaire item in reference to section 11(7) of the Young Offenders Act (Appendix C question #19), concerning the representation of a young offender by a suitable adult was not included in the summary measure. The separate analysis of the item indicated that while the majority of the total sample (67%) generally approved of the provision that is ranged in their response from 'strongly' (1.0) to 'mildly' (3.0) approve, there was a considerable level of disapproval or disagreement (32.8%). Of this proportion, 27.5% of the total sample responded in the 'disapprove' (5.0) or 'strongly' disapprove (6.0) category. Disagreement regarding this provision was notable primarily in Quebec

TABLE 14

Representation by an adult other than legal counsel

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	1 14.3	1 14.3	2 28.6	3 42.9			7 2.9
QUEBEC	4 9.5	3 7.1	7 16.7	3 7.1	10 23.8	15 35.7	42 17.3
ONTARIO	18 22.8	27 34.2	12 15.2	2 2.5	13 16.5	7 8.9	79 32.5
MANITOBA	13 25.0	21 40.4	9 17.3	3 5.8	4 7.7	2 3.8	52 21.4
ALBERTA	10 32.3	12 38.7	3 9.7		3 9.7	3 9.7	31 12.8
BRITISH COLUMBIA	6 18.8	9 28.1	5 15.6	2 6.3	7 21.9	3 9.4	32 13.2
COLUMN TOTAL	52 21.4	73 30.0	38 15.6	13 5.3	37 15.2	30 12.3	243 100.0

(66%), Ontario (27.9%) and British Columbia (37.6%) (Table 14).

In addition, the findings varied considerably between Quebec and the rest of the provinces. Specifically, approximately 66% of the sample in Quebec ranged in response from 'mildly' (4.0) to 'strongly' (6.0) disapprove. Of this proportion, 35.7% strongly disapproved. This result might be attributed to the effect of the established practice in that province prior to the new legislation.

Under the Youth Protection Act a formalized diversion process had been implemented that diverted young offenders out of the justice system and to the appropriate social service resource. The juvenile court was considered to be the last resort (Corrado, et.al., unpublished; Bala & Corrado, 1985). Subsequently only the cases involving the more serious offences were prosecuted in court. Under these circumstances, it would seem unreasonable, particularly in the opinion of defence counsel, to allow anyone else other than qualified legal counsel to act on behalf of a young offender in this situation.

This interpretation may be corroborated by the earlier analysis of the data pertaining to the circumstances under which counsel is considered to be necessary (Appendix B question #4a). In Quebec over 90% of the sample indicated that in all cases involving serious charges it was necessary for a juvenile to represented by a lawyer.

The questionnaire items in this subsection refer to section 44 of the Young Offenders Act which provides guidelines regarding the circumstances under which fingerprints and photographs of young offenders are to be taken. Due to the distinct content and structure of the items, a summary measure was not calculated.

The first item measured the attitude of defence counsel with regard to the taking of fingerprints and/or photographs of a young offender accused of an offence where if she/he were an adult would be an indictable offence. Across jurisdiction, the responses to this item indicated an almost even split between defence counsel who mildly to strongly approved (43.6%) and those who mildly to strongly disapproved (56.3%) (Table 15).

TABLE 15

Fingerprints/Photographs for Indictable Offences

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA			2 28.6	1 14.3	3 42.9	1 14.3	7 2.9
QUEBEC	2 4.8	4 9.5	9 21.4	7 16.7	7 16.7	13 31.0	42 17.3
ONTARIO	11 13.9	14 17.7	6 7.6	10 12.7	14 17.7	24 30.4	79 32.5
MANITOBA	6 11.5	10 19.2	9 17.3	8 15.4	8 15.4	11 21.2	52 21.4
ALBERTA	3 9.7	8 25.8	5 16.1	2 6.5	2 6.5	11 35.5	31 12.8
BRITISH COLUMBIA	6 18.8	11 34.4		2 6.3	8 25.0	5 15.6	32 13.2
COLUMN TOTAL	28 11.5	47 19.3	31 12.8	30 12.3	42 17.3	65 26.7	243 100.0

On a provincial level, the response of the majority of counsel was 'strongly' disapprove (6.0) with the exception of British Columbia where

counsel approved (2.0) of this procedure. However a more detailed analysis of the provincial responses indicated an almost even distribution of responses ranging from 'strongly approve' (1.0) to 'strongly disapprove' (6.0). For example the mean responses for each province ranged from 'disapprove' (4.3) in Nova Scotia to 'mildly approve' (3.3) in British Columbia.

Furthermore in most of the provinces the responses were distributed in such a way that there did not appear to be a consensus of approval or disapproval. For example in Manitoba approximately 48% of the sample indicated some level of approval of this provision while approximately 52% disapproved. Similarly in Alberta, approximately 51% of defence counsel approved compared to 48.5% who disapproved. Finally in British Columbia there were no responses in the 'mildly approve' (3.0) category and an insignificant proportion in the 'mildly disapprove' (4.0) category. However 53.2% of the sample either strongly approved (1.0) or approved (2.0) while 40.6% either disapproved (5.0) or strongly disapproved (6.0) of the provision.

In light of these findings it is difficult to distinguish, with an acceptable degree of accuracy, the provinces which approve or disapprove of this provision. As reflected in the results across jurisdiction, it would appear that there is no clear consensus in reference to the taking of fingerprints and photographs of young offenders accused of an indictable offence.

The second item measured the attitude of defence counsel toward the procedure of fingerprinting young offenders for a summary conviction

offence. A large majority of the total sample (85.2%) agreed that a young offender should not be fingerprinted for such an offence even with

TABLE 16

No Fingerprinting of Youths for Summary Offence

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	2 28.6	4 57.1	1 14.3				7 2.9
QUEBEC	34 81.0	5 11.9	2 4.8	1 2.4			42 17.3
ONTARIO	33 41.8	26 32.9	6 7.6	6 7.6	6 7.6	2 2.5	79 32.5
MANITOBA	21 40.4	19 36.5	6 11.5	2 3.8	3 5.8	1 1.9	52 21.4
ALBERTA	16 51.6 6.6	10 32.3 4.1	3 9.7 1.2	1 3.2 .4		1 3.2 .4	31 12.8
BRITISH COLUMBIA	6 18.8	11 34.4	2 6.3	4 12.5	6 18.8	3 9.4	32 13.2
COLUMN TOTAL	112 46.1	75 30.9	20 8.2	14 5.8	15 6.2	7 2.9	243 100.0

his/her consent. Approximately 77% of counsel responded in the 'strongly' or 'approve' category (Table 16).

This result was consistent when the provinces were analyzed on an individual basis. British Columbia was the only province where a level of disapproval was indicated. Approximately 40% of the sample in this province responded to this item in the disapprove categories. It is

difficult to speculate as to why this level of disapproval was evident. However in the previous item counsel in British Columbia approved of having young offenders fingerpinted and/or photographed when accused of indictable offences. The combination of these findings may reflect the more legalistic philosophy underlying the procedure of the system in this province.

The summary measure for the subsection of the questionnaire pertaining to dispositions included items that measured the attitudes of counsel with respect to the requirements and types of dispositions stipulated with in the Young Offenders Act (Appendix C). These items refer to section 19(7) which establishes limitation on punishment, section 21(2)(a)(b) which outlines the conditions for the fine option program, section 22(1) which establishes the requirement of consent by the young person and parents in order to render a disposition of detention for treatment purposes and section 24(2) regulating decisions regarding the level of custody.

Across jurisdiction counsel approved (2.0) of these provisions. Approximately 84% of the total sample responded in the 'strongly approve' or 'approve' category (Table 27). This finding remained consistent when the responses were analyzed according to the major study sites. Counsel in all of the sites indicated a consistent level of approval with respect to the provisions concering dispositions stipulated in the legislation.

Omitted from the summary measure was the item concerning the appropriate place of custody for the young offender within the level of custody designated by the Youth Court (Appendix C question #26).

According to section 24(6) of the Young Offenders Act, officials of the provincial juvenile services or the provincial director or his delegate are responsible for deciding the place of custody. In general the total sample of defence counsel indicated an almost even distribution of those who approved (54.2%) and those who disapproved (45.8%) (Table 17).

TABLE 17

Place of Custody decided by Provincial Officials

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA		2 28.6	2 28.6	2 28.6	1 14.3		7 2.9
QUEBEC	4 9.5	5 11.9	8 19.0	8 19.0	6 14.3	11 26.2	42 17.4
ONTARIO	5 6.3	18 22.8	23 29.1	10 12.7	13 16.5	10 12.7	79 32.6
MANITOBA	1 2.0	15 29.4	12 23.5	13 25.5	5 9.8	5 9.8	51 21.1
ALBERTA	3 9.7	8 25.8	5 16.1	3 9.7	6 19.4	6 19.4	31 12.8
BRITISH COLUMBIA	2 6.3	9 28.1	9 28.1	5 15.6	5 15.6	2 6.3	32 13.2
COLUMN TOTAL	15 6.2	57 23.6	59 24.4	41 16.9	36 14.9	34 14.0	242 100.0

Analysis of the findings, within each jurisdiction, indicated significant levels of disagreement toward this provision. This was most notable in Quebec where approximately 59% of the sample responded in the disapprove categories with a median response of 'strongly disapprove'

(6.0) and a mean of 'mildly disapprove' (4.0). While explanations as to why counsel responded in this manner would be speculative, it may related to the fact that since the most serious cases were referred to the Quebec Juvenile Court, particularly those involving custody, that is should be the responsibility of the court rather than provincial juvenile services officials to make decisions regarding the place of custody. The explanation underlying this finding is consistent with the item pertaining to the provision allowing an adult to act on behalf of a young offender.[15]

Counsel in Ontario most frequently responded in the 'mildly approve' (3.0) category with regard to this item. However approximately 42% of the sample responded in the disapprove categories. This pattern or distribution of responses seemed to be consistent with the rest of the provinces. Although the median response for the provinces of Manitoba, Alberta and British Columbia was 'approve' (2.0), the mean responses ranged from 'mildly approve' (3.0) to 'mildly disapprove' (4.0) indicating that a proportion of the sample, in these provinces, responded in the disapprove categories. For example, while the majority of defence counsel in Manitoba and Alberta approved of this provision, a significant proportion (44.2% and 47.0% respectively) responded in the disapprove categories. The results were similar in British Columbia although a smaller proportion of the sample indicated their disapproval (37.5%) in that province.

---

[15] Over 60% of the sample in Quebec disapproved of the provision that allows the young offender to request a 'suitable' adult to act on her/his behalf in Youth Court proceedings. A detailed analysis is presented in the section entitled 'Counsel'.

The subsection of the questionnaire concerning the review of disposition refers to the conditions under which review hearings for dispositions not involving custody are to take place as stipulated in section 32(1) of the Young Offenders Act. According to this section the young person, her/his parents, the Attorney General or his agent or the Provincial Director may request a review of disposition six months after the time the disposition was rendered. Included in this subsection was an item concerning the time after which a review of disposition involving custody will be held.[16]

The summary measure reflecting the attitude of counsel toward these provisions across the six sites, varied substantially when compared to the summary measures for the other subsections of this part of the questionnaire. This measure indicated that defence counsel responded to these items most frequently in the 'mildly approve' (3.0) category with a mean response of 2.7 (between approve and mildly approve) (Table 27). This finding suggests that there was a degree of disapproval to some of the questionnaire items that can only be explained by analyzing them individually.

Upon further analysis it was found that defence counsel indicated a considerable degree of disapproval toward two items in this subsection. These items focused on an aspect of the provision enabling officials of provincial juvenile services as well as the crown to request a review of non-custodial dispositions (Appendix C questions 32 & 33).

---

[16] Section 28(1) of the legislation stipulates that a disposition, involving custody exceeding one year, will be reviewed at the end of one year from the date of disposition. Section 28(3) establishes an optional review after six months of the date of disposition.

For these items a significant proportion of defence counsel, across jurisdiction, responded in the disapprove categories (4.0 to 6.0). Specifically 38.9% of the total sample disapproved of that aspect of the provision enabling officials of provincial juvenile services to request a review, while 42.4% of defence counsel disapproved of the right of the Crown to request a review of disposition (Table 18 & 19).

TABLE 18

Request for Review by Provincial Officials

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA		2 28.6	2 28.6	2 28.6	1 14.3		7 2.9
QUEBEC	6 14.3	9 21.4	10 23.8	9 21.4	4 9.5	4 9.5	42 17.4
ONTARIO	7 8.9	27 34.2	21 26.6	14 17.7	5 6.3	5 6.3	79 32.6
MANITOBA	3 5.9	12 23.5	11 21.6	11 21.6	11 21.6	3 5.9	51 21.1
ALBERTA	1 3.2	7 22.6	6 19.4	5 16.1	5 16.1	7 22.6	31 12.8
BRITISH COLUMBIA	1 3.1	14 43.8	9 28.1	2 6.3	4 12.5	2 6.3	32 13.2
COLUMN TOTAL	18 7.4	71 29.3	59 24.4	43 17.8	30 12.4	21 8.7	242 100.0

Provincially, with the exception of Ontario and British Columbia where counsel indicated a high level of approval (69.6% and 75.0% respectively), there appeared to be an almost even split between the

TABLE 19

Request for Review by Crown

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA			3 42.9	1 14.3	3 42.9		7 2.9
QUEBEC	7 16.7	11 26.2	8 19.0	8 19.0	4 9.5	4 9.5	42 17.3
ONTARIO	8 10.1	32 40.5	15 19.0	7 8.9	10 12.7	7 8.9	79 32.5
MANITOBA	2 3.8	14 26.9	6 11.5	8 15.4	14 26.9	8 15.4	52 21.4
ALBERTA	1 3.2	5 16.1	9 29.0	4 12.9	4 12.9	8 25.8	31 12.8
BRITISH COLUMBIA	1 3.1	10 31.3	8 25.0	2 6.3	6 18.8	5 15.6	32 13.2
COLUMN TOTAL	19 7.8	72 29.6	49 20.2	30 12.3	41 16.9	32 13.2	243 100.0

approval and disapproval categories in response to the item pertaining to juvenile services officials requesting review of disposition hearings. Such findings were notable in Nova Scotia, where 42.8% of the sample disapproved to this aspect of the provision. Similarly in Quebec, Manitoba and particularly in Alberta a significant percentage of the provincial samples (40.5%, 49% and 54.8% respectively) indicated disapproval.

These findings might be attributed to the procedure that had been established under section 21 of the Juvenile Deliguents Act, where

juveniles who had received non-custodial dispositions were frequently returned to court for a review or rehearing[17] During the observational period of the National Study, 14% of the youths had cases returned to court for a dispositional review or rehearing (Bala & Corrado, 1985:133). Under the Young Offenders Act, a decision-making body or person, other than the youth court, may determine if and when a dispositional review may conducted. It may be that defence counsel disapproved of a responsibility of this type being removed from the exclusive jurisdiction of the court.

Furthermore in Nova Scotia and Quebec, it was common practice for judges to render an initial disposition and then adjourn the proceedings for a review of progress as was allowed under sections 20(1)(b) and 20(3) of the Juvenile Delinquents Act (Bala & Corrado, 1985:133). At the review hearing the original disposition might be upheld or a new (often less severe) disposition might be rendered. The decision to conduct such a hearing, however, was at the discretion of the court.

There was a significant level of disapproval by counsel in Nova Scotia (57.1%), Manitoba (57.7%), Alberta (51.6%) and British Columbia (40.6%) to the questionnaire item that measured attitudes toward the Crown prosecutor requesting a review of non-custodial dispositions. In these provinces the median response ranged from 'approve' to 'disapprove' with mean responses ranging from 'approve' in Manitoba to 'disapprove' or 'strongly disapprove' (3.5) in British Columbia.

---

[17] Section 21 of the Juvenile Delinquents Act established that reviews and rehearings could only occur if a juvenile was not removed from his/her home.

An explanation of why defence counsel responded in this manner may be related to the way in which the questionnaire item was structured. Specifically the question focused on a particular element of the entire provision, that being the opportunity for the Crown to request review hearings (Appendix C question #33). Excluded from the questionnaire was the subsection stipulating that a disposition resulting from a review hearing cannot be more onerous than the remaining portion of the disposition.[18]

Without the benefit of this information the sample of defence counsel may have interpreted the intention and ramifications of this provision to mean that by enabling the Crown to request dispositional reviews would also provide an opportunity for the Crown to argue for additional and perhaps more severe dispositions. Without further analysis or research addressing these findings, this explanation cannot be substantiated empirically. It is plausible that had the subsections outlining the restrictions relating to review of disposition hearings been included as part of the question, defence counsel may not have responded with the same degree of disapproval as was observed in the findings.

---

[18] Section 32(8) of the Young Offenders Act, relating to dispositions not involving custody provides that, " ... where a disposition made in respect of a young person is reviewed under this section, no disposition made under ss.(7) shall, without the consent of the young person, be more onerous than the remaining portion of the the disposition reviewed. For exceptions to section 32(8), see section 32(9) and 33(7)(a)(b) where the young person has failed or refused to comply with the disposition or in the case of committal to custody has escaped or attempted to escape custody.

Due to the content of the questions, two additional items were omitted from the summary measure for this subsection. The first concerned the establishment of a provincial board to review custodial dispositions (Appendix C question #27). Seventy percent of defence counsel responded in the approve categories. Of the proportion that disapproved of this provision, over 20% either disapproved or strongly disapproved (Table 20).

TABLE 20

Provincial Board Review of Custodial Dispositions

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	2 28.6	2 28.6	2 28.6		1 14.3		7 2.9
QUEBEC	8 19.0	10 23.8	8 19.0	6 14.3	5 11.9	5 11.9	42 17.3
ONTARIO	12 15.2	30 38.0	10 12.7	6 7.6	9 11.4	12 15.2	79 32.5
MANITOBA	12 23.1	20 38.5	8 15.4	3 5.8	7 13.5	2 3.8	52 21.4
ALBERTA	5 16.1	7 22.6	8 25.8	2 6.5	4 12.9	5 16.1	31 12.8
BRITISH COLUMBIA	4 12.5	14 43.8	8 25.0	2 6.3	1 3.1	3 9.4	32 13.2
COLUMN TOTAL	43 17.7	83 34.2	44 18.1	19 7.8	27 11.1	27 11.1	243 100.0

Defence counsel in Quebec, Alberta and Ontario indicated a significant level of disapproval in that while the median responses were

either 'approve' (Quebec and Ontario) or 'mildly approve' (Alberta), in all three provinces over 30% or the sample responded in the disapprove categories (4.0 to 6.0).

An explanation of these findings may suggest that the proportion of counsel that disapproved of this provision might have opposed the removal of the decision-making responsibility related to the review of disposition from the jurisdiction of the youth court. For example in Quebec prior to the Y.O.A., the Director of Youth Protection with the approval of the Minister of Justice delegate were primarily responsible for deciding which cases were appropriate for diversion and those that were to prosecuted in court (Bala & Corrado, 1985).

Cases that were not suitable for diversion, at any level of the program, were referred to the juvenile court. Given the severity of the cases that would have reached the Quebec Juvenile Court and were disposed of through custodial dispositions, it may not be surprising that defence counsel would oppose reviews of these dispositions by a provincial review board rather than by the youth court.

Similarly in Alberta reviews of disposition were conducted by the court in cases where juveniles were committed to the care of the Director of Child Welfare or to compulsory care (industrial school) under the Child Welfare Act. In cases where the committal was ordered under section 75 of the Act, a new hearing was required if the committal was to extend beyond a six month period (Bala & Corrado, 1985). Therefore regardless of the section of legislation that had been applied in committing a juvenile to custody, dispositional reviews were

conducted exclusively by the Alberta Juvenile Court. As a result of existing provincial legislation, defence counsel in this province may have developed negative attitudes toward the establishment of a provincial review board rather than a court to review custodial dispositions.

However, the Young Offenders Act further stipulates that where a provincial board has reviewed a disposition involving custody, the board must notify the youth court of its decision and upon request of the agent or the provincial director the youth court may within ten days of the board's decision, conduct a review.[19] It is possible that had the respondents been aware of these provisions that, in effect, place the ultimate responsibility for disposition review decisions within the jurisidiction of the youth court, they may not have indicated such a strong degree of disapproval toward this item.

An additional questionnaire item that was analyzed individually concerned the retention of the youth court jurisdiction of review over all dispositions (Appendix C question #28). Across jurisdiction there was a considerable level of agreement toward this provision in that 87.6% of the total sample of defence counsel responded in the approve (1.0 to 3.0) categories (Table 21). This level of agreement was exhibited on a provincial basis and was reflected in the distribution of responses that were either 'strongly approve' (1.0) or 'approve' (2.0). The responses to this item partially substantiate the explanations proposed with respect to the previous findings in that it would appear

---

[19] Section 30(4)(5)(6); Section 31(1) of the Young Offenders Act R.S.C. 1984.

TABLE 21

Review Jurisdiction retained by Youth Court

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	1 14.3	3 42.9	2 28.6		1 14.3		7 2.9
QUEBEC	19 45.2	16 38.1	5 11.9	2 4.8			42 17.4
ONTARIO	18 23.1	41 52.6	6 7.7	6 7.7	5 6.4	2 2.6	78 32.2
MANITOBA	15 28.8	23 44.2	6 11.5	2 3.8	5 9.6	1 1.9	52 21.5
ALBERTA	9 29.0	15 48.4	3 9.7	3 9.7	1 3.2		31 12.8
BRITISH COLUMBIA	7 21.9	21 65.6	2 6.3		2 6.3		32 13.2
COLUMN TOTAL	69 28.5	119 49.2	24 9.9	13 5.4	14 5.8	3 1.2	242 100.0

that defence counsel favour the youth court retaining the decision-making responsibility of dispositional reviews over the establishment of provincial review boards.

With respect to the rights of appeal, the survey questionnaire contained a single item that measured the attitudes of counsel toward the provision of the Young Offenders Act establishing that the young persons rights of appeal will be similar appeal[20] to those of adults in the Criminal Code (Appendix C, question #34). Generally there was a

[20] Section 27(1)(a)(b) of the Young Offenders Act R.S.C. 1984.

high level of agreement, across jurisdiction, toward this provision. In each province over 90% of defence counsel responded in the approve categories (Table 21). This level of approval was reflected by the median response (strongly approve). There was no significant degree of disapproval in any of the six major study sites.

The questionnaire items pertaining to the attitudes of defence counsel toward youth court proceedings being open to the public and the exclusion of the persons from the proceedings under specific circumstances were analyzed separately. The summary measure for the jurisdictions combined as well as for each jurisdiction, differed significantly from other subsection measures to warrant further individual analysis of the two questionnaire items.[21]

With respect to public hearings, defence counsel across the six sites indicated an almost even split in response between the approve and disapprove categories. A slight majority of the total sample (52.7%) approved of this provision, however 47.3% indicated some degree of disapproval (Table 22).

On a provincial basis the majority of defence counsel in Nova Scotia (85.7%), Quebec (59.5%) and British Columbia (53.1%) responded in the disapprove categories. In Ontario, Manitoba and Alberta a slight majority approved of this provision yet there was a considerable percentage, approximately 40% in each of these provinces, that responded in the disapprove categories.

---

[21] The summary measures including the median and mean response for each province varied considerably suggesting that disapproval to at least one of the items was evident.

TABLE 22

Proceedings Open to the Public

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA			1 14.3		2 28.6	4 57.1	7 2.9
QUEBEC	8 19.0	6 14.3	3 7.1	7 16.7	7 16.7	11 26.2	42 17.3
ONTARIO	12 15.2 37.5	26 32.9 41.3	10 12.7 30.3	13 16.5 38.2	12 15.2 32.4	6 7.6 13.6	79 32.5
MANITOBA	6 11.5	17 32.7	6 11.5	5 9.6	9 17.3	9 17.3	52 21.4
ALBERTA	4 12.9	6 19.4	8 25.8	2 6.5	4 12.9	7 22.6	31 12.8
BRITISH COLUMBIA	2 6.3	8 25.0	5 15.6	7 21.9	3 9.4	7 21.9	32 13.2
COLUMN TOTAL	32 13.2	63 25.9	33 13.6	34 14.0	37 15.2	44 18.1	243 100.0

The median response category for each of the provinces did not necessarily reflect accurately the level of disagreement toward this item. For example the majority of counsel in British Columbia (53.1%) disapproved of this provision yet the median response for the sample was 'approve' (2.0). The mean response (3.7), however, suggested that on average, the respondents tended not to approve of this provision. This was also the case in Ontario and Manitoba where counsel most frequently responded in the approve category but the mean responses (3.1 and 3.4 resepectively) suggested that a large proportion of the sample indicated

some degree of disapproval. Upon further analysis the findings indicated that in Ontario (39.2%) and Manitoba (44.2%) of defence counsel disapproved of this provision.

The item concerning the exclusion of members of the public from the proceedings under special circumstances refers to section 30(1)(a) (b) of the Young Offenders Act. According to the conditions stipulated in this section, the judge may exclude persons from the court who are deemed unnecessary to the conduct of the proceedings. This provision may also apply to the disposition stage of the proceedings as well as the review of disposition hearing (Section 39(3) of the Young Offenders Act).

A large majority of the total sample (over 85%) approved of this provision (Table 23). This finding was consistent when the provinces were analyzed individually. The most frequent response for all six sites was either 'strongly approve' or 'approve' with mean responses ranging from 1.7 (Nova Scotia) to 2.2 (Manitoba).

A comparison of the findings for these two questionnaire items suggests that counsel indicated a preference for excluding members of the public from youth court proceedings. The circumstances under which the public may be excluded from the proceedings appear to be based primarily on considerations of the best interests or welfare of the young person(s) involved in the proceedings. This might suggest that, generally, defence counsel prefer youth court proceedings to be closed to members of the public, particularly where the welfare of the young person(s) is perceived to be in jeopardy.

TABLE 23

Exclusion of Public from Proceedings

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	3 42.9	3 42.9	1 14.3				7 2.9
QUEBEC	21 50.0	10 23.8	5 11.9	1 2.4	2 4.8	3 7.1	42 17.3
ONTARIO	26 32.9	40 50.6	6 7.6	2 2.5	2 2.5	3 3.8	79 32.5
MANITOBA	14 26.9	26 50.0	6 11.5	3 5.8	2 3.8	1 1.9	52 21.4
ALBERTA	11 35.5	12 38.7	5 16.1	1 3.2	1 3.2	1 3.2	31 12.8
BRITISH COLUMBIA	10 31.3	19 59.4	2 6.3			1 3.1	32 13.2
COLUMN TOTAL	85 35.0	110 45.3	25 10.3	7 2.9	7 2.9	9 3.7	243 100.0

The summary measure for the subsection concerned with youth court records included questionnaire items that measured attitudes of defence counsel toward the young person having access to records pertaining to youth court proceedings as well as the circumstances under which young persons will be denied access to the records (Appendix C questions 37,38,39). Overall the majority of the total sample (83.7%) approved of these provisions. The median response was 'approve' (2.0) with an overall mean response of 2.6 (Table 21).

Provincially, the summary measures suggested that a degree of disapproval was evident in Alberta and British Columbia where the median response was 'mildly approve' (3.0) with mean responses of 3.0 and 2.7 respectively. Due to the level of disapproval to one or more of the items indicated by the provincial summary measures and the subsequent implications related to the content of these items, they were analyzed separately.

The item that measured attitudes of defence counsel toward young persons 'normally' having access to youth court records was approved of

TABLE 24

Records Available to Youth upon Request

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	2 28.6	3 42.9	1 14.3		1 14.3		7 2.9
QUEBEC	31 73.8	5 11.9	6 14.3				42 17.3
ONTARIO	46 58.2	29 36.7	2 2.5	2 2.5			79 32.5
MANITOBA	19 36.5	28 53.8	3 5.8		1 1.9	1 1.9	52 21.4
ALBERTA	21 67.7	8 25.8	2 6.5				31 12.8
BRITISH COLUMBIA	12 37.5	15 46.9	1 3.1		4 12.5		32 13.2
COLUMN TOTAL	131 53.9	88 36.2	15 6.2	2 .8	6 2.5	1 .4	243 100.0

by a large majority (96.3%) of the total sample (Table 24). Similar results were indicated on a provincial level where, in all jurisdictions, over 85% of counsel approved of this provision. The median response, across jurisdiction was either 'strongly approve' or 'approve' with mean responses ranging from 1.4 (strongly approve) to 2.3 (approve).

There was however evidence of disapproval for the items dealing with the circumstances under which the court could withhold records from the young person. While the majority (60.1%) of the total sample approved of the provision that specified that where information is deemed to be detrimental to the treatment or recovery of the young person that information may be withheld, a significant proportion (39.9%) of the respondents disapproved (Table 25).

Disapproval was particularly evident in Nova Scotia, Manitoba, Alberta and British Columbia where over 40% of defence counsel in these provinces responded in the disapprove categories (4.0 to 6.0). In Alberta this percentage (58.7%) respresented the majority. Counsel most frequently responded in the 'approve' category which did not reflect the degree or strength of the level of disagreement as accurately as the mean responses for these provinces which ranged from 3.2 in Manitoba, 3.3 in British Columbia and Nova Scotia to 3.9 in Alberta.

Similar overall and provincial findings were indicated regarding the withholding of information from the young person where the information may result in injury to a third party. While the majority (64.8%) of the total sample approved of the provision, a significant percentage

TABLE 25

Records Withheld if Detrimental to Youth

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA		2 28.6	2 28.6	2 28.6	1 14.3		7 2.9
QUEBEC	12 28.6	9 21.4	12 28.6	5 11.9	2 4.8	2 4.8	42 17.5
ONTARIO	8 10.3	22 28.2	17 21.8	13 16.7	7 9.0	11 14.1	78 32.5
MANITOBA	3 6.0	18 36.0	9 18.0	11 22.0	4 8.0	5 10.0	50 20.8
ALBERTA	1 3.2	9 29.0	3 9.7	5 16.1	6 19.4	7 22.6	31 12.9
BRITISH COLUMBIA	4 12.5	9 28.1	4 12.5	6 18.8	6 18.8	3 9.4	32 13.3
COLUMN TOTAL	28 11.7	69 28.8	47 19.6	42 17.5	26 10.8	28 11.7	240 100.0

(35.8%) disapproved (Table 26). On a provincial level, the most notable degree of disapproval was indicated in Nova Scotia, Manitoba and Alberta where over 40% of counsel responded in the disapprove categories. In the Alberta sample the majority (54.8%) disagreed with this item. Similarly the median response of 'approve' did not reflect the degree of disapproval as accurately as the mean responses which ranged from 2.9 in Nova Scotia to 3.0 in Manitoba and 3.7 in Alberta.

Disapproval of this provision was also indicated in Quebec and British Columbia where over 30% of the sample responded in the

TABLE 26

Records Withheld if Injurious to Third Party

COUNT / ROW PCT	STRONGLY AGREE 1	AGREE 2	MILDLY AGREE 3	MILDLY DISAGREE 4	DISAGREE 5	STRONGLY DISAGREE 6	ROW TOTAL
NOVA SCOTIA	1 14.3	2 28.6	1 14.3	3 42.9			7 2.9
QUEBEC	10 23.8	8 19.0	8 19.0	11 26.2	3 7.1	2 4.8	42 17.4
ONTARIO	11 14.1	27 34.6	22 28.2	6 7.7	6 7.7	6 7.7	78 32.4
MANITOBA	6 11.8	19 37.3	5 9.8	12 23.5	7 13.7	2 3.9	51 21.2
ALBERTA	3 9.7	6 19.4	5 16.1	5 16.1	6 19.4	6 19.4	31 12.9
BRITISH COLUMBIA	4 12.5	15 46.9	3 9.4	6 18.8	2 6.3	2 6.3	32 13.3
COLUMN TOTAL	35 14.5	77 32.0	44 18.3	43 17.8	24 10.0	18 7.5	241 100.0

disapprove categories. While the median response in the two provinces varied significantly (disapprove in Quebec and approve in B.C.), the mean responses were more comparable (2.9 in Quebec and 2.8 in B.C.) and in the case of British Columbia, more indicative of the strength of the level of disagreement.

Based on the findings it would appear that 'normally' (that is, where the treatment or recovery of the young person is not jeopardized or where there is no perceived threat of injury to a third party) defence counsel generally agreed to enabling the young person, upon request, access to youth court records.

Furthermore, while the majority of the sample agreed to the circumstances under which information contained in the records may be withheld, there was a significant percentage (approximately 35%) of defence counsel who did not agree to these stipulations.

Table 27
Summary Measures of Attitudes Toward the
Substantive and Procedural Measures
of the Young Offenders Act *

Subsection of Questionnaire	(1) Strongly Approve	(2) Approve	(3) Mildly Approve	(4) Mildly Disapprove	(5) Disapprove	(6) Strongly Disapprove	Mean
Alternative Measures	15.5	37.2	35.6	8.8	2.9		2.5
Bail & Detention	18.8	47.1	23.8	9.8	.8		2.3
Notice to Appear	22.1	53.3	20.4	3.3	.8		2.1
Counsel	79.0	19.8	1.2				1.2
Fingerprints/ Photographs	2.1	19.2	34.2	42.8	1.2	.4	3.2
Dispositions	27.5	56.7	13.7	2.1			1.9
Review of Dispositions	6.2	37.3	38.6	16.6	.4	.8	2.7
Appeal	50.6	35.8	10.3	1.6	.4	1.2	1.7
Public Hearings	4.9	30.9	30.5	28.8	3.3	1.6	3.0
Availability of Youth Court Records	9.6	37.5	36.7	15.4	.8		2.6

Note: Respondents were asked to indicate the level of approval/disapproval to the statements outlining measures established in the Young Offenders Act.
* Summary Measures indicate the combined level of approval/disapproval for each item in the specified subsection of the questionnaire. For the individual items refer to Appendix C.

3.4 SUMMARY

Overall, defence counsel indicated a consistently high level of agreement to the Substantive and Procedural Measures provided for by the Young Offenders Act. The summary measures calculated to measure attitudes of defence counsel with respect to topics rather than individual items confirmed that, apart from a few items, the sample generally agreed to the provisions stipulated in the legislation (see Table 21).

Where disapproval or disagreement was evident, it was attributed to those questionnaire items that were initially excluded from the summary measure and were analyzed individually. Similarly items that had, as a result of negative responses, affected the overall or jurisdiction summary measure also contributed to the extent of the disagreement.

Finally where counsel indicated some degree of disapproval the pattern of responses did not constitute total disagreement on a provincial level but proportional combinations of agreement and disagreement. As a result, provinces could not be categorized as either in agreement or disagreement toward a particular provision. Classification according to province became increasingly problematic since defence counsel tended to disapprove of individual items pertaining to specific aspects of Y.O.A. provisions rather than entire questionnaire subsections. Therefore it was not possible to conclude that a particular province either disagreed or agreed to a subsection related to an entire provision or a questionnaire item related to an element of a provision. Unlike the findings of Corrado

et.al.(unpublished), where the 'provincial factor' was evident in the variation of attitudes within the particular key actor groups, these findings do not provide a basis to differentiate attitudes according to province.

As a consequence of the high level of overall agreement to the items in this section of the questionnaire it was not possible to distinguish or to differentiate provinces according to the strength or level of agreement/disagreement. Subsequently an attempt to relate these these findings to a particular structural model of the court also becomes problematic since while the model of the court organization may be identified, the findings pertaining to the questionnaire have not provided a basis upon which the propositions can be thoroughly examined. In other words, due to the inability to distinguish role type combined with the lack of differentiation in the level of agreement/disagreement to the items regarding the legislation, two of the three components of the propositions (role and agreement to the Y.O.A.) cannot be adequately analyzed as originally proposed.

3.5 NATURE OF DELINQUENCY & THE OBJECTIVES OF THE COURT

As discussed in the summary of the findings, the analyses performed on the attitudinal data did not differentiate role as anticipated, according to the predefined typology. As a result it is not possible to discuss the findings of the next sections of the questionnaire with reference to role type. However in order to provide a descriptive overview of the attitudes of defence counsel toward these survey items the findings will be presented focusing on significant variation in

levels of agreement/disagreement or variation in attitude according to province.

The section of the questionnaire on the Nature of Delinquency (Appendix C) measured the perceptions of defence counsel regarding the types of juveniles charged in their community, the problems encountered by juvenile justice personnel in dealing with young people and the factors that contribute to delinquency (Table 28).

Generally the respondents indicated that they perceived delinquency to be more a part of adolescence than a genuine threat to society or a psychological problem. The majority (62.3%) of the total sample indicated that over 50% of the juveniles charged were involved in delinquent acts as a part of adolescence. Further 76.4% of the respondents maintained that less than 20% of juveniles charged constituted a genuine threat to society. (refer to Table 29) In addition, 91.3% of the sample indicated that less than 20% of the juveniles charged required insitutionalization while 37.4% responded that over 50% of juveniles charged benefit from probation.

With respect to the problems encountered by juvenile justice personnel in assisting young people (Table 28), the majority of defence counsel indicated some level of difficulty (2.0) with each of the items except the item which stated that the youth believes that the present juvenile justice system is unfair. However the responses indicated that defence counsel experience greater difficulties with the youth's inability or unwillingness to recognize his/her own problems (36.4% and 35.7% respectively). This finding suggests that a substantial

proportion of the sample posit the difficulties encountered in assisting youth with the personal problems of the individual rather than with those related to the juvenile justice process.

In reference to Table 28, defence counsel attributed delinquency to the lack of parental supervision (mean=1.9), family situation (mean= 2.0), peer pressure (mean=2.0) and poverty (mean=2.1). Approximately 70% of the total sample indicated that these factors contributed to delinquency in either a considerable (2.0) or very great extent (1.0).

The section dealing with the Objectives of the Juvenile Court (Appendix E) required the respondents to consider the importance of the actual and ideal objectives of the court. With the exception of the objective to uphold moral standards of the community, all specified objectives increased in importance between the actual and ideal circumstances (Table 29). The most significant variation between actual and ideal objectives was evident with respect to rehabilitation and deterrence. The mean responses for these two objectives increased in importance from 2.6 and 3.2 as an actual objective to 4.5 and 4.2 as an ideal objective (see Table 29).

Unlike the study of Corrado et.al. (unpublished) that reported discernible differences within key actor groups according to province, the reponses of defence counsel were comparable across jurisdictions.

It is interesting that despite the intent of the Young Offenders Act to shift from a treatment to a justice oriented philosophy, defence counsel perceived the ideal objectives of the juvenile court in terms of rehabilitation, deterrence and developing respect for the law. These

objectives are characteristic of a welfare philosophy (Corrado et.al, unpublished).

Table 28
Attitudes Toward the Nature of Delinquency

Questionnaire Item	Less than 10%	10 to 20%	30 to 50%	Over 50%	Mean
% Threat to Society	36.4	40.0	18.8	4.7	17.2
% Part of Adolescence	1.9	12.3	38.4	62.3	52.9
% Psychological Problem	24.9	45.9	13.9	10.9	21.9
% Need Institutionalization	57.6	33.7	7.3	1.3	10.0
% Benefit from Probation	4.8	16.8	40.8	37.4	47.2

Note: Respondents were required to indicate the percentage of juveniles charged in their community that would be described according to the specified categories.

Table 28
Attitudes Toward the Nature of Delinquency
(continued)

Questionnaire Item	Great (1) Difficulty	Some (2) Difficulty	Little (3) Difficulty	No (4) Difficulty	Mean
Do not Understand Court Procedure	13.8	61.9	20.1	4.2	2.1
Unable to Recognize Problems	36.4	51.5	11.3	.8	1.8
Unwilling to Recognize Problems	35.7	51.3	10.5	2.5	1.8
Unwilling to Accept Help	24.3	52.3	20.9	2.5	2.0
Youth believes system is unfair	12.2	32.8	44.5	10.5	2.5

Note: Respondents were asked to what extent each of the factors created difficulty in their work with young people.

Table 28
Attitudes Toward the Nature of Delinquency
(continued)

Questionnaire Item	Very Great Extent (1)	Considerable Extent (2)	Moderate Extent (3)	Slight Extent(4)	Not at All (5)	Mean
Poverty	29.2	40.4	22.1	7.9	.4	2.1
Peer Pressure	25.0	55.8	15.8	3.3		2.0
Lack of Parental Supervision	29.3	52.7	16.7	1.3		1.9
Family Situation	28.5	49.0	18.0	4.5		2.0
Too Much Free Time	11.7	30.8	36.7	18.8	2.1	2.7
Lack of Respect for Parental Authority	11.7	31.3	38.7	16.7	1.7	2.7
Lack of Interest in Education	7.5	27.9	45.0	17.5	2.1	2.8
Lack of Employment	14.2	41.2	26.2	16.2	2.1	2.5
Stigma from prior contact	2.5	11.7	27.6	43.1	15.1	3.6

Note: Respondents were asked to what extent the specified factors contributed to delinquency.

Table 29
Objectives of the Juvenile Court

Questionnaire Item	(1) No Importance	(2) Little Importance	(3) Moderate Importance	(4) Considerable Importance	(5) Very Great Importance	Mean
Rehabilitation						
Now	1.2	6.6	42.8	34.8	14.3	2.6
Should be	.8	.4	4.1	30.7	63.9	4.5
Respect for the Law						
Now	4.5	25.6	37.6	22.3	9.3	3.1
Should be	.4	2.1	14.5	35.7	47.3	4.3
Quick Processing of Cases						
Now	7.0	23.1	44.2	20.2	5.4	2.9
Should be	5.4	15.7	38.8	21.1	19.0	3.3
Punishment						
Now	3.7	20.7	44.8	25.7	5.0	3.1
Should be	4.2	14.6	37.9	26.7	16.7	3.4
Deterrence						
Now	2.5	19.8	41.3	28.0	10.3	3.2
Should be	1.2	1.7	13.6	41.7	41.7	4.2
Protect Community						
Now	4.1	17.8	38.8	28.5	10.7	3.2
Should be	1.7	2.5	21.9	43.4	30.6	4.0
Uphold Moral Standards of Community						
Now	8.8	21.8	40.2	21.8	7.5	3.0
Should be	9.2	22.2	35.6	21.8	11.3	3.0

Note: Respondents were asked to consider the importance of each objective in the actual functioning of the Juvenile Court and to indicate how important the respondent's thought that the objective 'should be'. The term 'Now' referred to the functioning of the court in 1982.

3.6 HANDLING OF JUVENILE CASES AND DECISION MAKING

In reference to the final proposed research question, suggesting a relationship between perceived role type and its affect on the way in which juvenile matters are handled, the section of the questionnaire on Juvenile Offenders and the Handling of their Cases was analyzed (refer to Table 31).

Disagreement was evident toward items including relaxing the rules of evidence during a transfer hearing (mean=5.0) and defence counsel interfering with the treatment and rehabilitative efforts of the court (mean=5.1) (Table 31). Milder levels of disagreement were notable with respect to the adequacy of the J.D.A. (mean=4.2), the treatment of minority group youths by police (mean=4.2) and the use of secure custody as a means of deterrence (mean=4.1).

Inconsistencies in responses were particularly evident with respect to the level of agreement regarding the adherence to due process (mean= 2.5), disposition based on evidence (mean=2.0) while the respondents also indicated a level of agreement regarding the parens patriae role of the court (mean=3.1). The findings indicate that defence counsel do not perceive strict adherence to due process and to evidence establishing guilt despite the youth's apparent need of assistance as incompatible with or contradictory to the parens patriae or rehabilitative role of the court.

Initially, it was anticipated that perceived role types would be correlated with attitudes toward the handling of juvenile matters. Specifically, lawyers who adhered to an advocate role type might differ

in their attitudes toward the way in which juvenile cases were handled than lawyers that adhered to a guardian role type.

Due to the inability to differentiate role type, the relationship between role type and the handling of juvenile cases cannot be examined as initially proposed. However as part of this analysis an additional factor analysis was performed in order to determine whether attitudes of defence counsel regarding the handling of juvenile cases would divide into two factors that reflected either a 'treatment' or 'justice' orientation.

As shown in Table 30, the results of this analysis indicate similar problems as those associated with previous attempts. Out of eighteen variables, six factors with significant eigenvalues were extracted, explaining only 59.3% of the variance.

Table 30 'Factor Analysis of Attitudes Toward Juvenile Offenders and the Handling of their Cases' Orthogonal Varimax Rotated Factors

Variable	F1	F2	F3	F4	F5	F6	
System operates too slowly	.78	-.01	-.09	-.09	.05	-.07	
Courts Overworked	.76	.14	.02	-.09	.07	-.08	
Need for Plea Negotiation	.56	.03	-.08	.08	-.15	.48	
Warning Despite Prior Record	.14	.83	.03	-.10	-.02	.05	
Interests in Plea-Bargaining	.05	.81	-.03	.03	.14	.15	
Relax Rules of Evidence at Transfer	.21	-.51	-.07	.30	.35	.17	
Disposition based on Evidence	-.07	-.10	.70	.08	-.25	.32	
Parens Patriae Role of Court	.18	.11	-.60	.08	-.08	.12	
Disposition based on Social Factors	.20	.09	.59	-.13	.06	-.11	
Adherence to Due process	.18	.18	.57	.06	.50	.21	
Cooperation between Defence/ P.O./Crown	.26	-.01	-.56	.26	-.12	.03	
Custody as Deterrence	-.01	-.07	-.12	.71	-.03	.07	
Police treatment of Minorities	-.23	-.09	-.16	.69	.02	.10	
Temporary Secure Custody	.10	.23	-.04	.51	.46	-.16	
Defence Interferes with Court	.01	.00	.06	.02	.80	.01	
Adequacy of J.D.A.	-.46	.18	.06	.11	.23	.61	
Use of Custody Disposition Infrequently	.04	.09	-.05	-.58	-.13	.58	
Fairness of Plea-bargaining	-.03	.38	.01	.30	-.26	.42	
Eigenvalues	2.63	2.21	1.96	1.48	1.38	1.02	
Percent of Variance Explained	14.6	12.3	10.9	8.2	7.7	5.7	(59.3%)

Note: Respondents were asked to what extent they agreed/disagreed with the specified statements.

In addition, the variable 'warning despite prior' had significant factor loadings on three different factors (factors 2,4 & 5), indicating problems relating to the complexity of the variables and the subsequent correlation among the variables rather than with the factor (Table 30).

It was interesting that the variables with significant factor loadings for factor 3 seem to reflect what could be described as a 'legalistic' orientation. For example, the variables 'disposition based on evidence' (.70), 'dispositions based on social factors' (.59), and 'adherence to due process' (.57) had significant factor loadings while the variables 'parens patriae role of court' (-.60) and 'cooperation between defence/P.O./Crown' (-.56) loaded negatively on the same factor (Table 30). Conceptually the association of these variables to the same factor appears to describe a 'legalistic' or 'justice' philosophy. However, this factor does not explain a significant proportion of the variance (14.3%) and therefore does not provide a meaningful substantive explanation.

Further, the variables that indicate or characterize a 'treatment' or 'welfare' orientation were not associated with a common factor. Subsequently the factor analysis did not produce the anticipated results. The large number of factors with significant eigenvalues combined with the small percentage of variance explained by the factors complicates rather than simplifies the explanatory value of the analysis and therefore does not provide any conclusive findings.

In addition to the effect of perceived role on the attitudes of defence counsel toward the handling of juvenile cases, it was also

proposed that role would have an effect on attitudes toward the criteria used in deciding on whether to sentence a juvenile to secure custody. The questionnaire section on Decision Making required the respondents to consider the importance of each of the specified factors in deciding whether or not juveniles should be sentenced to a secure juvenile facility (Table 32).

The responses to the majority of the factors were in the moderate (3.0) to great (4.0) importance range (Table 32). Within this range there was a combination of both 'social' or 'extra-legal' factors including the maturity, general behaviour and living conditions of the juvenile as well as 'legal' factors such as the prior record of the juvenile, severity of the offence and the facts of the case.

Variables that were considered to be less important in determining secure custody dispositions included demeanor of the juvenile (mean=2.2), attitude of the community (mean= 2.2) and wishes of the victim (mean=1.9). Further, defence counsel considered the rehabilitation (mean=3.5) and deterrence (mean=3.1) of the offender as more important factors than the punishment of the offender (mean=2.3) in determining a secure custody disposition.

The last items in this section concerned the use of formal sentencing criteria in the juvenile court and the quality of information obtained in police, probation and psychological reports (refer to Table 32).

With reference to the application of formal sentencing criteria in the juvenile court, a slight majority of the total sample (52.6%) agreed with this statement. The mean response (3.5) indicated the almost even

split between the level of agreement and disagreement toward this item (Table 32).

Finally, defence counsel rated the quality of the information obtained from police, probation and psychological reports as adequate. The mean responses ranged from 2.8 to 3.2.

Table 31
Juvenile Offenders and the Handling of Their Cases

Item	(1) Strongly Agree	(2) Agree	(3) Mildly Agree	(4) Mildly Disagree	(5) Disagree	(6) Strongly Disagree	Mean
Police Warning	18.7	48.5	21.2	7.1	4.6		2.8
Warning Despite Prior	13.2	42.4	23.5	10.7	9.9	.4	2.6
Temporary Secure Custody	5.8	12.3	24.7	18.5	23.5	15.2	3.9
Disposition Based on Evidence	44.4	33.3	10.3	7.0	3.7	1.2	2.0
Disposition Based on Social Factors	9.1	19.4	22.7	21.9	19.8	7.0	3.4
Fairness of Plea-Bargaining	16.6	53.9	17.8	5.8	3.7	2.1	2.3
Courts Overworked	15.4	29.0	24.1	15.4	13.7	2.5	2.9
Parens Patriae Role of Court	6.2	26.9	33.9	16.5	12.4	4.1	3.1
Custody as Deterrence	2.9	12.4	20.7	15.8	26.6	19.5	4.1
System Operates Slowly	12.8	27.6	27.2	18.9	10.7	2.9	3.0
Adherence to Due Process	21.9	38.0	20.7	13.6	4.1	1.7	2.5
Relax Rules of Evidence at Transfer	.4	4.5	7.9	12.4	31.4	43.4	5.0
Secure Custody Infrequent	30.2	41.7	14.5	7.9	4.5	1.2	2.2
Adequacy of J.D.A.	1.2	10.0	16.2	23.7	32.9	15.8	4.2
Police Treatment of Minors	.8	11.4	15.7	26.3	26.3	19.5	4.2
Defence Interferes With Court	1.6	2.9	3.7	12.3	39.1	40.3	5.1
Need for Plea Negotiation	10.8	29.5	24.1	14.5	15.8	5.4	3.1
Cooperation Between Defence/ P.O./Crown	10.5	26.9	27.7	13.0	14.7	7.1	3.2

Note: Respondents were asked to what extent they agreed with the statements about juvenile offenders and the handling of their cases. For the complete statement associated with each varible label refer to Appendix F.

Table 32
Decision Making

Questionnaire Item	(1) No Importance	(2) Little Importance	(3) Moderate Importance	(4) Great Importance	Mean
Importance of Age	.4	5.4	31.4	62.4	3.6
Importance of Maturity	.8	2.9	29.7	66.5	3.6
Importance of Living Conditions	2.5	10.5	37.1	49.8	3.3
Importance of Behaviour Pattern	.4	3.8	35.7	60.1	3.6
Importance of Demeanor	16.4	49.6	29.4	4.6	2.2
Severity of Offence		6.3	43.1	50.6	3.4
Facts of the Case		2.9	36.5	58.6	3.6
Attitude of the Community	20.1	45.2	28.5	6.3	2.2
Willing to Make Restitution	.4	9.6	46.4	43.5	3.3
Prior Record		10.0	53.6	36.4	3.3
Prior Use of Community Corrections	1.7	13.4	52.1	32.8	3.2
Importance of Predisposition Report		11.5	66.9	21.3	3.1
Importance of Crown's Recommendations	5.0	30.5	55.2	9.2	2.7
Importance of Defence Submissions		10.9	65.3	23.8	3.1
Importance of Psychological Reports	.4	8.4	65.7	25.5	3.2
Requests of Parents	4.2	32.2	53.6	10.0	2.7
Statement of Juvenile	3.8	36.2	48.7	9.2	2.6
Wishes of Victim	36.4	39.7	21.3	2.5	1.9

Table 32
Decision Making
(continued)

Questionnaire Item	No Importance	Little Importance	Moderate Importance	Great Importance	Mean
Protect Society Through Custody	7.5	22.6	48.1	21.8	2.8
Rehabilitation Through Treatment	1.3	5.4	34.7	58.6	3.5
Deter Specific Offenders	2.5	14.5	51.0	31.8	3.1
Deter Potential Offenders	18.0	40.6	33.9	7.5	2.3
Importance of Punishment	22.2	36.8	34.3	6.7	2.3

Note: Respondents were asked what weight or importance the specified factors had in deciding whether or not a juvenile should be sentenced to a secure juvenile facility.

Table 32
Decision Making
(continued)

Questionnaire Item	(1) Strongly Agree	(2) Agree	(3) Mildly Agree	(4) Mildly Disagree	(5) Disagree	(6) Strongly Disagree	Mean
Formal Sentencing Criteria	5.5	22.7	24.4	21.0	18.5	8.0	3.5

Note: Respondents were asked to what extent they agreed with the statement that the juvenile court should be guided by formal sentencing criteria.

Questionnaire Item	(1) Very Good	(2) Good	(3) Adequate	(4) Poor	(5) Very Poor	Mean
Quality of Police Reports	1.3	16.3	44.4	34.3	3.8	3.2
Quality of Probation Reports	1.3	31.4	53.1	13.4	.8	2.8
Quality of Psychological Reports	4.2	40.7	42.4	9.3	3.4	3.2

Note: Respondents were asked to rate the quality of the information obtained from each of the specified reports.

3.7 SUMMARY

The descriptive analysis of the attitudes of defence counsel with respect to the section of the questionnaire dealing with the Nature of Delinquency, Objectives of the Juvenile Court, Juvenile Offenders and the Handling of their Cases as well as Decision Making indicated essentially no differentiation in the types of responses according to province or jurisdiction. The respondents reflected similar attitudes, in terms of mean response, to all items in these sections. Where some discernible differences in attitude were exhibited, it was reflected in the variation of the proportion of the level of agreement/disagreement toward a specific item and in most cases did not constitute a significant variation.

Despite the inability to differentiate attitudes of defence counsel according to province, some general observations regarding the entire sample can be made. The majority of the respondents indicated that they perceived the occurrence of delinquency to be more a part of adolescence attributed to social conditions including poverty, peer pressure and lack of parental authority which required less severe judicial sanctions such as probation rather than custodial dispositions.

In relation to these types of attitudes, the sample generally perceived the rehabilitative or 'treatment' ideal objectives of the court to be more important than the 'justice' objectives. This is consistent with the Corrado et.al.(unpublished) study which reported defence counsel as having the most negative views toward the ideal justice model objectives.

In light of the responses to previous sections of the questionnaire indicating a tendency toward a 'treatment' rather than a 'justice' orientation, one might expect that this tendency would also be reflected in the attitudes regarding Juvenile Offenders and the Handling of their Cases (Table 31). However several inconsistencies or apparent contradictions were evident in the responses of defence counsel regarding this section of the questionnaire. For example, as measured by mean responses of the sample, defence counsel generally agreed with the statements that dispositions should be based on the evidence not on the apparent need of assistance by the juvenile (Appendix F, question #4) and that the juvenile's interests are best served when due process of law is strictly adhered to in the court (Appendix F, question #11).

The level of agreement toward these items indicate a legalistic orientation with respect to the handling of juvenile matters. The findings are further complicated by the responses pertaining to the parens patriae role of the court (Appendix F, question #8). The respondents indicated, in terms of mean response, mild agreement toward this item (Table 31). In fact, 67% of the total sample were in agreement (responded in the strongly to mildly agree category) with the statement that the juvenile court should assume the role of parent (parens patriae) emphasizing the needs of the juvenile. In relation to this item, the majority of defence counsel disagreed with the item that the J.D.A. was adequate for dealing with juvenile offenders (Table 31).

While the respondents may have been referring to aspects other than the philosophy of the J.D.A., it is interesting that defence counsel maintained a preference for the rehabilitative orientation regarding the

objectives and function of the court, yet criticized the legislation in which this philosophical perspective was initiated.

Moreover, it would appear that, despite the 'treatment' or 'welfare' orientation indicated by the respondents regarding the court and the handling of juveniles, defence counsel adhered to a more 'legalistic' orientation regarding items which referred to their individual role or function as an actor in the system.

The prevalence of the legalistic orientation in attitude is less evident in reference to the questionnaire section on Decision Making (Table 32). As previously discussed, defence counsel indicated similar levels of importance for both the extra-legal and legal factors that contribute to deciding on secure custody dispositions (Table 32). It could be argued that the qualifier regarding a 'secure juvenile facility' might have had an effect on the way in which counsel respondend to the items. However the effect would more likely have ellicited responses indicative of a legalistic orientation rather that a combination of legalistic and welfare orientations. In other words, one might have predicted that under circumstances where secure custody was a possible disposition, defence counsel might have exhibited a tendency to consider the 'legal' factors as more important than the 'extra-legal' factors.

This explanation is somewhat complicated by the fact that this reasoning or logic would probably be applicable in the context of criminal court. However, within the context of juvenile court the distinction between justice and treatment philosphies becomes obscured.

What is considered punishment according to criminal law becomes a type of rehabilitation in juvenile justice.

3.8 DISCUSSION

The intent or purpose of analyzing the attitudinal data was to formulate a typology that would explain the perceptions of defence counsel toward their role by examining the patterns of responses to items relating to the functioning of juvenile court. It was anticipated that the responses would vary in a way that would differentiate role perceptions into two types (advocate/guardian). Once identified, it was proposed that 'role-types' could correlated with additional role-related issues that would provide a broader examination and discussion of the subject area.

However, the results of the two sections of the questionnaire used to operationalize the variable 'role' (Principles of the Y.O.A. and Legal Representation in the Juvenile Court) were inconsistent (that is, there was no discernible pattern to the responses) to the extent that the type of role perceived by the sample was not reflected in their responses and could not be indentified as anticipated. Subsequently the variable 'role' could not be separated into two distinct types.

Specifically, there was general agreement with most of the principles of the Y.O.A. by the majority of the total sample. On a provincial level, there was significant levels of disapproval to some principles (e.g. special guarantees) that were unexpected and disagreement with principles that contradicted the apparent intent of the Declaration of

Principles section (e.g. the right to least interference). In this case, the levels of disagreement followed an unexpected pattern, being higher in provinces that were traditionally legalistic in philosophy than those that adhered to a more welfare, treatment philosophy.

Subsequently, the overall level of agreement was contradicted ,in some instances, by significant levels of disagreement according to jurisdiction. Since it has been argued in the literature that the intent of the principles is to implement a legalistic orientation toward juvenile justice, interpreting these findings becomes problematic in that disagreement toward key principles in this section poses contradictions, or at least inconsistencies, regarding the philosophy of the Act.

The results of the section Legal Representation in Juvenile Court contributed to the inconsistency of the findings regarding the first section. Specifically the items concerning the appropriate conduct of private/legal aid lawyers are inconsistent with the findings concerning the interests of plea-bargaining. That is, lawyers agree that juveniles should be represented as if they were adults but that the long term interests rather than the short term satisfaction of the client should take priority in plea-bargaining. This constitutes a contradiction in the legal assumptions applied in defining role types.

Finally, there were no significant correlations among the variables. This was verified by the factor analysis, based on the correlation matrix, which was unsuccessful (in two attempts) to derive factors in order to explain role types.

The implications of the findings from this part of the analysis are significant in that the accuracy and adequacy of the traditional definitions of defence counsel role types that have been delineated by law and established by both the sociological and legal literature are seriously questioned. The contradictions that were evident in the responses to the items regarding the Philosophy of the Young Offenders Act and particularly to those concerning Legal Representation in Juvenile Court, clearly pose critical questions as to the appropriateness of continuing to apply these ideal types in attempts to describe and to explain the complexities that may be inherent in the lawyer-client relationship when the client is a young person.[22]

In addition the findings question whether defence counsel either perceive of or in practice adhere to a consistent role that can be identified as a specific type. In other words, it is plausible that lawyers vary their role on a case to case basis. Under these circumstances, their role may be determined by both legal and extra-legal factors relating to the facts of the case, the lawyer's impression of the client as well as his/her individual philosophical predispositions regarding juvenile justice.

This implication is substantiated by the empirical evidence from the attitudinal data. The extent of the inconsistency in the response patterns across jurisdictions supports the conclusion that the respondents did not perceive of their role in either the advocate or guardian role types as anticipated.

---

[22] A young person is defined in the Young Offenders Act, R.S.C.,1984,Section 2(1) as a person who is twelve years of age or over and under eighteen years of age.

The level of inconsistency observed in this analysis is comparable to that reported by Moyer and Carrington (1985) who analyzed the opinions toward aspects of the legislation by key actor group and jurisdiction. In addition several correlates of opinions including background data and other attitudes to juvenile justice that were identified by the survey instrument were examined. Finally, 'within-legislation correlates'[23] were considered in an attempt to examine correlations in attitude toward the legislation.

On the basis of their analysis, Moyer and Carrington (1985) found very, " ... few correlates of either statistical or substantive significance ..." and they were subsequently unable to, " ... arrive at general interpretations of opinions on the Y.O.A. in terms of background characteristics of the respondents or their attitudes toward other features of the juvenile justice system" (Moyer and Carrington, 1985:7,117).

The second research question referred to the variation of role according to jurisdiction. Several inter-related propositions were formulated to examine the relationship between model, role and attitudes toward the Y.O.A. Since role types were not determined, there remained the possibility that the relationship between the model (structural organization) of the court and attitudes toward the Act could be examined as proposed.

---

[23] Moyer and Carrington used this term in reference to, "... how responses to each topic relate to responses regarding other aspects of the legislation" (Moyer and Carrington, 1985:7).

The section of the questionnaire (Substantive and Procedural Measures under the Y.O.A.) used to operationalize defence counsel's attitudes toward the Act did not yield results that enabled differentiation of attitudes according to jurisdiction. Generally, there was a consistently high level of agreement regarding the stipulations of the Act. As a result, relating attitudes toward the legislation with a specific provincial model becomes problematic.

The lack of jurisdictional variation in attitude was supported by the findings in the Moyer and Carrington (1985) report. They attributed variation among the key actor groups to role and position in the system and to a lesser extent, jurisdiction- specific concerns. However this variation was evident on a limited number of issues and therefore precluded any substantive generalizations according to province (Moyer and Carrington, 1985: 110,119-120).

The inability to differentiate and explain the variable 'role' (that is, perceptions of defence counsel toward their role) by the predicted role-types, created problems in terms of testing the propositions constructed in order to examine the relationship between the 'model' of the court, the 'role' of defence counsel and their 'attitudes toward the Young Offenders Act'. Specifically, while the identification of the structural model of the youth courts in each province is possible, according to the method proposed, it becomes redundent in that the remaining elements of the propositions, as indicated in the findings, cannot be tested as initially anticipated.

For example, the first set of propositions suggested that in a jurisdiction where a 'welfare' structural model of court organization was in operation, defence counsel will perceive their appropriate role as that of guardian and will subsequently be less likely to agree with the provisions of the Young Offenders Act (proposition 1 a-b). In order to test this proposition as proposed, the questionnaire sections used to operationalize the variable 'role' would have had to support the advocate/guardian typology so that the guardian role-type would have been confirmed by the data. Secondly, the section of the questionnaire which operationalized the third element of the proposition, attitudes toward the Young Offenders Act, would have to had indicated varying levels of agreement according to jurisdiction in correlation with role-type. Finally, these two variables would have had to correlate with the particular structural model of the court described by the observational data.

As previously discussed, the analysis of the attitudinal data did not substantiate the predicted relationship among the variables as constructed in the propositions. The data did not enable the differentiation of role types and there was no significant variation in attitudes, according to province, toward the Y.O.A. Subsequently the relationship between role, model of the court and attitudes toward the legislation could not be analyzed as proposed.

The inability to differentiate role-types also created problems regarding the direction of the analysis for the remaining research questions. Initially, these questions were constructed with reference to 'role' in an attempt to correlate a specific role-type with

particular attitudinal responses in order to further examine the conclusions of Moyer and Carrington (1985) and Corrado, et.al. (unpublished) that the role or position of the particular key actor had a discernible affect on attitudes toward the legislation. As a result of the findings, however, no reference to role-types could be made and subsequently a descriptive analysis of the data was conducted rather than examining the correlations between role and attitudes toward other aspects of the legislation.

The analysis of the sections of the questionnaire dealing with the Nature of Delinquency, Objectives of the Juvenile Court, Juvenile Offenders and the Handling of their Cases as well as Decision Making indicated essentially no differentation in the types of responses according to province or jurisdiction. The respondents reflected similar attitudes, in terms of mean response, to all of the items in these sections. Despite the inability to differentiate attitudes of defence counsel according to province some general observations were summarized for the entire sample.

The majority of the respondents indicated that they perceived that the occurrence of delinquency was more a part of adolescence resulting from social conditions including poverty, peer pressure and lack of parental supervision that required less severe judicial sanctions such as probation rather than custodial dispositions.

The sample indicated more 'treatment' oriented attitudes regarding the ideal objectives of the court. This tendency in the responses, however, was not consistent regarding attitudes concerning Juvenile

Offenders and the Handling of their Cases. Contradictions in responses were evident with respect to dispositions based on evidence regardless of apparent need and the adherence to due process and the role of the court. Lawyers perceived the handling of juvenile matters in legalistic terms particularly in reference to their individual function in the court. However, they maintained more treatment oriented attitudes regarding the court's role or function.

The inconsistencies in the attitudes of the respondents becomes particularly evident in the section on Decision Making. Both the legal and extra-legal factors were rated with similar importance when deciding secure custody dispositions. It would appear that lawyers do not perceive that the legalistic orientation toward their own role is not incompatible with the rehabilitative role that is perceived to be the function of the court.

Further descriptive analysis of the results revealed additional inconsistencies in attitude relating to other aspects of the survey. As a result of the findings of this analysis, the purpose, emphasis and structure of the interviews with defence counsel were adjusted to address the inconsistencies in attitude relating to role perception, the philosophy of the Y.O.A. and the function of of the court. The interview was used as a means to attempt to resolve the apparent contradictions between role-specific and court functions, as well as how lawyers reconcile the philosophical and practical inconsistencies reflected in the attitudinal responses.

Chapter IV

PRESENTATION AND DISCUSSION OF THE INTERVIEW FINDINGS

The majority of the fifteen lawyers interviewed had practised primarily criminal law in adult and youth court. Several lawyers had limited experience in civil, family and immigration law while only one of the lawyers practised corporate law. Their years of experience ranged from ten months to fifteen years with an average of approximately 6.5 years.

The percentage of their caseload that was comprised of juvenile matters ranged from 5% for some members of the private bar to 98% for legal aid lawyers. An average of one-third (33.7%) of their caseload was made up of juvenile matters. This figure is biased by the unusually high percentage of juvenile cases handled by legal aid lawyers. When these are excluded, the average percentage of juvenile matters is lowered to 22.5%.

Apart from a few lawyers who mentioned that they had appeared as duty counsel while their were articling, only lawyers practising with legal aid services currently represent youths in the capacity of duty counsel. The majority of the members of the private bar are retained by youths through legal aid certificate. Only two lawyers stated that they were privately retained as counsel on a substantial basis.

The first subject area addressed in the interviews concerned the perceptions of lawyers regarding their role in juvenile justice and role-related issues (Appendix H question #6). The advocate-guardian typology that was developed to analyze the attitudinal data was also applied to the interview data in order to categorize responses regarding role perceptions. However it became evident, early in the interview process, that distinguishing the role of counsel on this basis was problematic.

Analyzing how the lawyers explained their perceptions toward their role by their initial responses or comments and whether they made explicit reference to either role type allowed for general but crude role distinctions. Out of the fifteen lawyers, eight described their role as that of an advocate, one lawyer maintained a guardian or social worker type of role while six lawyers described their role in terms of a combination of the advocate and guardian role types.

These are, however superficial distinctions. The explanations regarding role perceptions were extremely diverse and, with few exceptions, varied according to each individual. Therefore rather than describing the role of counsel by categorizing responses according to a limited typology, a more accurate explanation that reflects the diversity and complexity of the problem may be to conceptualize the notion of role on a continuum or scale. On either ends of the continuum are the strict advocates and guardians. In between these opposites are the majority of lawyers whose role or approach may vary slightly depending on both the legal and extra-legal circumstances of each case.

In order to facilitate the presentation and analysis of the interview findings, a modified typology was developed which enabled the categorization and identification of responses while also reflecting the diversity with which lawyers perceived their role. This provided a basis for comparing responses according to a typology similar to the one initially proposed. Although the role distinctions developed in the modified typology represent some improvement over the original advocate/guardian role types, they should not be interpreted as consistent distinct types. The interview results suggested that the ability of defence lawyers to adopt or adhere to a consistent role type was compromised by several interpersonal and organizational constraints.

The purpose of labelling the perceptions of role according to the revised typology was to retain a method of identification and analysis similar to those established in previous research and to that initially proposed. However, due to the considerable degree of variation in the responses, these are, at best, arbitrary distinctions and should not be interpreted as a consistent method of identifying role perceptions. On the basis of the revised typology, four lawyers were identified as strict advocates, four lawyers adopted a 'moderate' advocate position, six lawyers combined, in varying degrees, the advocate and guardian roles and one lawyer adhered to a guardian role type.

Lawyers who adhered to a strict advocate role when acting as defence counsel in youth court characteristically made reference to the legalistic criteria or principles that formulated the guidelines for their position. In describing their role these lawyers typically referred to ensuring the fairness and impartiality of the proceedings as

well as the protection of their clients rights through the adherence to the rules of evidence and procedure, securing an acquittal or unconditional discharge or if their client was convicted that it was beyond reasonable doubt and at the sentencing stage, to secure a disposition that causes the least restrictive interference with their clients liberty. In other words, the primary focus of their role was to address the legal interests of their client.

There were several types of responses that were indicative or reflected the tendency toward the advocate role type. In reference to the nature and purpose of this role, the following two excerpts from the interviews clearly typified the attitude of the strict advocate. One lawyer concluded that:

> My main concern is not the treatment. If I can get this kid acquitted on a technicality, even if he needs the treatment, forget about that. I mean its the win. You want to get this kid off or you want the most lenient sentence.

Another lawyer stated:

> I'm not trying to be cynical. I see the role as a positive one, being a lawyer for kids because they have rights too. They have the right to beat charges.

Of the fifteen lawyer interviewed, perhaps four could be classified within the strict advocate role type.

There were several lawyers who although perceived themselves as advocates, but who varied slightly from the strict advocates regarding the nature of their role. While the role of the strict advocate was determined by legal principles, lawyers who adhered to a 'moderate' advocate role commented that their attitude was affected by factors including the age and maturity of the offender and whether the client was a first or repeat offender.

These lawyers admitted that they tended to be less adversarial with younger first-time offenders than with older clients who had been extensively involved with the system. This position was justified in that the offence committed by the younger client was perceived as 'acting out' behaviour attributed to social and family problems as opposed to the older client who was perceived to have made a conscious decision to adopt a criminal lifestyle.

Generally, these lawyers were more paternalistic than the strict advocate when dealing on a personal level with their younger clients and admitted that they had the tendency to lecture them. The strict advocates also admitted that they played a more educative role when their clients were young offenders, however they still conceptualized and handled their criminal and youth court cases in a similar manner. In fact one lawyer commented that regardless of whether the client is an adult or juvenile, it is counsel's responsibility to educate the client and in that sense adult and juvenile clients are the same.

It was interesting that, regardless of how they perceived their role, lawyers related similiar explanations in justifying the the treatment of young clients. For example, some lawyers who were identified as expressing an advocate orientation justified the least restrictive principle because delinquency was perceived as a part of adolescence and therefore did not require severe sanctions. Others maintained that their clients were in fact 'streetwise' criminals and should subsequently be treated in the same manner as adults where the goal is to secure the most lenient sentence. Conversely, lawyers who expressed a social welfare approach also justified this position in that due to the lack of

maturity, delinquent acts were perceived as spontaneous, acting-out behaviour and should therefore be treated in a less adversarial manner than a deliberate criminal offence.

Lawyers who perceived themselves as advocates generally acknowledged that the disposition process was 'tempered' or influenced by extra-legal considerations. A characteristic that distinguished the 'strict' from the 'moderate' advocate role type, however, was the attitude toward the nature and purpose of the sentencing process and the function of counsel at the sentencing stage. The lawyers who perceived their role as that of the strict advocate did not differentiate between the trial and disposition stages in terms of their role or their purpose. Both stages were considered to be part of the adversarial process where their function was to act in the best legal interests of their client by securing an unconditional discharge or, in the case of conviction, obtaining the least restrictive disposition. In this sense these lawyers perceived their role to be the same regardless of whether they were representing an adult or a youth.

The strict advocates attributed the introduction of child welfare interests to the input of probation services and the youth court judges. They did not feel that it was part of their function to decide on the relevance of the child welfare concerns to the case. Furthermore, these concerns did not influence the way in which the case was to be represented. As one lawyer stated:

> I make decisions with my client in mind and the general state of the law rather than my personal feelings. There are judges to make decisions as to what will and won't happen as well as other professionals with skills that I don't have whose input the court will consider.

As noted earlier, the lawyers who adhered to what has been labelled as a 'moderate' advocate approach, differed in their attitude toward adult and youth clients as well as among the younger and older juvenile clients. The paternalistic attitude with which these lawyers treated their young first offenders was also reflected in their attitude toward their role at the sentencing stage. They felt a degree of responsibility to decide on the importance or relevance of the child welfare concerns which affected the representation of the case. For example, some lawyers mentioned that in circumstances where the recommended disposition was not the least restrictive given the facts of the case, but provided some form of treatment that they might advise their client to accept the disposition. They admitted that they have 'persuaded' their client into accepting a more restrictive disposition especially in cases where the offenders were very young. However, this type of compromise would only be considered in cases where the difference, in terms of severity, between the recommended disposition and the least restrictive disposition was minimal. As one lawyer explained:

> You don't sell out your client just because you're social work oriented. Generally you try to get the most lenient sentence while taking child welfare concerns into account. But if custody was needed, I might not fight as hard against it in the strict adversarial sense.

Furthermore, whereas lawyers who adopted a child welfare orientation asserted that this decision constituted a legitimate aspect of their role, the moderate advocate expressed a reluctance to suggest that this behaviour was entirely appropriate. One lawyer, "hated to admit" to persuading a client into a potentially more restrictive disposition and

continued to comment that the "role shouldn't be that of a parent" but added, "I just can't help it with some of these kids." Another lawyer explained that:

> In a lot of cases you compromise. You relax the adversarial role when the predisposition report indicates a bad home environment. You try and reach a disposition that you can live with. For example, instead of a fine, which is appropriate, you accept probation which may be better, in terms of child welfare interests, than a fine. So unfortunately I would tend to lean that way.

With reference to securing the most lenient disposition another lawyer concluded that:

> The most lenient disposition is not always the best. In some cases, the kid needs something, sometimes supervised probation.

The attitude that child welfare concerns intruded on rather than formulated an integral part of the role, is the general characteristic that roughly distinguished the advocate role types from what has been referred to as the social welfare orientation or the guardian role type. Lawyers who were oriented toward this end of the continuum perceived that because of the nature of their clientele and the youth justice system, addressing child welfare concerns formulated a legitimate aspect of their role.

Unlike the advocate role types, lawyers who adhere to either the guardian or a combination of the advocate/guardian role types expressed difficulty separating their personal values and opinions regarding the best interests in terms of the welfare of their client from their legal interests. Moreover, for the lawyers who had developed a child welfare approach in dealing with clients, the separation of the legal and moral interests was not perceived as a valid approach to representing youths.

While a few lawyers conceded that their approach may not be consistent with that delineated by the legislation, they maintained that one set of interests should not be ignored for the sake of the other.

Similar to the 'moderate' advocate, but to a greater extent, these lawyers indicated that their attitudes toward the causes of delinquency affected their role. For these lawyers, delinquency was more directly attributed to a deprived social and family background that contributed to the cirumstances which resulted in the youth committing an offence. Their attitude toward delinquency combined with the notion of reduced responsibility, produced a different perception regarding their role. One lawyer remarked:

> Kids get in trouble because of problems with cultural and family background and you can't ignore that aspect of the problem in the court process.

Another lawyer noted that:

> When you're dealing with a thirteen year old, first offender charged with Break and Enter, I'm not saying that the court is blind to that- but they will deal with it strictly adversarially and I think that maybe we should be looking behind the act of the child and looking at what's going on elsewhere.

The lawyers who adopted a social welfare orientation differed significantly from those with an advocate approach in their perceptions to the objectives of the sentencing process. While the 'moderate' advocates acknowledged that child welfare considerations influenced the sentencing process, the social welfare role type placed less emphasis on securing the least restrictive disposition in attempts to reconcile the welfare and legal interests.

According to these lawyers, the ideal disposition satisfied both sets of interests. Further, based on their experience, they maintained that in the majority of cases, the court was able to address the issue of treatment and rehabilitation without exceeding what, in their opinion, constituted a reasonable disposition according to the state of the law. One lawyer suggested that working with juveniles allowed for a more 'imaginative' response to the development of their role. Subsequently the ability to address the legal and moral interests was attributed to the flexibility of both the role of counsel and the youth court. This lawyer continued by commenting that:

> In some cases, a severe intervention with the client's liberty may be consistent with the client's best interests. Whereas in criminal court, there are hardly ever cases where a long period of secure custody is going to benefit an adult.

Conversely, lawyers who adhered to an advocate approach adamently opposed the incorporation of the moral or child welfare interests as part of the role as counsel. In reference to the function of an advocate, one lawyer commented that:

> I'm a 100% advocate. I'm not an expert in anything other than the law. That's my job. They have other people with other training to look after the social welfare interests.

Another lawyer stated that:

> I don't want to play a social worker role. That's not my function. There are probation officers and social workers out there. I don't want them to play lawyer and I don't want to play their role.

Of the lawyers interviewed, only one expressed an orientation that could be placed on the extreme child welfare end of the continuum. In her philosophy and practice, this lawyer had developed an entirely different and unique opinion regarding the nature and objectives of

juvenile justice. Opposed to the intended change toward a criminal justice model and philosophy underlying the Young Offenders Act, the respondent has maintained an orientation toward the role of counsel similar to that which was prevelant under the previous legislation.

Characteristic of what has been defined as the guardian role this lawyer preferred to practice in conjunction with the child's parents and appreciated the ongoing exchange with probation services. This attitude was directly related to the respondent's opinion regarding the occurrence of delinquency. Similar to the explanation related by other lawyers, the interviewee stated that delinquent acts were spontaneous occurrences frequently committed by irresponsible children who were not 'streetwise' criminals. Similar to the advocates, this lawyer adhered to the least restrictive disposition principle because more severe sanctions were not justified. In describing this approach this lawyer commented that:

> My attitude to the practice of law is not adversarial. I am aware of the legal issues and the fact that I am a lawyer but I am concerned with rehabilitation. I do take the role of the stern parent.

In the majority of the interviews, the interview probe concerning the least possible interference in reference to the sentencing of young offenders was the subject area that precipitated the broader discussion regarding the issue of role conflict (refer to Appendix H, question #6). In fact, it became evident over the course of the interviews, that the conflict of legal versus moral interests associated with the notion of least interference, in part, formed the basis of the controversy regarding the role of counsel.

As noted earlier, the provision related to the right to the least possible interference[24] signified a departure from the parens patriae philosophy characteristic of the former legislation (Bala & Lilles, 1982). In addition, by explicitly placing an increased emphasis on protecting the interests of society in conjunction with the interests of the young person and their families, the intent of the provision is to initiate a shift toward a legalistic philosophy.

Subsequently it was anticipated that attitudes toward this provision would vary according to the tendency of lawyers to adhere to a particular orientation. However the lawyers interviewed, regardless of role perception and description, stated that in the majority of cases, they supported the right to least interference. Moreover, as indicated by the attitude toward the nature of their clientele and the rationale related to sentencing, lawyers who were identified as expressing attitudes on either end of the advocate/guardian continuum supported this provision for completely opposite reasons.

In addition, there were lawyers who stated that under specific circumstances they would consider a more restrictive disposition. This result was not, as anticipated, particular to the lawyers who expressed a child welfare orientation but was also mentioned by those who have been described as moderate advocates. For example, in the case of a transfer hearing some lawyers were of the opinion that although their client may receive a less restrictive sentence from a criminal court than from a youth court they would advise them against the transfer. These lawyers explained that in the best legal and welfare interests of

[24] Young Offenders Act, Section 3(1)(f).,R.S.C.,1984.

the client, it would be better to remain in youth court. In terms of the legal interests, a successful transfer would result in the client accumulating a criminal record. Further, any length of sentence served in an adult facility was not considered in the best interests of the client's welfare. One lawyer, who questioned the legitimacy of always seeking the most lenient disposition, stated that:

> The quality of the facility in terms of what's available for potential treatment and what the client is doing in that time should be considered along with the length or quantity of time.

Other lawyers, typically those who were classified as strict advocates, maintained that in the case of a transfer where there was a good possibility of the client receiving a more lenient sentence, they would accept the transfer and secure the sentence that least interferes with their client's liberty.

For some lawyers the entire issue concerning the conflict of interests between the child welfare and criminal justice philosophies, created a considerable degree of confusion regarding their role. Three of the lawyers explicitly stated a sense of confusion about their role in defending young offenders. Typically these lawyers were less experienced or had developed a combination of advocate/guardian role types with a tendency toward a child welfare approach. In attempting to address these concerns one lawyer mentioned that:

> The confusion arises from the need of the young offenders and perhaps the need of counsel to take a more human role. You need to get involved in a personal way with the clients so that you don't feel like a machine, giving advice, taking instructions and firing it back to the court.

Another lawyer explained that:

> There is a conflict. I am torn sometimes but most time I think the adversarial role and the philosophy of the Act is probably the right one.

A third lawyer commented:

> I have doubts about what I should be doing. Doubts about knowing, in reality, what I'm doing is not really what is in the best interests of my client.

Conversely, lawyers who had perceived themselves as strict advocates did not express any sense of personal confusion regarding their role. Characteristically, they maintained a more traditional lawyer-client relationship as well as a definite separation between the legal and child welfare interests. As one lawyer stated:

> I know what's right and wrong, legally, maybe not for the kid's welfare, but that's not my function. I'm not here to rehabilitate you, I'm here to get you off. I don't suffer from moral dilemmas. I know what I'm suppose to do and I do it.

Another lawyer commenting on the representation of young offenders concluded that:

> I think that the whole area presents far too much of a problem, far too many conflicts for lawyers. The best way to resolve those conflicts is to treat the process as being adversarial, the trial process as the trial process, the sentencing process as the sentencing process, both of which are adversarial, the trial more so. In sentencing you try to get the best result for the client bearing in mind the overall reasonableness of what you're doing and your ability to persuade the judge. I try to be objective. It is necessary to set your personal values aside and to perform your function as a courtroom lawyer, not someone who is harassed by their personal emotions or feelings so that it interferes with your role.

Typically, this type of response was expressed by senior lawyers with more experience in both criminal and youth court. It was not surprising therefore that they attributed the confusion expressed by some lawyers to their lack of experience. When asked if they thought there was a

possibility of a maturation process among lawyers (refer to Appendix H, question #8) that may have an affect on the attitude toward their role they agreed that with experience, younger lawyers who have developed a welfare orientation would likely 'drift toward a legalistic approach'.

When this question was posed to the less experienced lawyers or lawyers who differed, in approach, from the advocates, the responses varied considerably. Some lawyers agreed that it was possible that their attitude would change over time. One lawyer admitted that there had been a change in attitude but did not consider it to be a positive one. The lawyer remarked that:

> I was probably more of a caring type when I first started practising law. As a senior lawyer, I would probably not do as good of a job for a client as I would have two years out of law school when I really cared and knew them.

Other lawyers mentioned that while experience had an effect on role perception, other factors including their personality type and the size of their practice also affected the approach to their role. One lawyer explained that a larger practice necessitated a shift toward a more adversarial orientation. This lawyer added:

> Unfortunately, I don't have too much time for the more human aspects of law.

In addition, two lawyers attributed their perception toward their role to the type of articling experience they had received as junior lawyers and not to maturation of the profession. As one lawyer explained:

> I had this attitude toward my role from the start of my career. I articled with a senior criminal lawyer who taught me that this is the way you do it, everything is cut and dry.

At this point in the discussion, most of the lawyers tended to defend their position or attitude regarding their role. Some of those who adhered to a strict advocate role type were very critical of lawyers who mixed the function of defence lawyer with that of a social worker. For example, one lawyer stated that:

> Young lawyers that don't fight as hard as they should because they're concerned with the long term benefits are making a mistake. You can't be a lawyer and a social worker, you can't mix the two.

With reference to the welfare orientation, another lawyer commented:

> If you want him (the client) to confess, take him to a priest. I'm not a priest. I think that's improper for a lawyer to do, that's not a lawyers' function at all.

Another lawyer concluded that in the attempt to address both sets of interests you start to make decisions about your clients and cases and what should be happening which makes practising criminal law very difficult.

In defence of their position, a few welfare oriented lawyers criticized the advocate approach as being totally impersonal and reflecting more of an interest in the business aspect of their practice in that it costs too much in time and money to develop a welfare approach. In addition, the strict advocate attitude was considered by some to be 'too black and white'. One lawyer concluded, "I hope I'm never to the stage where things don't bother me and the facts of the case don't offend me."

As noted earlier, one lawyer expressed the opinion that lawyers with less experience and cynicism are better able to represent young offenders. However, some lawyers disagreed and suggested that lawyers who adopt a child welfare approach to their role are placing their clients at a disadvantage

and subsequently youths are not receiving as competent representation as they should. This opinion was justified by one lawyer who suggested that senior lawyers are better equipped to represent young offenders because, "Juvenile law is much more technical than criminal law. There is much more you can do, in a legal sense, for a juvenile than for an adult" implying that experienced lawyers are more able to test the legal 'loopholes' than junior lawyers.

Other lawyers attributed the sense of confusion they experienced regarding their role to the type of clientele that they represented. As indicated earlier some lawyers clearly distinguished, in terms of approach and treatment, between their juvenile and adult clients. In some cases, this attitude subsequently affected their attitudes toward their role as counsel and the objectives of the sentencing process. In explaining the difference in the lawyer-client relationship when the client is a juvenile, one lawyer remarked, "You're not just their mouthpiece, but also a friend." Another lawyer stated that because:

> You're advising them (clients) on aspects other than legal aspects, a lot of the time it's a lawyer-social worker-parent type of role. I don't know how you can be a mouthpiece for a twelve year old kid who has never been through the court process and has no idea as to what's going on. I don't think that the mouthpiece role will give the kid an appreciation for what the system is all about.

A factor which, for some lawyers, contributed to their sense of confusion about their role, but for others constituted a source of frustration and role constraint concerned the nature of youth court proceedings and the legislation governing juvenile law.

For a few lawyers, frustration with the youth justice system was attributed to fundamental procedural and structural or organizational differences between criminal and youth court proceedings. As one lawyer explained:

> It's a different setting. People who come here (youth court) have to recognize that there are different rules here.

However, the majority of the lawyers interviewed, frustration emerged as a result of what was referred to as uncontrollable 'extraneous variables or considerations' which influenced various stages of the youth court process.

Many lawyers remarked that, despite the substantial philosophical and procedural changes encompassed within the Young Offenders Act, in practical application, the legislation has had a negligible impact on the actual operation of the court. For example, several lawyers mentioned that, despite changes in the provisions governing judicial interim release, securing bail under the new legislation had become more difficult. In an attempt to reduce the incidence of pre-trial detention, the provisions of the Criminal Code governing judicial interim release or bail reform provisions,[25] were applied to proceedings under the Young Offenders Act (Latimer, 1986). However, some lawyers maintained that there was considerable disparity between criminal and youth court with respect to the frequency with which interim releases were granted. In comparing two cases concerning the same offence in criminal and youth court, one lawyer recalled that despite the fact that the adult client had a more damaging prior record than the youth client, the adult was released on bail while the youth spent three months in pre-trial detention.

Most lawyers attributed the problems associated with securing judicial interim releases to the belief that the majority of youth court judges continued to apply a parens patriae approach to youth justice. Judges were criticized as being paternalistic and were said, by some lawyers, to be using pre-trial detention as a means of punishment or behaviour modification. One

---

[25] Section 457(7)., Criminal Code.

lawyer stated that:

> They (judges) use it (pre-trial detention) as a sword. Now we've got you here, you're going to see what it's like to spend some time in jail. It's an archaic method of strap and whip to scare juveniles.

Another lawyer concluded that:

> The legal tests for bail are the same for both courts but judges are quicker to say that a kid will get re-involved so they detain them.

A third lawyer noted that an indication that judges were adhering to a child welfare philosophy in their approach to pre-trial detention was the frequency with which they stated that they wouldn't release the accused unless the parent was present or there was proof of accomodation. The lawyer commented that in criminal court, this was not required in order to grant release on bail.

In addition to this explanation, two lawyers also attributed the problems associated with pre-trial detention to a failure on the part of Child and Family Service to provide adequate placements for homeless youths. As a result, despite their eligibility for bail based on the legal criteria, youths are being detained due to a lack of accomodation. Commenting on this problem, one lawyer agreed that while it was a legitimate consideration of the court as to whether a youth has accomodation, it should be the responsibility of the system to provide the placements in order that they are not denied bail. Another lawyer commented:

> Child and Family Services has not been as diligent in utilizing the resources that might have been available.

As a result of the inefficiency of the child welfare agencies in providing placements combined with the tendency of some youth court judges to use custody as a means to treat child welfare problems, some lawyers have also

had to utilize 'alternative resources' in order to secure bail. One lawyer remarked that:

> You have to put comments about the lack of placements on the record so that judges can put pressure on the social workers and agencies. But kids are being detained.

In addition to the comments pertaining to the difficulty of securing judicial interim releases, a few lawyers mentioned that where a youth is released, the bail conditions imposed are often more stringent than what an accused would receive in criminal court and are used to modify or control the youth's behaviour. In the opinion of one lawyer, the imposition of conditions that are unreasonable and irrelevant to the offence including school attendance, securing employment, obeying house rules, "... set youths up for failure", in that non-compliance could result in pre-trial incarceration.

The comments in reference to judicial interim release, pre-trial detention and bail conditions were substantiated by the findings of the report on Winnipeg Youth Court and the Young Offenders Act (Latimer, 1986). According to the report, youths were detained prior to trial more frequently than adults and for longer periods of time (Latimer, 1986:37-41). In addition, bail conditions appeared to, "... be the rule rather than the exception ..." and were not, "... limited to ensuring attendance at trial or ensuring that the accused does not interfere with the administration of justice prior to trial."

Only one lawyer, when asked about judicial interim release, stated that generally it was less difficult to secure bail, under the Young Offenders Act, particularly when accused was charged with a serious offence.

According to the majority of the lawyers interviewed, the influence of the parens patriae approach to youth justice which was noted with respect to pre-trial detention was similarly prevalant at other stages of the court process.

Several lawyers suggested that there was a notable difference between the operation of the criminal and youth court at the trial stage. Most lawyers attributed this difference to the frequent preoccupation of some judges with child welfare concerns. Some lawyers maintained that despite their persuasive ability based on the legal aspects or facts of the case, they were at the 'mercy of a particular judge' who may be child welfare oriented. In reference to the trial process in youth court, one lawyer remarked:

> It's supposed to be adversarial but you don't get the same reception of legal arguments. There is an underlying attitude of resolving the dispute in order to address the 'real' needs.

Another lawyer stated that:

> You don't get the same hearing because of judges who have their own philosophy and they don't want fancy lawyers arguing a case ... You're not treated the same. They (judges) don't like trials and they don't like a young offender to beat a charge.

A few lawyers were critical of judges for their lack of experience and familiarity with the rules of evidence and procedure. One lawyer commented that, as a result, the rules were not as stringently enforced in youth court as in criminal court. Another lawyer stated that there was no appreciation for the principle of beyond reasonable and that there was an underlying attitude with some judges that, "... even if they do convict, it's probably for the best, we're here to help them (youths)." Similarly it was noted that the 'standard of proof' appeared to be lower in youth court than in criminal court and that, "Defences that work in the ordinary court will not work in

youth court." However this was not attributed so much to inexperienced judges but to their attitude regarding, "... teaching youths a lesson, and not letting them get away with anything."

Lawyers also attributed the disparity in the trial process of the two courts to factors other than the orientation of the particular judge. For example, one lawyer explained that:

> In the context of the court and the legislation, judges are put in the position that if they grant an acquittal on a technicality that they're teaching kids that they can get away with this type of behaviour and they there are ways of beating the system.

Two lawyers disagreed with the opinion that there was a discernible difference in the trial processes. One of these lawyers maintained that:

> I'm not satisfied with every judge out there (youth court) or in adult division but I go out there to put in a case just as I would anywhere else. I think that when I go there to do a trial, the judges know that I'm coming to work, not to fool around and not to treat it as 'kiddie court'. This is business, this is the trial process.

Most lawyers also mentioned that the plea-bargaining process in youth court differed considerably when compared to criminal court. There is a fundamental procedural difference between the two contexts since in youth court, the focus is on the charge(s) rather than charge(s) and sentence. The bargaining or negotiating centres on which charges the accused is prepared to enter a plea and which charges the Crown prosecutor is prepared to proceed with. The notion of the accused pleading to a particular charge in order to secure a specific sentence, a common practice in criminal court, does not normally occur in youth court proceedings.

The difference in procedure arises as a result of the provision in the Young Offenders Act which requires the youth court to consider a

pre-disposition report prior to making an order of committal to custody and, in all other cases, the use of pre-disposition reports is at the discretion of the youth court[26] (Latimer, 1986). According to the majority of lawyers interviewed, youth court judges request pre-disposition reports in most, if not all, cases. Susequently, the reliance on these reports as well as what is contained in them has a significant impact on the plea-bargaining process. As one lawyer remarked:

> The Crown Attorney may say that they're not going for custody but if the pre-disposition report is lousy, they'll change their minds.

Another lawyer stated:

> They're very powerful. If you get a bad report, you're in deep trouble.

Consistent with the indications by some lawyers that the bail and trial process were influenced by the child welfare philosophy of the judges, it appears that the impact of the pre-disposition reports, containing the social history of the accused as well as other information relating to their lifestyle, has a similar effect on the process of plea-bargaining. In other words, the ability of the Crown attorney and defence counsel to negotiate and resolve a case based on the facts is somewhat reduced due the influence of the social welfare interests addressed in the pre-disposition report.

The influence of pre-disposition reports was also discussed in the Latimer report (1986). The report indicated that a significantly higher number of pre-disposition reports were ordered in youth court compared to pre-sentence reports in criminal court. It was concluded that, " ... either more custodial dispositions are contemplated than actually awarded or the judges often use pre-disposition reports to assist them in arriving at an

[26] Section 14(1), Young Offenders Act., R.S.C., 1984.

appropriate penalty" (Latimer, 1986: 31). The report further concluded that, "The recommendations of the pre-disposition reports may be influencing the youth court away from awarding dispositions that account for a specific misdeed and toward dispositions that are intended to address the perceived social welfare needs of the youth" (Latimer, 1986:32).

Additional factors that were mentioned as having an effect on the plea-bargaining process in the youth court context included the nature of the relationship or the degree of familiarity between the particular Crown attorney and defence counsel, overworked and uncooperative Crown attorneys, the diverse range of dispositions that are available under the Act as well as the number of conflicting interests that are addressed simultaneously which complicate the process.

One lawyer did not completely agree that the circumstances of the youth justice proceedings significantly affected the plea-bargaining process. This lawyer remarked:

> There's no question that it's easier to plea-bargain in youth court ... it's like shootin' fish in a barrel out there.

This conclusion was based on what this lawyer perceived as a more welfare oriented attitude toward young offenders on the part of youth court Crown prosecutors. He stated that:

> The Crown attorneys ... have different considerations. They see children differently than they would adults. I've seen Crown attorneys go from youth court to adult court and can see a change in the way they plea-bargain.

The problems associated with youth court reports are exacerbated by the lack of control the defence lawyer has over the kind of information about the accused that is submitted to the court as well as the inability to mitigate

the potentially damaging affect. The significance of these problems become increasingly evident at the disposition stage.

Several lawyers mentioned that when comparing cases with similar circumstances, dispositions in youth court are notably more severe than those in criminal court. In reference to the disposition process, one lawyer commented:

> Youth clients with a record get hammered in youth court. Yet if they appear in adult court in front of a judge who knows their record they will get a much more lenient sentence than the last youth offence even though the same record is before the judge; almost without exception. They (judges) really aren't fair in terms of sentencing juveniles.

Other lawyers generally agreed with this observation but qualified it according to category of offence or by suggesting that the gradation, in reference to severity of disposition, between offences was more acute. Others agreed that while dispositions under the Young Offenders Act remain excessive it represents an improvement over the situation that existed under the previous legislation. Another lawyer felt that the new legislation had not changed the types of dispositions. He stated that:

> There is no practical difference between the Y.O.A. and the J.D.A. The average sentence is about the same, except that it's couched in different language. The language has changed, but not the effect.

The comments related to the severity of dispositions youth court were, in part, substantiated by the Latimer report (1986). Based on the findings, the report concluded that, "Probation and community services were used proportionately more often by youth courts while custody and monetary penalties are used proportionately more often by adult courts." While the report did not speculate about possible discrepancies in the way dispositions were imposed, it was stated that, "Some of the dispositions, however, are not meeting the statuatory requirements for their imposition" (Latimer, 1986:64).

Ironically, explanations as to why disparities existed in sentencing between criminal and youth court were similar to those which explained why there were no differences in sentencing between the two pieces of legislation. Most of the lawyers who commented on the severity of youth court dispositions as opposed to those in criminal court were also critical of youth court judges who were perceived to be inexperienced and who lacked knowledge in appropriate sentencing procedure. Further, these lawyers expressed the opinion that many judges continued to apply a parens patriae approach to sentencing. Similarly, it was suggested that because of the emphasis placed on rehabilitation in youth justice as well as the predominance of the child welfare philosophy there were few differences in the type and severity of dispositions between the new legislation and the Juvenile Delinquents Act. As one lawyer commented, "The judges look at themselves as social workers."

The criticism regarding the prevalance of the welfare approach was also mentioned in the findings on the Winnipeg Youth Court and the Young Offenders Act (Latimer, 1986). It was suggested that, "Both the process and penalties of the youth court attempt to control the future behaviour of the accused rather than simply to hold him or her accountable for a specific misdeed" (Latimer, 1986: Executive Summary).

According to the these lawyers, adherence and subsequent influence of the parens patriae approach to sentencing was exhibited, on the part of some judges, by the continued reliance on the opinions and recommendations of probation officers who are perceived as an impartial third party. However, several lawyers expressed the view that the pre-disposition reports quite often contain inadmissable evidence in the form of inflammatory statements

and hearsay reflecting the bias of the particular probation officer. When asked about the responsibility of the judge to discern inadmissable evidence or fact from hearsay, one lawyer stated:

> Right, that's one of their (judges) little fictions. Quite frankly, a lot of the judges wouldn't know what was inadmissible if it hit them in the face.

The contents of the pre-disposition report become particularly effective in persuading judges who have either directly or indirectly exhibited their predisposition toward a child welfare philosophy. Several lawyers stated that, in the majority of cases, the judges concurred with the disposition recommended in the report. One lawyer was convinced that:

> In some instances, judges make decisions as to disposition based on the pre-disposition report before counsel has even made submissions.

Another lawyer commented that:

> If the Crown concurs with the pre-disposition report, it's basically two against one.

The combination of circumstances pertaining to the orientation of the judge and the lack of control defence counsel has over the information submitted to the court as well as the restricted ability to mitigate the potentially damaging contents of the report creates, according to several lawyers, a social welfare bias to sentencing in youth court. Expressing a sense of frustration, one lawyer concluded:

> Sometimes it seems like these decisions are coming from way out in left field. It's not just dispositions, in the trial process they're (judges) too quick to convict.

In explaining the attitude of the judges with respect to sentencing, one lawyer commented:

> They think it's for the good of these kids to give them a short shot in the youth centre.

Similarly another lawyer maintained that the emphasis on responsibility intended by the legislation has been interpreted, by some judges, as 'government sanctioned deterrence' which has been equated with custody. This rationale justifies the notion of a 'short, sharp shock' of incarceration in order to deter juveniles.

Two lawyers, however were not opposed to the use and subsequent influence of the pre-disposition reports in the sentencing of youths. One lawyer remarked:

> There is a lot of information before the judge from the pre-disposition report. Some defence counsel are uneasy because hearsay and inflammatory remarks are included. But I think that the reports are useful to the defence. The judge gets the idea that he's dealing with a person not just a case, but a human being.

Another lawyer, who has initiated pre-disposition reports, did not consider that probation officers were a 'hindrance' and was opposed to their reduced role in the youth justice system.

Despite the criticism directed at the youth court judges and the social welfare agencies, the lawyers interviewed recognized that addressing child welfare consideration, at the disposition stage, was a legitimate concern of the court. The controversy emerges regarding the extent to which these concerns should be emphasized as well as the predominance with which the welfare philosophy pervades the other stages of the process and its subsequent affect.

The continued emphasis placed on the <u>parens patriae</u> philosophy with its history of harsh treatment of juveniles, was perceived, by most lawyers, as the primary reason for role constraint. The perceived imbalance between legal and welfare interests invoked a feeling of futility and frustration on

the part of several lawyers who were interviewed. In fact one lawyer suggested that the presence of counsel only preserved the 'appearance of justice'. He commented:

> The majority of times the defence counsel role is limited because the judges and probation officers take over. I will still play the role of an advocate but I am constrained because I know that the probation officer still carries a very strong club and so does the judge ... To me it's the same as adult court, but I know there are certain lines, because my role is not as strong as it is in the Safety Building ... It's a harder hill to climb in youth court than criminal court.

With reference to youth court judges, several lawyers expressed frustration with the inconsistency with which they handle youth justice matters. The level of inconsistency contributes to the uncertainty over the direction and outcome of the proceedings which directly affects the ability of counsel to function as effectively as adversaries as they would in criminal court. Commenting on the difficulty with adapting to the inconsistencies of some youth court judges, one lawyer stated:

> The judges are not consistent in their philosophy of handling juveniles. Some are strictly law, and some say to hell with the law.

Other lawyers believed that their role was constrained because of the conflicting expectations of some judges. These lawyers expressed frustration with the demands and expectation placed on them because judges believed that part of their role was similar to the function of the probation officer, social worker or, in some instances, the parents. One lawyer maintained that:

> Some judges have the perception and expectation that lawyers should act like social workers. They perceive that as part of the adversarial role. For example, one judge asked if the child was in need of protection because he had received information that the kid was out of control. He said that we all have a duty under the Child Welfare Act to report to the appropriate agency, when a child is in need of protection.

Similarly another lawyer remarked that, "Some judges will put you in a position to decide on long term solutions but that's not my role."

In addition, there were lawyers who suggested that the nature of the Young Offenders Act was such that in recognizing the "special needs" of the youth the legislation has, simultaneously, "... opened the door to child welfare." This has had both positive and negative effects on their role. Some lawyers suggested that, "... the Y.O.A. is a compromised document and intends to be. The system has to have, for some kids, a heart." Another lawyer agreed that, "... there is room to consider child welfare." Others maintained that:

> The legislation is confused, it doesn't know what it wants to do. It's a criminal process but recognizes, in a covered or cloaked method, the child welfare concerns. It's not a proper balance.

Subsequently, while some lawyers considered this recognition as beneficial to their role, others perceived it as a source of role constraint.

A few lawyers maintained that while the legislation has increased the types of defences or legal arguments that can be submitted to the court, the lack of control over the flow of information combined with the predisposition of the judges toward the welfare approach, decreases the range of arguments that can be presented successfully. As one lawyer explained:

> The dichotomy between theory and practice is like day and night. Even though the Y.O.A. wants to be like kiddie criminal court, it doesn't work that way. Even the Court of Appeal has taken a more social work approach to juveniles.

Another lawyer stated, "The system, while acknowledging the role of the lawyer, still sees him as an outsider and treats him like one."

Conversely, when asked how the legislation has affected their role (refer to Appendix H, question #10), other lawyers maintained that the Act has clarified their role as well as the role of other key actors in the system. One lawyer remarked:

> It has defined our role better. It has helped our role because now we know what we have to do and who we are accountable to. It has made it nice for lawyers because it's back to being nice and legalistic and rigid which is what lawyers love.

Another lawyer expressed the view that the legislation had established the role of counsel as adhering to the traditional advocate role. He commented that:

> That's maybe one way in which the Y.O.A. has changed things. You can be more adversarial with people who interfere like probation officers, judges and Crown attorneys.

Similarly another lawyer added, "I feel more like a lawyer now because Y.O.A. has firmed things up in terms of process."

The disparity between the theory behind the Young Offenders Act and the way in which it has been implemented were also mentioned by lawyers with reference to the affects of the legislation on the role of the other key actors in the youth court. The majority of lawyers agreed, to varying degrees, that the procedural changes that have been implemented have had an effect on the role of the probation officers and Crown attorneys. Some lawyers suggested that the role of the probation officers had been substantially reduced compared to their role under the previous legislation. However others did not agree that the Act has had any practical affect on the role of probation officers. One lawyer remarked:

> You wonder what are the Crown and I doing here. Probation officers are running the show. He's telling the judge what's doing, the explanation and he's telling him what he thinks he (the client) should get. I wonder what I am doing here.

With respect to the Crown attorneys, some lawyers mentioned that, under the new legislation, their role has become more adversarial. One lawyer commented that the legislation has established the 'proper legal tests' and, "... that it forces the Crown attorneys to enter a case properly which didn't

happen before." Conversely other lawyers did not perceive of any significant changes regarding the role of the prosecutor.

As indicated by their comments, the majority of the lawyers were of the opinion that the role the youth court judges has not been affected by the legislative changes. Apart from the comments related to 'relearning' a new piece of legislation as well as becoming accustomed to making 'legal decisions', most lawyers agreed that with some judges, there was little or no difference in the way they conducted court. One lawyer stated:

> The law has changed, the judges are the same. They had the urge to punish kids before but couldn't and now they can.

With reference to the advantages and disadvantages of the Young Offenders Act (refer to Appendix H, question #12), most lawyers mentioned that generally, the Act had firmly established procedural requirements pertaining to the trial process. In addition, most felt that the legislation has legitimized the presence of counsel by acknowledging the right of young persons to retain and instruct counsel.[27] Further, the recognition of other rights related to bail and appeal as well as the increased formalization of procedures including the Alternative Measures provisions[28] were also perceived as advantages under the new legislation. Due to codified individual rights as well as the procedural and evidentiary requirements, many lawyers expressed the opinion that this will provide, at least structurally, an opportunity for fair and impartial proceedings.

---

[27] Section 11(1), Young Offenders Act., R.S.C.,1984.

[28] Section 4(1), Young Offenders Act., R.S.C., 1984.

Some lawyers mentioned that the lack of preliminary hearings prior to the trial as well as no provision for jury trials were perceived as disadvantages associated with the legislation. In addition, two lawyers commented that the fact the the most severe custodial disposition is three years, which is not perceived as a long enough period of incarceration for serious offences. Subsequently the only option is to have the accused transferred to criminal court. These lawyers suggested that longer custodial dispositions should be available in order to that young offenders could remain in the youth justice system rather than being subjected to adult institutions. Finally, apart from the protections of individual liberties, one lawyer believed that the intent of the legislation to shift toward a criminal justice model was a disadvantage related to the legislation.

Additional comments refered to the philosophy and the application of the legislation. For example, one lawyer suggested that personal opinion regarding the legislation was dependent upon the acceptance of the basic premises outlined in the Declaration of Principles.[29] He stated that:

> It depends on whether you accept the move away from the child welfare philosophy. It depends on your own philosophy about the way young offenders should be treated.

Another lawyer remarked:

> In the Y.O.A. they're emphasizing individual and general deterrence over rehabilitation, that's what it says, but in practice I don't see that they've changed that much. There are a lot of technical changes but really nothing ever changes. They're the same kids committing the same offences with the same judges with the same mindset. They deal with them in the same fashion only they couch it in different language.

Finally, with reference to the legislation, another lawyer stated:

---

[29] Section 3(1), Young Offenders Act., R.S.C., 1984.

> From a lawyer's perspective, I love the Y.O.A. It's the worst drafted piece of legislation to come out of parliament in the past twenty years which makes it just a lawyers delight.

Toward the end of the interview some lawyers were asked if there was anything they considered to be unique with respect to their role (refer to Appendix H, question #9). In response, lawyers did not mention that there was anything particularly unique about their role with the exception that in dealing with young persons the lawyer is required to assume a more educative role than would be expected with adult clients. However one lawyer maintained that acting as counsel for young people was 'emotionally draining' and," ... difficult if you are a caring type ..." because "... clients are more dependent upon their lawyer as a friend."

Lawyers were also asked to describe the ideal role type as well as the most difficult aspect of their role (Appendix H, question #13,14). The responses varied in relation to the way in which the lawyers initially perceived and described their role. Generally lawyers who perceived themselves as advocates maintained that this was the ideal role type. There were, however, some exceptions from lawyers who were identified as moderate advocates. These lawyers conceptualized the ideal role type as incorporating more of a balance between the child welfare and legal approach. One lawyer suggested that, ideally, a junior lawyer who adhered to a welfare approach should act as counsel while a senior lawyer should supervise and advise on the legal aspects of the case. In this way both sets of interests are addressed by the appropriate person.

Similarly lawyers who perceived themselves as adhering to either a guardian or a combination of guardian/adovocate approach maintained that this

was the ideal role type. One lawyer, however, mentioned that, under ideal circumstances, the input from the social welfare agencies would not be 'automatic' so as to present a 'barrier' to the role of counsel but that counsel would have more control over the emphasis placed on the child welfare considerations.

In addition, one lawyer seriously questioned the legitimacy of the youth court as the appropriate organization or structure for dealing with essentially behavioural or social welfare problems. This lawyer favoured 'community based justice' over the present youth justice system. When asked about what would constitute the ideal method, this lawyer suggested that defence counsel and Crown attorneys would not be involved in dealing with young offenders. She also suggested that a greater number of youths should be diverted from the system and that more emphasis should be placed on the involvement of Child and Family Services rather than police involvement. Reflecting on the youth justice system, this lawyer remarked, "The real question is whether we ought to be having a youth court."

In response to the question regarding the most difficult aspect of representing young persons, most lawyers mentioned problems that were related to the nature of the clientele. Several lawyers expressed difficulty in accepting or receiving instructions from their young clients. The reluctance on the part of these lawyers to accept instructions was partly correlated with their perceptions regarding the competence and ability of their clients to give appropriate instructions. Some lawyers, who perceived their clients as 'streetwise' did not have difficulty regarding legal competence. Other lawyers were not as confident in their clients capability to understand and express themselves adequately. These lawyers implied that their clients did

not instruct them, in the strict sense, but were inclined to 'go along with' their advice.

Furthermore, there were lawyers who suggested that, in most cases, legal instructions were fairly simple regardless of whether the client was a juvenile or an adult and therefore following instructions did not present a problem.

Finally, in relation to the continued predominance of the child welfare philosophy in youth justice, a few lawyers commented that they found it difficult to balance or 'juggle' all of the interests that impinged on the court process. One lawyer commented that it was difficult to, "... know when and how to restrain personal and emotional involvement with a case."

4.1 SUMMARY

On the basis of the interviews, it was found that lawyers generally applied the labels of advocate or adversarial as opposed to child welfare or social worker when describing how they perceived their role. To this extent the lawyers appeared to perceive of their roles according to the predefined types. There were individual lawyers who responded to the various role-related issues with a certain degree of consistency that correlated with the traditionally defined role types. In these limited cases, the consistency between the perception of role and the attitudes toward role-related issues were evident so as to identify the individual as exhibiting a particular 'ideal' role type.

For most cases, however, lawyers frequently responded to role-related issues in a manner that was inconsistent with the way in which they

perceived their role. For example, there were lawyers who perceived themselves as adhering to an advocate role but also stated that, under specific circumstances, they would not always agree to or advise their client to accept the most lenient disposition.

The differences in the attitude of lawyers toward sentencing was a factor which broadly distinguished the advocate from the guardian orientation. Overall, lawyers who adhered to a welfare approach did not place the same level of importance on securing the least restrictive disposition. For the most part, these lawyers perceived that addressing the welfare interests of the client constituted an integral part of their role. However there was an exception in that one lawyer who exemplified the 'ideal' guardian role type, also favoured the most lenient disposition due to fundamental opposition regarding the present youth justice process. In addition, there were some lawyers who considered themselves to be adversarial yet stated that depending on various circumstances related to the case and the client, they may also assume the role of the guardian. In these instances, lawyers admitted to lecturing their clients or playing a parental role as well as persuading their clients to accept a more restrictive disposition that would benefit their welfare rather than their legal interests.

The discussions pertaining to the conflicting interests underlying the principle of least interference[30] were a significant aspect of the interviews. This subject area, in particular, reflected the considerable degree of controversy over the appropriate role of counsel. It has been suggested that this provision of the principles

[30] Section 3(1)(f)., Young Offenders Act., R.S.C., 1984.

distinguishes the philosophy and intent of the Young Offenders Act from that of the previous legislation (Bala & Lilles, 1982). In view of its importance, it was significant that the lawyers who were interviewed exhibited such a degree of variation in attitude with respect to this provision.

Additional inconsistencies were evident with respect to the lawyer-client relationship. Several lawyers stated that they treated their juvenile and adult clients in a similar manner. However, some of these lawyers commented that one of the most difficult aspects of representing youths was accepting their instructions. This reluctance on the part of the lawyers was related to the lack of confidence in their client's ability to understand and appreciate their situation as well as their capability to express themselves sufficiently. In some instances, this was stated as a problem even though the lawyers had described their young clients as 'streetwise'. The implications of these findings pose critical questions regarding the competency of young persons to instruct counsel and the degree of client control in the relationship. In fact, a few lawyers admitted that their young clients can be manipulated because they place a significant degree of trust in the advice of the lawyer.

The problems associated with the lawyer-client relationship were also evident in the findings from prior research on the role of counsel. Murphy (1985) concluded that, " ... there was evidence to suggest that while the lawyers thought their role was to be an advocate, the lawyers also implied that they should have control over the relationship. Such a view is somewhat at odds with the traditional understanding of the

role of an advocate which implies client control in the lawyer-client relationship" (Murphy, unpublished thesis:86).

A substantial amount of time during the interview was spent discussing the procedural and philosophical differences between the criminal and youth court proceedings as well as the subsequent affect these differences had on the role of counsel. The majority of lawyers agreed that there were considerable differences in the operation of the youth court compared to criminal court despite the intentions of the Young Offenders Act. The disparities were primarily attributed to the continued application of the parens patriae philosophy which, according to most lawyers, remains prevalent in the youth court.

Lawyers, regardless of role orientation, were critical of some of the youth court judges for their preoccupation with addressing child welfare considerations at every stage of the youth justice system. Quite frequently, this occurred at the risk of violating the rights of the individual and the requirements of due process. The majority of the lawyers interviewed agreed that the continued emphasis placed on welfare interests were evident in securing judicial interim release, the ability of defence counsel to negotiate or plea-bargain, the reception of defence submissions during the trial process, the continued reliance on the input from probation services in the form of pre-disposition reports and the severity of the dispositions. For most lawyers, these disparities constituted a source of confusion and frustration which some felt subsequently reduced their ability to perform their role effectively.

It was not anticipated that lawyers who perceived themselves as adhering to a welfare orientation would be as equally critical toward the influence of this approach as were those lawyers who described themselves as being more adversarial. However, for some lawyers it did not present a contradiction to perceive of and practice their role in welfare terms and yet criticize the court for operating according to similar principles. As one lawyer concluded:

> We want it both ways. We don't want kids doing more time because of the helping model, but we want our kids doing less time because of the helping model.

This comment reflected one of the most crucial factors underlying the criticisms toward youth court judges and the operation of the youth justice system. It did not appear that most lawyers were critical of the court in addressing child welfare considerations at the appropriate stage. In fact most lawyers agreed that this was a legitimate concern of the court during the disposition process. However, frustration emerged due to the lack of control on the part of defence lawyers over the information submitted to the court which affected their ability to control the direction and outcome of the case.

Additional factors that contributed to the sense of confusion or frustration with representing young offenders included the nature of the clientele, the lack of practical experience, conflicting expectations and demands from other key actors, tenuous relationships with the Crown attorneys and the way in which the legislation has been written and interpreted.

In reference to the legislation, some lawyers maintained that the legalistic philosophy, procedural changes and the provisions for counsel have assisted in defining and clarifying their role. Other lawyers continue to be confused and are frustrated with the substantial disparities between the legislation, in theory, as opposed to its practical application.

The perceived disparities between theory and practice was frequently mentioned as one of the disadvantages related to the legislation in addition to the earlier statements regarding youth court judges and the influence of the parens patriae philosophy. Other factors that were mentioned as disadvantages pertained to the lack of preliminary hearings and jury trials.

In summary, the lawyers who were interviewed varied considerably in attitudes and perceptions. With few exceptions, the responses were inconsistent to the extent that it was not possible to discern a pattern of attitudes or opinions that could be identified and labelled as indicative of a particular type.

The revised typology enabled differentiation of perceptions toward role. However, these distinctions were superficial and did not accurately reflect the degrees of variation in attitude. In addition, it became evident that there were substantial differences with regard to various definitions of terms and concepts. Terms including 'advocate' or 'best interests' assumed different meanings according to each lawyer interviewed which seemed to reiterate the inconsistency with which they perceived their role.

The interview findings were important in clarifying the inconsistencies observed in the attitudinal research. The unstructured questions in conjunction with the non-directive method used in the interviews, provided an opportunity to discuss issues that were indirectly related to role perceptions. In this way, lawyers provided additional information and insight which was helpful in explaining the disparities in the attitudinal data.

Chapter V

DISCUSSION OF THE FINDINGS AND CONCLUSIONS

There has been a substantial amount written, primarily by members of the legal profession, on the subject of the legal representation of children. The majority of the literature has focused on the nature of the relationship between the child and the defence laywer and what role the lawyer ought to assume in that relationship according to the current state of the law. Despite the greater number of lawyers acting on behalf of juveniles over the last fifteen years, only recently has empirical research addressed the issue of defining the role of counsel.

Due to the fundamental changes introduced by the enactment of the Young Offenders Act, there has been an increased sense of importance and emphasis placed on examining and clarifying the role of counsel in youth justice. It was in consideration of these concerns that the objective of this thesis was established.

This research examined the perception of defence counsel concerning their role in the Canadian Youth Justice System. Based on the data collected as part of the National Study on the Functioning of the Juvenile Court (Solicitor General of Canada, 1982), the analysis combined the data obtained from a survey questionnaire administered to a sample of defence counsel measuring attitudes toward the Young Offenders Act and the findings from in-person interviews conducted with defence lawyers who regularly appeared in the Manitoba Youth Court.

Initially, the study was to incorporate the observational and file data from six principal study sites that were summarized in the site reports comparing the organizational structure of the courts. By focusing on the stuctural variation the had developed prior to the new legislation, it was anticipated the this framework would enable the analysis of the perceptions of defence counsel toward their role taking into account the effect of the structure of each court organization. Given the distinctive provincial and local character of Canadian Youth Courts, it was anticipated that the organizational position and role under the Juvenile Delinquents Act would have been an important factor in assessing the impact on their role as a result of the new legislation.

Incorporating an organizational perspective, the theoretical basis of the research was to focus on the variation among defence counsel with respect to the perceptions of their role by emphasizing the organizational dynamics of the court 'workgroup' and the application of informal rules and procedure that varied among provinces.

In order to focus the direction of the research, several research questions were formulated that addressed the description and variation of the perceptions of lawyers toward their role, the factors affecting role perceptions including the attitudes toward the causes of delinquency and the objectives of the court. The final question concerned the effect of role perceptions on the attitudes toward decision making and the handling of juvenile cases.

The first component of the research primarily involved a descriptive statistical analysis of the attitudinal findings in order to examine the patterns of responses to the questionnaire items. In addition, factor analyses were conducted using sections of the survey data in order to assist in the differentiation and explanation of role perceptions.

The second component, involving interviews conducted with defence lawyers, were conducted in order to substantiate and clarify the findings from the attitudinal research as well as to obtain additional information regarding the role of counsel and role-related issues. The data collected from the administration of the interviews were analyzed qualitatively. The findings were categorized and discussed in relation to the general themes outlined in the Defence Counsel Interview Schedule (refer to Appendix H).

In describing the perception of lawyers with respect to their role, the concept 'role' was operationalized by the two sections of the attitudinal survey pertaining to the Philosophy of the Young Offenders Act and Legal Representation in Juvenile Court (see Appendix A & B). For the purposes of analysis, 'role' was conceptualized on the basis of two 'ideal' types which described the defence function in purely legal (advocate role) or social (guardian role) terms. It was anticipated that this typology, as developed in the literature and applied in previous research, would enable the differentiation and explanation of the perceptions of role.

The analysis of the attitudinal data based on these sections of the questionnaire did not produce the predicted results. The responses to

the items used to operationalize the concept of role were discrepant to such a degree that perceptions toward role could not be differentiated according to the advocate/guardian typology. Apart from the inability to differentiate role types, due to the level of approval for the principles across jurisdiction, there was disagreement toward particularly significant items which further complicated the interpretation of the findings.

Specifically, while the majority of the total sample approved of the principles of the Young Offenders Act, there were varied levels of disagreement on a provincial level regarding the special guarantees (Table 2) and least interference principles (Table 3). Further, the levels of disagreement with regard to the principle of least interference followed an unpredicted pattern, in that respondentrs from provinces that were traditionally legalistic orientation (for example, British Columbia) exhibited a higher degree of opposition than those from provinces that were welfare oriented in their approach to youth justice.

There were additional items which complicated findings with regard to the appropriate conduct of privately retained and legal aid lawyers. Overall, there was a high level of agreement that lawyers should represent juveniles as if they were adults (refer to Table 4 & 5). Yet, in response to a question concerning plea-bargaining, lawyers expressed a preference for addressing the long term interests over the short term satisfaction of the client (see Table 6).

As a means of further examining the plausibility of identifying two distinct role types from the data, two separate factor analyses were conducted on these sections of the attitudinal data. However, despite two attempts, the results of the factor analyses indicated that the variables were not correlated and therefore could not be reduced into two common factors that contributed to the explanation of role type.

In Manitoba, the variation in attitudes toward these items found in the analysis of the attitudinal data were substantiated by the interview findings. When describing how they perceived their role, lawyers applied the labels of 'advocate' or 'social worker' which, in limited cases, were consistent with attitudes reflected in response to other aspects of the interview on role-related issues. In addition, by applying a revised typology in order to account for more subtle variations in perceptions toward role, general distinctions in reference to role types were evident. On this basis, role types were differentiated according to the variation in attitudes toward the treatment of juvenile clients, the nature and causes of delinquency as well as the purpose and objectives of sentencing.

However, lawyers often reflected attitudes toward role-related issues that were discrepant in comparison to the way in which they perceived their role. In particular, there were lawyers who perceived their role as that of an advocate, yet under specific circumstances, assumed functions that would be described as child welfare oriented. Furthermore, some of these lawyers favoured the combination of the welfare and legal interests in their approach to youth justice.

With reference to the principle of least interference, there were similar patterns of disagreement observed in the interview findings as were evident in the attitudinal data. Some lawyers, while perceiving themselves as advocates, did not always favour securing the least restrictive disposition, especially if the disposition recommended was perceived as a benefit to the welfare of the client. Conversely, one lawyer who adhered to the guardian role type and was opposed to the legalistic philosophy of the new legislation favoured the most lenient disposition principle. The extent of the variation in attitude and level of disapproval regarding this principle is significant in that the findings constitute conflicting, if not contradictory, attitudes toward the intent of the Young Offenders Act.

To further complicate the interpretation of the findings, there were lawyers who expressed a tendency to combine the welfare and legal interests in performing their role, yet did not perceive that it was appropriate that the court apply the 'best interests test' to sentencing. These lawyers criticized the court for adhering to a paternalistic approach which emphasized the child welfare over the legal interests as well as attempting to control behaviour by focusing on the offender rather than dealing with the offence.

While lawyers applied the pre-defined labels designating the role types of advocate, combination of advocate/guardian and guardian when describing how they perceived their role, the definitions or the kinds of functions that were considered as part of each role type varied among the lawyers interviewed. For example, the functions that were described as aspects of the advocate role varied depending on how the individual lawyer perceived and defined the role type.

As a result of the degree of variation or disparity with regard to definitions of perceived role types as well as other concepts related to role, identifying and labelling a set of perceptions as indicative of a particular role type was problematic. However, it may partially explain the disparities observed in attempting to correlate perceptions of role and responses to other role-related issues.

The second research question, which addressed the extent and nature of the variation of role perceptions according to jurisdiction, involved the formulation of several propositions that predicted the relationship between the structure of the court organization, the perceived role types of counsel and the level of agreement toward the Young Offenders Act. The propositions were constructed in order to examine the relationship between the key variables of model, role and attitudes toward the legislation.

The concept 'model', proposed as a means to distinguish the structural organization of youth courts, was conceptualized according to two 'ideal' types (Justice and Welfare Models). The purpose of distinguishing court structure according to models was to focus the disparities among jurisdictions at various stages of the process. Court organizations were then to be placed on a justice-welfare continuum. Accordingly, each province was to be described with reference to the 'model' of the court structure and the 'type' of role perceived by the responding defence counsel. It was anticipated that the variation in role type reflected in the attitudes toward the legislation could then be partially attributed to and explained by the effect of the structure of the court organization on role development.

The third component of the proposition, attitudes of defence counsel toward the Young Offenders Act, was to be examined through the analysis of the questionnaire section on the Substantive and Procedural Measures under the Young Offenders Act (refer to Appendix C). As a direct measure of the attitudes of the sample toward the actual provisions contained in the legislation, this section was used as a means to determine the level of agreement or disagreement regarding the legislation.

As a result of the inability to differentiate role according to types, as predicted, the research focused on the analysis of the questionnaire data on the substantive and procedural measures of the legislation in order to examine the possible relationship between model and attitudes toward the Young Offenders Act.

In order to facilitate the presentation and analysis of this section of the questionnaire, summary measures were calculated to measure level of agreement/disagreement with respect to topics rather than individual items. With the exception of a few items, the findings indicated a consistently high level of agreement toward the provision of the legislation. Further, where disapproval was observed on a provincial level, the pattern of response did not constitute total disagreement but proportional combinations of agreement and disagreement toward a particular provision.

According to these findings, the high level of agreement toward the substantive and procedural measures of the Act, indicated little, if any, provincial variation in attitude. Since this basis of analysis did

not enable differentiation of attitudes toward the legislation according to jurisdiction, it was not possible to correlate these attitudes with a particular model of court organization.

The interview did not directly address the attitudes of the lawyers toward the specific substantive and procedural measures of the legislation. However lawyers were asked to comment on the advantages and disadvantages of the Act. Specific provisions that were mentioned as advantages included the records section, the formalization of the Alternative Measures procedures, the bail and pre-trial detention revisions as well as the right to counsel provisions. In addition, most lawyers expressed a general level of agreement toward the codification of procedural and evidentiary requirements.

With reference to disadvantages, some lawyers mentioned that the three year maximum for custody dispositions was not appropriate for youths who had committed serious offences. In their findings, Moyer & Carrington (1985) also reported a considerable degree of opposition, from all actor categories, regarding this provision (Moyer & Carrington, 1985:55).

Due to the inability to differentiate the concept of role according to the typology in conjunction with the absence of significant jurisdictional variation in attitudes toward the legislation, it was not possible to examine the relationship between 'model', 'role' and 'attitudes toward the Young Offenders Act' as originally formulated in the propositions.

Since the analysis of the questionnaire sections regarding the differentiation of 'role' did not produce the anticipated results, the remainder of the attitudinal data findings were presented in the form of a descriptive analysis which focused on the attitudinal variation (levels of agreement/disagreement) among jurisdictions.

Similar to the previous findings, there was essentially no variation in the types of responses to these sections of the questionnaire according to province, however general observations regarding the national sample were discussed.

The majority of the sample indicated that they felt that the occurrence of delinquency to be a part of adolescence which resulted from impoverished social and financial conditions. Subsequently, they suported less severe criminal sanctions such as probation as opposed to institutionalization. Similar findings were indicated by laywers interviewed in Winnipeg. When discussing the lawyer-client relationship, several lawyers commented on their perceptions regarding the nature and causes of delinquency. For the most part, lawyers expressed the opinion that delinquency was a part of adolescence involving spontaneous 'acting-out' behaviour which was attributed to the problems associated with the client's family and social background.

There were some exceptions, particularly when the client was older or approaching the maximum age for youth court jurisdiction and had lengthy prior records. In these cases, some lawyers perceived that these clients had adopted a criminal lifestyle. In addition there were lawyers who perceived their clients as 'streetsmart', not quite

criminals yet not naive, first-offenders. Regardless of how they perceived the nature of delinquency, all of the lawyers attributed the causes of delinquent acts committed by the majority of young offenders to a combination of social and family problems.

In addition, the attitudinal findings indicated that lawyers experienced the greatest amount of difficulty with youths because of their inability or unwillingness to recognize their own problems. Of the lawyers interviewed, several mentioned problems related to the immaturity and irresponsibilty of their young clients. One lawyer commented that young offenders do not think that they deserve to be punished and that they do not understand cause and effect.

Consistent with these attitudes, the respondents generally perceived the rehabilitative or 'treatment' ideal objectives of the court to be more important than the 'justice' objectives. Of particular significance were the findings that indicated, under ideal circumstances, lawyers placed more importance on rehabilitation and deterrence. While both objectives are desirable, one of the intentions and explicitly the rationale underlying the Young Offenders Act, is that increased emphasis ought to be placed on individual accountability and responsibility for specific misdeeds rather than using criminal justice tools to modify and control behaviour. In this sense the objective of rehabilitation, while important, is not emphasized to the same degree as it was under the Juvenile Delinquents Act.

The findings for Manitoba, with respect to the Objectives of the Juvenile Court, were comparable to those for the national sample.

However the interview findings generally contradicted the attitudinal results in that, despite indicated support for rehabilitation, the majority of lawyers attributed the problems associated with youth justice to the continued emphasis on and subsequent influence of child welfare interests.

Lawyers perceived that the importance placed on 'treatment' objectives, including rehabilitation, largely contributed to the problems related to the difficulty of securing bail, the ability to plea-bargain, as well as the excessive dispositions characteristic of the youth court. Furthermore, these comments were supported by the data and findings from the study conducted on the Winnipeg Youth Court by Latimer (1986). A possible explanation for this apparent discrepancy may be related to the rationale that was expressed or implied by some lawyers that if the treatment objectives or welfare approach will result in more lenient dispositions then it is perceived as positive or desirable. However the reverse of this argument, which appears to portray a more accurate history of the Winnipeg Youth Court, provokes a negative or critical reaction to the welfare approach.

In addition, a few lawyers were explicit in their criticism of the court for equating the notion of responsibility with 'government sanctioned deterrence' which, in their opinion, has been interpreted as secure custody. While it is plausible that in responding to this survey item lawyers interpreted deterrence as something other than custody, in view of the expressed criticism, these findings indicate a degree of inconsistency.

Due to the 'treatment' orientation that was reflected in the responses to the section of the questionnaire pertaining to court objectives, it was anticipated that a similar tendency would be indicated by the responses to the section concerning Juvenile Offenders and the Handling of their Cases. In fact, the pattern of responses indicated a legalistic rather than treatment orientation. This finding was further complicated by the approval of the item regarding the role of the court as that of a surrogate parent. This was also reported by Moyer & Carrington (1985) who concluded that, " ... supporters of the legislation did not often reject the approach that emphasizes the role of the court as a surrogate parent, emphasizing the needs of the juvenile" (Moyer & Carrington, 1985:117).

The attitudes from the survey reflecting the legalistic orientation, particularly in Manitoba, were supported by the interview findings. As evident by the criticism of the current operation of the youth court, lawyers favoured increased and stringent application of the rule of due process. Some lawyers admitted to relaxing procedural requirements at the disposition stage, however this varied depending on their attitudes toward the sentencing process.

Of particular significance however, was the item regarding the extent to which dispositions are based too heavily on social and personal characteristics of the offenders. The attitudinal findings for Manitoba indicated that lawyers did not perceive that dispositions were based too heavily on these factors, and in fact, agreed that dispositions were based on the evidence. Yet all of the evidence from the interview findings as well as those from the report on the Winnipeg Youth Courts

(Latimer, 1986) indicates that the reverse is the case. It was concluded on the basis of these findings that lawyers perceived of their function or role within the system in legalistic terms yet perceived the function of the court in terms of a treatment or welfare orientation.

The inconsistenices in the attitudes of the respondents were particularly evident regarding the findings on Decision Making. Legal and extra-legal factors were rated as equally important when making decisions regarding secure custody dispositions. While the specific factors that may contribute to the decision making process were not directly addressed in the interviews, in responding to issues related to their function as counsel, lawyers reflected the numerous combinations of variables that may affect the way in which they perceived their clients, their style of representation as well as their attitudes toward youth justice.

However, given the legalistic intentions of the legislation and the criticism from the lawyers regarding the continued emphasis and influence of the 'lifestyle' factors of the offender in sentencing, this level of disparity in the findings was not predicted. Yet, for some lawyers, the equal emphasis placed on extra-legal and legal factors or legal and welfare interests, does not conflict with the perception of their role or the role of the court.

5.1 CONCLUSIONS AND THEORETICAL IMPLICATIONS OF THE FINDINGS

Throughout this research, the findings based on the attitudinal data analysis have implied that due to the degree of inconsistency in response, it was not possible to differentiate, as predicted, lawyer's perceptions toward their role according to the advocate/guardian typology. Moreover, as the analyses progressed, it became increasingly evident that there were considerable disparities in the responses toward additional attitudinal items that prevented the formulation of any signficant or substantive correlations in reference to role types

In addition while it is inaccurate to generalize the findings of the interviews conducted with lawyers in Winnipeg with reference to lawyers elsewhere, the interview findings substantiated a similar degree of disparity in a segment of the population as was exhibited in the attitudinal data based on the national sample of defence counsel. The national survey findings resembled the interview findings in terms of the level of inconsistency regarding role perceptions and attitudes toward role-related issues.

The accumulated findings based on the analysis of the attitudinal and interview data provide empirical and substantive support to the conclusion that lawyers do not perceive of or adhere to a consistent role type. The combination of the inability to differentiate perceptions of role according to the typology and the lack of internal consistency as well as the qualitative evidence from the interviews establishes a sufficient basis to conclude that there was is no apparent consistency in the way in which defence counsel perceive of or approach their role in the youth justice system.

In view of these disparities it does not seem possible to 'quantify' attitudes or perceptions according to an ideal typology. The review of the literature illustrated that previous research in this area has been largely successful in differentiating and explaining the disparities in role perceptions according to the advocate/guardian ideal types. However, this research differs methodologically and in terms of the type of data collected and analyzed from the majority of earlier studies.

The previous research used observational data where specific kinds of behaviour were documented on an observational schedule (Stapleton & Teitelbaum, 1972; Parker et.al., 1981). The observational findings were correlated with a particular orientation of the court which established that the role of the lawyer was dependent upon the organziation of the court. However, the measures used in these studies were based on pre-conceived ideas regarding the role or function of defence lawyers based on the ideal advocate/ guardian role types. In addition, the observational data was not substantiated by another type of data which might have refuted the findings. Where observational data was substantiated by interview findings (Anderson, 1978), the interviews did not address how the actors perceived their own roles in order to compare self-perceptions with observed behaviour.

This research compared attitudinal and interview data. The structure of the survey consisted of largely closed-ended questions where respondents were provided with several types of responses. Conversely, the interview was unstructured and lawyers expressed their opinions with minimal interference from the researcher. A comparison of the findings clarified the reasons why disparities were observed between the

attitudinal and interview research. In addition, the interview findings suggested that there were discrepanices between words and deeds in that the way in which lawyers described their perceptions toward their role were not always consistent with their opinions toward role-related issues.

Under these circumstances, it is very difficult, if not inappropriate, to compare the findings. Further, the attempt to formulate comparisons would tend to minimize the level of inconsistency evident in the results of this research. Finally, to suggest that the findings described in this research resemble the consistency with which attitudes toward role and role perceptions were correlated and identified in prior research would be, at the very least, misleading.

The research findings have significant implications in reference to the theoretical framework constructed in order to examine the role of counsel. The organizational perspective as described and utilized by several researchers, in the area of criminal justice, (Blumberg, 1974; Eisenstein & Jacob, 1977; Anderson, 1978; Ericson & Baraner, 1982; Hackler, unpublished) conceptualize the court as a 'social system' or 'workgroup' and focus on the network of the relationships or patterns of influence and authority that are created and constrained by the organizational structure (Eisenstein & Jacob, 1977).

The roles of the key actors, within the court organization, are structured in accordance with organizational goals and values (Blumberg, 1974), which often reflect the distinctive orientation of the particular court. Subsequently, variation in court procedure and the roles

performed by the key actors will be determined by the orientation of the court.

Incorporating the quantitative and qualitative research within the organization paradigm established a framework within which the disparity in role perceptions could be explained and understood, in part, as reflecting the effects of the variation in ideological, structural and procedural organization of the courts.

This research did not test the adequacy or explanatory value of the theoretical perspective. Further, as a result of the unanticipated findings discovered early in the data analysis, it was not possible to examine the propositions which would have represented a more direct test of the relationships and effects of the organizational variables (model) on role perceptions (role type). However several important implications with respect to the organizational perspective are worth mentioning.

With reference to the attitudinal data, the high levels of agreement toward the provisions of the legislation prevented the differentiation of attitudes toward the Act, on the basis of jurisdiction. This subsequently affected the ability to correlate the 'model' (structural and procedural organization) of the court with the variation in attitudes toward the Young Offenders Act (substantive and procedural measures).

On this basis, it would appear that the orientation of the court does not directly affect either the perceptions toward the role of counsel or their attitudes toward the legislation. The provincial disparities in the nature of the juvenile justice process prior to the new legislation,

does not appear to have had the predicted effect in terms of the attitudes of defence counsel toward the reception of the Young Offenders Act.

However, on the basis of the interview findings, it appears that the ability of counsel to function according to the way in which they perceive their role was directly affected by and related to organzational variables. For example, there were explicit references to the theoretical and practical disparities regarding the implementation of the legislation. Lawyers also expressed difficulties with role constraints that were attributed to structural or procedural disparities between youth and adult court as well as to the adherence by the Winnipeg Youth Court to a child welfare philosophy.

In addition, there were comments regarding maintaining 'working relationships' with other key actors within the court workgroup which also affected the ability of counsel to function effectively in varied situations. Finally, the discussions of the formal or procedural rules versus the informal or organizational rules were reflected in comments regarding the influence of probation services in the youth court process in connection with the inability of defence counsel to control and mitigate the information submitted to the court. These factors also served as forms of role constraint.

These findings suggest that the organizational variables of the court affect the role of the defence lawyer. Explaining why lawyers experience role strain may be attributed more to the constraints imposed by the bureaucratic structure of the court than the effects of the personality types of lawyers.

While these findings were the result of methods that differed significantly from those applied in the study by Eisenstein & Jacob (1977), they provide general evidence in support of the works of Blumberg (1974), Anderson (1978), Ericson & Barener (1982) and Hackler (unpublished). They argued that in order to accurately understand an explain the function of the court and its key actors, an examination of the formal and informal rules, norms and expectations of the court organization which subsequently affect the interaction and the effective functioning of the members is required.

Eisenstein & Jacob (1977) disagreed with Blumberg's (1974) argument that the court constituted a bureaucratic hierarchy (Eisenstein & Jacob, 1977:9). They conceptualized the relationships among the court members as egalitarian in terms of power and authority. In describing the courtroom workgroup and the function of the actors, they stated that the workgroup members, "... operate in a common task environment, which provides common resources and common constraints on their actions" (Eisenstein & Jacob, 1977:10). However, there were findings from the interviews that disputed one of the presumptions which formulated the basis of the theoretical argument by these researchers.

In their discussion on authority patterns, they ackowledge that the formal authority of the court is personified by the judge. However they maintain that his or her authority is limited by the power of 'sponsoring organizations', 'budgetary constraints' and the power of appeal. They conclude therefore that, similar to the other actors, the judge's authority is constrained by the 'influence relationships' and subsequently, " ... the judges does not rule or govern; at most, he

manages, and he is often managed by others" (Eisenstein & Jacob, 1977:37).

This argument is questioned by the comments from lawyers who suggested that they experienced a lack of control over the direction and outcome of their cases in youth court. This was attributed, in part, to the procedural requirements, but was primarily perceived as the result of was appears to be the authority of the judge to impose his or her personal philosophy regarding youth justice. In consideration of some of the remarks with respect to the futility with which some lawyers percieve their ability to maintain control of their case, it would appear that, in youth court, perhaps the authority of the judges is not limited in the way the Eisenstein & Jacob (1977) suggest. However this may be a characteristic unique to the youth court.

In relation to authority patterns, the comments by lawyers concerning the influence of the probation officer in sentencing support the argument that there may not be 'common constraints' and equal access to 'common resources' in youth court. There was evidence from the interviews to suggest that probation officers have more power than other courtroom actors in controlling the outcome of youth court proceedings.

In the attempt to identify and describe the role of defence counsel in the youth justice system, this research has revealed the numerous and complex factors that affect the attitudes and perceptions of lawyers with respect to their role and role-related issues. The subjective nature of these factors was reflected in the degree of inconsistency in the findings which were exhibited throughout each stage of the data

analysis. As a result, it became increasingly evident that defence lawyers do not perceive of or adhere to a consistent role in their approach to youth justice or as one lawyer concluded succinctly, " The role of counsel is not a peg that fits in a hole."

5.2 DIRECTIONS FOR FUTURE RESEARCH

In view of the findings based on this research, further investigation regarding the role of counsel would require additional research focusing on the operation of the youth court as an organization. The discrepancy between how lawyers describe their perceptions toward their role compared to the responses toward role-related issues, suggests that perhaps there are disparities between what lawyers say they do compared to what function they actually perform. This conclusion is partially substantiated by prior research the found that while lawyers described themselves as advocates in an interview setting, they were observed performing a slightly different role in the courtroom depending on the nature of the appearance (Murphy, unpublished thesis).

The inability to differentiate role questions the appropriateness of quantifying attitudes or perceptions according to a legalistic or child welfare typology. This method of classification is seriously questioned if one considers whether there is a range of dispositions that would remedy a situation in terms of legal or child welfare perceptions. It could be argued that there is a semantic rather than real distinction between what constitutes a 'legalistic' disposition which addresses the specific misdeed or a disposition which addresses the best interests of the youth. Due to the limited number of child welfare options in terms

of dispositions, it is questionable whether the youth court is able to deal with welfare interests.

In addition, the discrepancies between the attitudinal and interview findings, with reference to the effects of the organizational variables on perceptions toward role, suggests that using non-directive interviewing techniques were more successful in obtaining information that revealed the effects of the court organization on the ability of counsel to perform their role.

Attempts to further examine and perhaps resolve these discrepancies would require additional in-depth interviews with the other key actors in order to understand the perceptions and attitudes of the other members of the workgroup toward each other's roles. This information would formulate the basis for a period of observation in order to analyze the process of interaction and effects of that process on the roles of the actors. This aspect would be particularly relevant considering the comments that were made by lawyers with reference to the effects of the influence of the social welfare agencies in the court process and on the role of counsel.

Comparing the interview and observational data provides a more effective method of examining the disparities between role perceptions, attitudes toward role-related issues and the behaviour of lawyers in court. In this way, the inconsistencies between what lawyers say they do compared to how they actually function in court can be analyzed. This type of analysis could be conducted on a national level in order to compare provincial courts in terms of orientation and the effects of the

organizational and interpersonal variables on the role of defence counsel.

The research suggested is similar to that conducted by Eisenstein & Jacob (1977) which was effective in identifying and describing the effect of the court organization on sentencing. In doing so, they revealed the patterns of authority and influence that were evident in the interaction of the court process. These relationships in conjunction with the goals and techniques of a particular court were directly related to the type of sentence received by the accused.

By applying similar methods in a comparative study, the role of counsel could be examined within the context of the court organization taking into account the effects of the organizational variables on the development of the role of counsel.

In the attempt to identify and describe the role of defence counsel in the youth justice system, this research has revealed the numerous and complex factors that affect the attitudes and perceptions of lawyers toward their role and role-related issues. Despite the apparent need of lawyers to perceive their role in terms of a specific type, this research has demonstrated that these self-definitions are affected and constrained by interpersonal and organizational variables. It is perhaps the combination of these factors which produces the nature of the role of defence counsel in the youth justice system.

Appendix A

PHILOSOPHY OF THE YOUNG OFFENDERS ACT

A. PHILOSOPHY OF THE YOUNG OFFENDERS ACT

The following statements pertain to some of the principles set forth in the Young Offenders Act. Please consider each statement and indicate the extent to which you agree or disagree with it by circling the appropriate number.

1. Young persons should **not** in all circumstances be held accountable for their illegal behavior in the **same manner as adults.**

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	015. ☐

2. Young persons should **not** in all circumstances suffer the same consequences for their illegal behavior as adults.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	016. ☐

3. Young persons who commit offences should be held responsible for their illegal behavior.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	017. ☐

4. Where the needs of the young person and the protection of society cannot be reconciled, the protection of society must take priority.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	018. ☐

5. Young persons who commit offences have special needs because of their state of dependency and level of maturity

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	019. ☐

6. Young persons alleged to have committed an offence should have the right to participate in the processes that lead to decisions that affect them

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	020	☐

7 Young persons should have special guarantees of their rights and freedoms

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	021.	☐

8. In their dealings with the juvenile justice system, young persons should have the right to the least possible interference with their freedom.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	022.	☐

9. Young persons should be removed from parental supervision only when all measures that would provide for continuing parental supervision are inappropriate.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	023.	☐

Appendix B

LEGAL REPRESENTATION IN THE JUVENILE COURT

In this section we are interested in learning about your views on the subject of legal representation for juveniles. Please base your answers on your own experiences and perceptions of the juvenile court(s) in your community.

1. Please indicate below how important you think it is for a juvenile to be represented by a lawyer at each of the following stages of the proceedings. Simply circle the appropriate number.

	Of Very Great Importance	Of Considerable Importance	Of Moderate Importance	Of Little Importance	Of No Importance		
a) Arrest	1	2	3	4	5	082.	☐
b) Diversion	1	2	3	4	5	083.	☐
c) Bail hearing	1	2	3	4	5	084.	☐
d) Transfer hearing	1	2	3	4	5	085.	☐
e) Arraignment hearing	1	2	3	4	5	85A.	☐
f) Trial	1	2	3	4	5	086.	☐
g) Adjudication hearing	1	2	3	4	5	087.	☐
h) Disposition hearing	1	2	3	4	5	088.	☐
i) Review of disposition hearing	1	2	3	4	5	089.	☐

2. Approximately what **percentage** of juveniles in your community receive legal representation at any stage of the proceedings? (Please circle your estimate.) 090. ☐☐☐

10 20 30 40 50 60 70 80 90 100

5 The following statements pertain to legal representation for the juvenile Please indicate the extent to which you agree or disagree with each statement by circling the appropriate number.

a) The juvenile should be provided with a defence counsel at the expense of the state, regardless of the juvenile's or his/her parents' ability to pay for legal services.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	095.	☐

b) A **privately retained** lawyer when acting as defence counsel in juvenile court represents the juvenile client as if the client were an adult appearing in adult court.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	096.	☐

c) A **legal aid** lawyer when acting as defence counsel in juvenile court represents the juvenile client as if the client were an adult appearing in adult court.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	097.	☐

d) In plea bargaining, the defence counsel should give precedence to negotiating in the long term interests rather than for the short term satisfaction of the juvenile client.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	098.	☐

3 How would you rate the quality of legal representation obtained by juveniles in your community? 091 ☐

Very Good	Good	Adequate	Poor	Very Poor
1	2	3	4	5

4. Please indicate below how often you think it is necessary for a juvenile to be represented by a lawyer in each of the following types of cases. Simply circle the appropriate number.

a) Cases involving serious charges against a juvenile which would be indictable offences if committed by an adult. 092. ☐

In all such cases	In most such cases	In half such cases	In few such cases	In no such cases
1	2	3	4	5

b) Cases in which the interests of the juvenile and parent are in conflict. 093. ☐

In all such cases	In most such cases	In half such cases	In few such cases	In no such cases
1	2	3	4	5

c) Cases in which secure custody is a possible disposition. 094. ☐

In all such cases	In most such cases	In half such cases	In few such cases	In no such cases
1	2	3	4	5

B. SUBSTANTIVE AND PROCEDURAL MEASURES UNDER THE YOUNG OFFENDERS ACT

The following statements pertain to certain measures set forth in the Young Offenders Act Please consider each statement and indicate the degree to which you approve or disapprove of the measure by circling the appropriate number.

ALTERNATIVES TO JUDICIAL PROCEEDINGS (DIVERSION)

1. Alternatives to judicial proceedings (diversion) may be used to deal with a young person alleged to have committed an offence **only if** the young person, after having been informed of the alternative measure, fully and freely consents to participate.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	024.	☐

2. Alternative measures (diversion) may be used to deal with a young person alleged to have committed an offence **only if** there is sufficient evidence to proceed with the prosecution of the young person.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	025.	☐

3. Alternative measures (diversion) may **not** be used to deal with a young person alleged to have committed an offence **if** the young person denies involvement in the commission of the offence.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	026.	☐

4. Alternative measures (diversion) may **not** be used to deal with a young person alleged to have committed an offence **if** the young person expresses the wish to have the charge dealt with by the court.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	027.	☐

5. The use of alternative measures (diversion) in respect of a young person alleged to have committed an offence does **not** preclude judicial proceedings concerning that offence.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	028.	☐

6. The judge **must dismiss** a charge for which the young person has **fully complied** with the alternative measures

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	029.	☐

7. The judge **may dismiss** a charge for which the young person has **partially complied** with the alternative measures.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	030.	☐

BAIL AND DETENTION

8. The youth court will deal with bail applications for young people using the rules and criteria that are set forth in the Criminal Code.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	031.	☐

9. No young person should be detained in a place with adult offenders.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	032.	☐

NOTICE TO APPEAR

10. When a young person is arrested and detained in custody, the parent or other appropriate adult must be notified as soon as possible of the arrest, the reason for the arrest, and the place of detention.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	033.	☐

11. When notice has not been given and where none of the persons entitled to receive notice accompanies the young person to court, a judge may adjourn proceedings and order that notice be given.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	034.	☐

12. A judge has the discretion to dispense with notice where compelling reasons exist

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	035	☐

13. The failure to give notice to the parents or to another appropriate adult renders the proceedings under the Young Offenders Act invalid, unless the court has dispensed with notice.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	036.	☐

14. The failure to give notice to the parent renders the proceedings under the Young Offenders Act invalid, unless a parent, on his/her own initiative, is in attendance.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	037.	☐

COUNSEL

15. A young person has the right both to retain and instruct counsel without delay at any stage of the proceedings.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	038.	☐

16. Upon arrest, a young person must be both informed by the police of the right to be represented by counsel and be given the opportunity to obtain counsel.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	039.	☐

17. A young person, not represented by counsel at a youth court proceeding, shall be advised of the right to be represented by counsel and shall be given the opportunity to obtain counsel.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	040.	☐

18 When it appears that the interests of a young person and those of the parents are in conflict, the youth court judge shall ensure that the young person is represented by a counsel who is independent of his/her parents

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	041	☐

19. When a young person is not represented by counsel at a youth court proceeding, the young person may, on his/her request, be assisted by an adult whom the court considers suitable.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	042.	☐

FINGERPRINTS/PHOTOGRAPHS

20. A young person may be fingerprinted and/or photographed for an indictable offence, whenever an adult could be subjected to this procedure.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	043.	☐

21. A young person cannot be fingerprinted for a summary conviction offence even with his/her consent.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	044.	☐

DISPOSITIONS

22. No disposition shall be given to a young offender that results in a punishment greater than the maximum punishment that could be given to an adult for the same offence.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	045.	☐

23. A young offender may discharge a fine imposed by a youth court by working in a program established for that purpose by the province.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	046.	☐

24. A youth court judge may make a disposition, with the consent of the young person and his/her parents, which requires that the young person be detained for treatment of a psychiatric, psychological or medical problem

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	047	☐

25. The youth court rather than officials of provincial juvenile services, has the responsibility for deciding whether the appropriate level of custody for a young offender will be open or secure.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	048.	☐

26. Officials of provincial juvenile services, rather than the youth court, will have the responsibility for deciding the appropriate place of custody for the young offender within the level of custody designated by the youth court.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	049.	☐

REVIEW OF DISPOSITION

27. A provincial board may be established to review a custodial disposition.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	050.	☐

28. The youth court retains a review jurisdiction over all dispositions until they are completed.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	051.	☐

29. A young person who has been in custody for a year must be brought to the youth court for a review of the disposition.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	052.	☐

30. A young offender may request that the youth court judge review any disposition not involving custody.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	053	☐

31 The parents of a young offender may request that the youth court judge review any disposition not involving custody

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	054	☐

32. Officials of provincial juvenile services may request that the youth court judge review any disposition not involving custody.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	055.	☐

33. The crown prosecutor may request that the youth court judge review any disposition not involving custody.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	056.	☐

APPEAL

34. The Young Offenders Act gives young persons rights of appeal similar to those of adults under the Criminal Code.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	057.	☐

PUBLIC HEARINGS

35. Generally youth court proceedings under the Young Offenders Act will be open to the public.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	058.	☐

36. Under specific circumstances, the presiding judge may exclude any or all members of the public from the proceedings.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	059.	☐

AVAILABILITY OF YOUTH COURT RECORDS

37. Normally all youth court records pertaining to youth court proceedings shall be made available upon request to the young person concerned.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	060	☐

38. Information contained in reports which form part of the youth court record may be withheld from a young person if the information would be detrimental to the treatment or recovery of the young person.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	061.	☐

39. Information contained in reports which form part of the youth court record may be withheld from the young person if the information would be likely to result in injury to a third party.

Strongly Approve	Approve	Mildly Approve	Mildly Disapprove	Disapprove	Strongly Disapprove		
1	2	3	4	5	6	062.	☐

APPENDIX D

NATURE OF DELINQUENCY

The following questions are about **the nature of juvenile delinquency**. We would like to have your opinion about the nature and extent of juvenile delinquency that occurs **in the community in which you work**.

1. Of all those juveniles who are **charged** by the police in your community: (Please circle your response.)

a) What **percent** are a genuine threat to society? 234. ☐☐☐

1 2 3 5 10 20 30 40 50 60 70 80 100

b) What **percent** are basically good kids, just growing up? 235. ☐☐☐

1 2 3 5 10 20 30 40 50 60 70 80 100

c) What **percent** have a severe mental or emotional problem? 236. ☐☐☐

1 2 3 5 10 20 30 40 50 60 70 80 100

d) What **percent** need to be institutionalized? 237. ☐☐☐

1 2 3 5 10 20 30 40 50 60 70 80 100

e) What **percent** are likely to benefit from probation? 238. ☐☐☐

1 2 3 5 10 20 30 40 50 60 70 80 100

In their attempts to assist young people, juvenile justice personnel may encounter a variety of problems. How much difficulty do each of the following factors pose for you in your work with young people? Please circle the appropriate number.

	Great Difficulty	Some Difficulty	Little Difficulty	No Difficulty	
a) The young person's lack of understanding of court procedures.	1	2	3	4	244. ☐
b) The young person's inability to recognize his/her own problems.	1	2	3	4	245. ☐
c) The young person's unwillingness to recognize his/her own problems.	1	2	3	4	246. ☐
d) The young person's unwillingness to accept help.	1	2	3	4	247. ☐
e) The young person's belief that the present juvenile justice system is unfair.	1	2	3	4	248. ☐

4 To what extent do you think each of the following factors contributes to delinquency? Please circle the appropriate number.

	To A Very Great Extent	To A Considerable Extent	To A Moderate Extent	To A Slight Extent	Not At All		
a) Poverty	1	2	3	4	5	249.	☐
b) Peer pressure	1	2	3	4	5	250.	☐
c) Lack of parental supervision	1	2	3	4	5	251.	☐
d) An unhappy family situation	1	2	3	4	5	252.	☐
e) Too much free time	1	2	3	4	5	253.	☐
f) Children's lack of respect for adult authority (parents, teachers, police, etc.)	1	2	3	4	5	254.	☐
g) Children's lack of interest in education	1	2	3	4	5	255.	☐
h) Lack of employment opportunities for young people	1	2	3	4	5	256.	☐
i) Stigmatization as a result of contact with the juvenile justice system	1	2	3	4	5	257.	☐
j) Other (Please specify:)	1	2	3	4	5	258.	☐
_____						259.	☐☐
k) Other (Please specify:)	1	2	3	4	5	260.	☐
_____						261.	☐☐

APPENDIX E

OBJECTIVES OF THE JUVENILE COURT

Below is a list of objectives which may be emphasized to varying degrees by the juvenile court

Please consider each objective and indicate how important you think it is in the actual functioning of the juvenile court(s) with which you are associated by putting a checkmark in the appropriate brackets ( ). Then indicate how important you think that the objective should be [ ].

	Of No Importance	Of Little Importance	Of Moderate Importance	Of Considerable Importance	Of Very Great Importance		
To rehabilitate juvenile offenders.							
	1	2	3	4	5		
1. IS NOW:	( )	( )	( )	( )	( )	001.	☐
2. SHOULD BE:	[ ]	[ ]	[ ]	[ ]	[ ]	002.	☐
To develop in young people a respect for the law.							
	1	2	3	4	5		
3. IS NOW:	( )	( )	( )	( )	( )	003.	☐
4. SHOULD BE:	[ ]	[ ]	[ ]	[ ]	[ ]	004.	☐
To process cases as quickly as possible.							
	1	2	3	4	5		
5. IS NOW:	( )	( )	( )	( )	( )	005.	☐
6. SHOULD BE:	[ ]	[ ]	[ ]	[ ]	[ ]	006.	☐
To see that juvenile offenders are appropriately punished.							
	1	2	3	4	5		
7. IS NOW:	( )	( )	( )	( )	( )	007.	☐
8. SHOULD BE:	[ ]	[ ]	[ ]	[ ]	[ ]	008.	☐
To deter the juvenile offender from committing future offences.							
	1	2	3	4	5		
9. IS NOW:	( )	( )	( )	( )	( )	009.	☐
10. SHOULD BE:	[ ]	[ ]	[ ]	[ ]	[ ]	010.	☐
To protect the community from dangerous youth.							
	1	2	3	4	5		
11. IS NOW:	( )	( )	( )	( )	( )	011.	☐
12. SHOULD BE:	[ ]	[ ]	[ ]	[ ]	[ ]	012.	☐
To uphold the general moral standards of the community.							
	1	2	3	4	5		
13 IS NOW:	( )	( )	( )	( )	( )	013.	☐
14. SHOULD BE:	[ ]	[ ]	[ ]	[ ]	[ ]	014.	☐

APPENDIX F

JUVENILE OFFENDERS AND THE HANDLING OF THEIR CASES

Below is a series of statements about juvenile offenders and the handling of their cases. We would like to know the extent to which you agree or disagree with each statement. Please indicate your opinion by circling the appropriate number.

1. Termination of an incident with a police warning is probably the best way of handling a minor offence.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	099.	☐

2. Warning by the police may be used for handling minor offences even when the juvenile has a previous record.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	100.	☐

3. Placing juveniles temporarily in secure custody prior to or after disposition is a good way to show them that the court means business.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	101.	☐

4. Where evidence does not clearly establish that the juvenile is guilty as charged, the case should be dismissed regardless of the juvenile's apparent need of assistance.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	102.	☐

5. Dispositions are based too heavily on the social and personal characteristics of the offender.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	103.	☐

6. In most instances plea bargaining does not detract from the fair handling of a juvenile's case.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	104.	☐

7 Juvenile courts have more work than they can handle to be effective.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	105	☐

8. The juvenile court should assume the role of a parent (parens patriae). emphasizing the needs of the juvenile.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	106.	☐

9. Placement in secure detention centres (e.g. training schools) is an effective way of deterring serious juvenile offenders from further acts of delinquency.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	107.	☐

10. The juvenile justice system operates too slowly.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	108.	☐

11. A juvenile's interests are best served when due process of law is strictly adhered to in the court.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	109.	☐

12. When the juvenile court is considering transferring a case to adult court, the rules of evidence during the transfer hearing should be relaxed.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree		
1	2	3	4	5	6	110.	☐

13 Dispositions which would remove juvenile offenders from their community should be used as infrequently as possible.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	111. ☐

14. The current Juvenile Delinquents Act is adequate for dealing with juvenile offenders.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	112. ☐

15. Police treat minority group youths in the same way as other juveniles.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	113. ☐

16. In general, participation of defence counsel in juvenile court interferes with the treatment and rehabilitative efforts of the court.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	114. ☐

17. Plea negotiation between crown and defence is necessary in the juvenile court in order to prevent the court from being taxed beyond its resources.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	115. ☐

18. The defence counsel in a juvenile case can best serve his/her client by working closely with the probation officer and the crown.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	116. ☐

APPENDIX G

DECISION MAKING

The following section is concerned with the decision making process in the juvenile court

1. In deciding whether or not a juvenile should be sentenced to **a secure juvenile facility**, what weight or importance should be given to **each** of the following factors? Please circle the appropriate number.

	No Importance	Little Importance	Moderate Importance	Great Importance		
a) The age of the juvenile juvenile	1	2	3	4	177	☐
b) The maturity of the juvenile	1	2	3	4	178.	☐
c) The conditions in which the juvenile lives, including the likely influences of other persons, especially his/her family	1	2	3	4	179.	☐
d) The general behavior pattern of the juvenile	1	2	3	4	180.	☐
e) The demeanor of the juvenile in court	1	2	3	4	181.	☐
f) The seriousness of the offence	1	2	3	4	182.	☐
g) The circumstances in which the offence was committed	1	2	3	4	183.	☐
h) Community knowledge of and attitudes toward the offence	1	2	3	4	184.	☐
i) Willingness of the juvenile to make amends (e.g. restitution)	1	2	3	4	185.	☐
j) The prior record of the juvenile	1	2	3	4	186.	☐
k) Prior use made by the juvenile of community based facilities	1	2	3	4	187	☐

	No Importance	Little Importance	Moderate Importance	Great Importance		
l) Predisposition report of the probation officer	1	2	3	4	188.	☐
m) The recommendation of Crown attorney/ agent.	1	2	3	4	189.	☐
n) Defence submissions	1	2	3	4	190.	☐
o) Recommendations of psychiatrist/ psychologist.	1	2	3	4	191.	☐
p) Wishes of juvenile's parents/guardian.	1	2	3	4	192.	☐
q) The statement of the juvenile in court	1	2	3	4	193.	☐
r) Wishes of victim	1	2	3	4	194.	☐
s) Protection of the community by the incapacitation of a known juvenile offender	1	2	3	4	195.	☐
t) Rehabilitation of the juvenile offender by providing a setting for a program of treatment	1	2	3	4	196.	☐
u) Deterrence of a specific juvenile offender	1	2	3	4	197.	☐
v) Deterrence of other potential juvenile offenders	1	2	3	4	198.	☐
w) Punishment	1	2	3	4	199.	☐

2 Please indicate whether you agree or disagree with the following statement
The juvenile court should be guided by formal sentencing criteria.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	204	☐
1	2	3	4	5	6		

3 The following are types of reports on which you may rely to some degree in your handling of juvenile cases. Please rate the **quality of the information** you usually obtain from each type of report by circling the appropriate number.

	Very Good Quality	Good Quality	Adequate	Poor Quality	Very Poor Quality		
a) Information in police reports/ court briefs	1	2	3	4	5	205.	☐
b) Information in probation officers' reports	1	2	3	4	5	206.	☐
c) Information in psychological/ psychiatric court clinic reports	1	2	3	4	5	207.	☐

Appendix H

DEFENCE COUNSEL INTERVIEW SCHEDULE

I Background

1. Sex: Female Male
2. What type(s) of law have you practised?
   a) Family
   b) Civil
   c) Criminal Juvenile and/or Adult
   d) Other:
3. How many years have you practised as defence counsel in youth court?
   a) Less than one year
   b) One to two years
   c) Two to four years
   d) More than four years
4. What percentage of your case load is comprised of juvenile matters? Percentage:
5. In what capacity do you usually act as defence counsel in youth court?
   a) Duty counsel
   b) Legal Aid
   c) Privately Retained Lawyer

II Perceptions of Role

6. How would you describe your function as defence counsel in youth court?

[Adherence to legalistic philosophy: e.g.

- expressing views of client
- protecting clients rights
- relevant facts/law of the case
- procedural fairness OR

Adherence to treatment philosophy: e.g.

- expressing views of parents/guardians
- addressing needs and best interests of client OR

Combination of both philosophies]

[Do you represent young offenders as if you were representing an adult?

- notion of client control
- educative role of lawyer
- similarities/difference in the environment

[In your perception, is the juvenile your client?]

[What factors do you consider in determining your role?]

7. Does the role of counsel vary?

Depending on: __ stage of proceedings
__ facts of case
__ the particular judge/Crown

8. Do you experience any ambiguity or confusion regarding the nature of your role?

PROBE: __ nature of proceedings
__ comptency of client

__ lack of experience

[Do you think that the role adopted by counsel may change over time through experience or maturation?]

[Role conflict regarding best interests vs. clients wishes

- notion of least interference]

9. Is there anything that you consider to be unique with respect to your role as counsel for young offenders?

10. Has your role, as counsel, been affected by the Y.O.A.?

11. In your opinion, has the Y.O.A. affected the roles of other key actors in the court? __ Judges

__ Crown Counsel

__ Probation Officers if yes: How have their roles been affected?

12. What do you consider to be the advantages/disadvantages with practising under the Y.O.A.? In comparison to: (if applicable)

__ J.D.A.

__ Criminal system

13. Ideally, how would your prefer your role to be defined and described?

14. What is the most difficult aspect of representing juvenile clients?

PROBE: __ client's capacity to instruct counsel

__ client's comptency

__ client's ability to express wishes

__ determining best interests or needs of client

Do you wish to make any comments?

Thank you for your cooperation.

BIBLIOGRAPHY

Ajzen, I., M. Fisbein., "Attitude-behaviour Relations: A Theoretical Analysis and Review of Empirical Research., Psychological Bulletin., Vol. 84, 1977, pp.888-918.

American Bar Association, Institute of Judicial Administration Juvenile Justice Standards., Standards Relating to Counsel for Private Parties. IJA-ABA Joint Commission., Cambridge, Mass.:Ballinger Publishing Co., 1980.

American Bar Association Project on Standards for Criminal Justice., Standards Relating to the Prosecution and Defense Function., (tenative draft)Advisory Committee on the Prosecution and Defense Functions.,1970.

Anderson, Richard., Representation in the Juvenile Court., London: Routledge & Kegan Paul, Ltd.,1978.

Archambault, O., "Young Offenders Act: Philosophy and Principles", Provincial Judges Journal, Vol. 7(2), 1983, p.107.

Atkinson, Maxwell J., Paul Drew., Order in Court: The Organization of Verbal Interaction in Judicial Settings., Atlantic Highlands, N.J: Humanities Press, Inc., 1979.

Bala, Nicholas & Raymond Corrado, Juvenile Justice in Canada: A Comparative Study, A report funded and prepared for The Research Division, Programs Branch, Ministry Secretariat, Solicitor General Canada, May, 1985.

Bala, Nicholas, Lilles Heino & Judge George Thomson., Canadian Children's Law: Cases, Notes & Materials., Toronto: Butterworth & Co.(Can.), Ltd., 1982.

Bala, Nicholas C.,"Constitutional Challenges Mark Demise of Juvenile Delinquents Act", Criminal Reports, 3rd Series, Vol.30, 1983, pp.245-259.

Bala, Nicholas & Kenneth L. Clarke, The Child and the Law., Toronto: McGraw-Hill Ryerson, Ltd., 1981.

Bala, Nicholas & Lilles Heino., Young Offenders Act, Annotated., Richard De Boo Publishers in cooperation with Solicitor General of Canada & Canadian Government Publishing Centre, Supply & Services Canada., 1984.

Bankowski, Zenon & Geoff Mungham (eds.), Essays in Law and Society., London: Routledge & Kegan Paul, Ltd.,1980.

Baxter, Ian., Mary a Eberts.,(eds.), The Child and the Courts., Toronto: The Carswell Co. Ltd., 1978.

Berger, Peter L., Invitation to Sociology: A Humanistic Perspective., New York: Anchor Books, Doubleday and Company, Inc., 1963.

Berger, Peter L., The Social Construction of Reality: A Treatise in the Sociology of Knowledge., New York: Anchor Books, Doubleday and Company, Inc., 1967.

Berkely, Heather, Chad Gaffield & W. Gordon West (eds.), Children's Rights: Legal and Educational Issues. Toronto: The Ontario Institute for Studies in Education. Syposium Series 9., 1978.

Besharov, Douglas J., Juvenile Justice Advocacy: Practice in a Unique Court., New York: Practising Law Institute.,1974.

Blumberg, Abraham S., Criminal Justice., New York: New Viewpoints, Franklin Watts, Inc., 1974. Originally published in 1967 by Quadrangle Books, Inc., Chicago.

Blumberg, Abraham S., "The Practice of Law As a Confidence Game", in Aubert, Vilhelm (ed.)., Sociology of Law, Selected Readings., Middlesex, England: Penguin Books, Ltd., Harmondsworth, 1969.

Blumer, Herbert., Symbolic Interactionism: Perspective and Method., Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1969.

Bogen, David., "Beating the Rap in the Juvenile Court", Juvenile & Family Courts Journal, 1980, Vol.31, pp.19-22.

Bortner, M.A., Inside a Juvenile Court: The tarnished Ideal of Individualized Justice., New York: New York University Press., 1984.

Brennan, W.C., S.K. Khinduka., "Role expectations of Social Workers and Lawyers in the Juvenile Court"., Crime and Delinquency, 1971, Vol.17, pp.191-201.

Campbell, Regina.M., "No-Frills Due Process - Who Needs Counsel?", Connecticut Law Review., 1982, Vol.14, pp.733-757.

Caputo, T.C., The Young Offenders Act: A Policy Assessment., Department of Sociology, University of Calgary, (unpublished manuscript), 1986.

Catton, Katherine., "Children in the Courts: A Selected Emprircal Review", Canadian Journal of Family Law., 1978, Vol.1.

Catton, Katherine & Patricia Erickson., The Juvenile's Perception of the Role of Defence Counsel in Juvenile Court: A Pilot Study., Toronto: Working Paper, Centre of Criminology, University of Toronto., 1973.

Catton, K. & J.S. Leon., "Legal Representation and the Proposed Young Persons in Conflict with the Law Act", Osgoode Hall Law Journal., 1977,Vol.15, p.107.

Chapman, P.B., "The Lawyer in Juvenile Court: A Gulliver Among Lilliputians", Western Ontario Law Review., 1971,Vol.10, p.88.

Cicourel, Aaron V., The Social Organization of Juvenile Justice., London: Heinemann Educational Books Ltd., 1968.

Clarke, Glen .W., "Procedural rights in the Juvenile Court: Incorporation or Due Process", Pepperdine Law Review., 1980,Vol.7, pp.865-896.

Clarke, John., "Whose Justice? The Politics of Juvenile Control", International Journal of Sociology of Law., 1985, Vol.13, pp.407-421.

Clarke, S., G. Koch., "Juvenile Court: Therapy or Crime Control: Do Lawyers Make a Difference?", Law and Society Review. 1980, Vol.14.

Corrado, Raymond R., Rod Kueneman, Marc LeBlanc, Rick Linden., Treatment of Justice: An Analysis of Attitudes Toward Juvenile Justice in Canada., unpublished manuscript.

Costello, Jan.C., "Ethical Issues in Representing Juvenile Clients: A Review of the IJA-ABA Standards on Representing Private Parties", New Mexico Law Review., 1980, Vol.10, pp.255-278.

Day, David C., "Counsel For Christopher: Representing An Infant's Best Interests in the Supreme Court of Canada", Report on Family Law., 1983, Vol.33.

Djao, A.W., Inequality and Social Policy, Toronto: Wiley, 1983.

Dickens, Bernard M., "Representing the Child in the Courts", The Child and The Courts., Baxter & Eberts (eds.), Toronto: The Carswell Co, Ltd.,1978.

Dootjes,I, Erickson,P, & R.G. Fox., "Defence Counsel in Juvenile Court: A Variety of Roles", Canadian Journal of Criminology and Corrections., 1972, Vol.14, p.132.

Duffee, D. & Siegel, L., " The Organization Man: Legal Counsel in the Juvenile Court", Criminal Law Bulletin., 1971, Vol.7, p.544.

Eisenstein, James & Herbert Jacob., Felony Justice: An Organizational Analysis of Criminal Courts., Toronto: Little, Brown & Co., Inc.,1977.

Eitzen, Tari., "A Child's Rights to Independent Legal Representation in a Custody Dispute: A Necessarily Broad Standard, The Child's Constitutional Rights, The role of the Attorney Whose Client is the Child", Family Law Quarterly, 1985-86, Vol.19, pp.53-57.

Emerson, Robert M., Judging Delinquents: Context and Process in Juvenile Court., Chicago: Aldine Publishing, Company, 1969.

Erickson, Patricia., "Legalistic and Traditional Role Expectations for Defence Counsel in Juvenile Court", Canadian Journal of Criminology and Corrections., 1975, Vol. 17, p.78.

Erickson, Patricia., "The Defence Lawyer's Role in Juvenile Court: An Empirical Investigation into Judges's and Social Worker's Points of View", University of Toronto Law Journal., 1974, Vol. 24 p.126.

Ericson, Richard V., Patricia M. Baranek., The Ordering of Justice: A Study of Accused Persons as Dependants in the Criminal Process., Toronto: University of Toronto Press, 1982.

Fabricant, Michael., Juveniles in the Family Courts., Toronto: D.C. Heath and Company, 1983.

Farrington, David P., Juvenile Justice in England and Canada., Solicitor General of Canada, October (draft), 1979.

Faust, Frederic L., Paul J. Brantingham (eds.), Juvenile Justice Philosophy: Reading, Cases and Comments., Second Edition. New York: West Publishing Co., 1979.

Ferster, E.Z., T.F. Courtless & E.N. Snethan., "The Juvenile Justice System: In Search of the Role of Counsel", Fordham Law Journal., 1971, Vol.39, p.375.

Fox, Richard G., "The Treatment of Juveniles in Canadian Juvenile Law", in Doob, A. and Greenspan E., (eds.)., Perspectives in Canadian Criminal Law., Toronto: Canadian Law Book, Inc., 1984.

Freemon, Susan Hussey., "Constitutional Law: Invocation and Waiver of Fifth Amendment Rights by Juvenile', University of Florida Law Review., 32, Winter, 1980, pp.356-368.

Gendon, J.K., "Separate Legal Representation for Children: Protecting the Rights and Interests of Minors in Judicial Proceedings", Harvard Civil Rights-Civil Liberties Law Review., 1976, Vol.11, p.565.

Gilbert, Arthur., "The Defence Lawyer's Complicated Role.(The Juvenile Court)., Los Angeles Law, 1981, Vol.12(4).

Goldstein, Joseph, Anna Freud & Albert J. Solnit., Before the Best Interests of the Child., New York: The Free Press/Division of MacMillan Publishing Co., Ltd., 1979.

Gould, Stephen Jay., The Mismeasure of Man., New York: W.W. Norton & Co. Inc., 1981.

Greenspan, E., "The Future Role of Defence Counsel" in Doob, A. and Greenspan, E., (eds.)., Perspectives in Canadian Criminal Law., Toronto: Canadian Law Book, Inc., 1984.

Grisso, Thomas., "Juvenile's Waiver of Rights: Legal and Psychological Competence., Children's Competance to Consent., Melton, Koocher & Saks (eds.), New York: Plenum Press, 1983.

Guggenheim, Martin., "The Right to be Represented but not Heard: Reflections on Legal Representation for Children", New York University Law Review., 1984, Vol.50(1), pp.76-155.

Hackler, James C., "Interpreting Meaning in Juvenile Court: The Use of Local Wisdom", Juvenile and Family Courts Journal, 1983-84, Vol.34, pp.71-82.

Hackler, J. "The Aftermath of the Young Offenders Act: The Failure to Recognize Subterranean Norms." A paper presented at the Canadian Sociology and Anthropology Association Conference. Winnipeg, June 1986.

Hackler, James C., "The Flow of Information in Juvenile Court: The Juvenile Court in Vienna", Canadian Journal of Criminology and Corrections, 1975, Vol.17, pp.57-68.

Hammersley, Martin & Paul Atkinson., Ethnography: Principle in Practice., New York: Tavistock Publishers Ltd., 1983.

Hawkins, Richard., Gary Tiedeman., The Creation of Deviance: Interpersonal and Organizational Determinants., Columbus, Ohio: Charles E. Merrill Publishing Co., 1975.

Hayeslip, D.W., "The Impact of Defence Attorney presence on Juvenile Court Dispositions", Juvenile and Family Court Journal, 1979, Vol.31(1), pp.9-15.

Houlgate, Laurence D., The Child and the State: A Normative Theory of Juvenile Rights., Baltimore, Maryland: The John Hopkins University Press, 1980.

Isaacs, Jacob., "The Lawyer in Juvenile Court", Criminal Law Quarterly., 1968, Vol.10, p.222.

Isaacs, Jacob., "The Role of the Lawyer in Representing Minors in the New Family Court", Buffalo Law Review., 1962, Vol. 12, p.501.

Jackson, J.A. (ed.), Role., Cambridge: Cambridge University Press, 1972.

Katz, Sanford. N.(eds.), The Youngest Minority: Lawyers in Defence of Children., American Bar Association, Section of Family Law.,1977.

Kay, R. & D. Segal., "The Role of the Attorney in Juvenile Court Proceedings: A Non-Polar Approach", Georgetown Law Journal., 1982-83, Vol.61, p.1401.

Keiter, L., "Privacy, Children & Their Parents: Reflections on and Beyond the Supreme Court's Approach', Minnesota Law Review., 1982, Vol.459, pp.467-487.

Kelner, Milton., "I Hear Voices: Necessity for Legal Representation for Children", Florida Bar Journal., 1984, Vol.58, p.314.

Kittel, Norman G., "Juvenile Justice Philosophy in Minnesota", Juvenile and Family Courts Journal., 1983-84, Vol.34, pp.93-102.

Komar, Roman., "The Criminal Domestication of the Juvenile Delinquents Act: The Lawyer's Role in Juvenile Court", Canadian Journal of Family Law., 1979, p.90.

Kueneman, R., R. Linden., V. Michaud., National Study on the Functioning of the Juvenile Court: Descriptive Site Report for Winnipeg Site., (October), unpublished, 1984.

Latimer, C.A., Winnipeg Youth Courts and the Young Offenders Act., Research, Planning and Evaluation, Attorney General.,(February)., 1986.

Law Society of Manitoba, Legal Studies and Legal Aid Manitoba., A Look at The Young Offenders Act., 1984.,

Law Society of Upper Canada., Professional Conduct Committee, Subcommittee Report on the Legal Representation of Children., Toronto, 1981.

Lemert, Edwin M., Social Action and Legal Change: Revolution Within The Juvenile Court Chicago: Aldine Publishing Co., 1970.

Leon, Jeffrey S., Legal Representation of Children in Selected Court Proceedings: The Capacity of Children to Retain Legal Counsel., Toronto: University of Toronto, Centre For Urban & Community Studies & the Child in the City Programme., 1978.

Leon, Jeffrey., "Rights, Fairness and Effectiveness in Canada and United States Client in the Criminal Process", Criminal Law Quarterly., 1977, Vol.20, p.29.

Leon, Jeffrey., "The Development of Canadian Juvenile Justice: A Background for Reform., Osgoode Hall Law Journal., 1977, Vol.15, p.71.

Maczko, Frank., "Some Problems with Acting For Children", Canadian Journal of Family Law., 1979, Vol.2, p.267.

Manning, Morris., "The Role of Defence Counsel: The Changing Face of Practice at the Criminal Bar", Sandra Oxner (ed.), Criminal Justice: Papers Prepared for Presentation at the Canadian Institute for the Administration of Justice Conference on Criminal Justice., Halifax, 1981. Toronto: Carswell Limited, 1982.

Manson, A.S., "Observations from an Ethical Perspective on Fitness, Insanity and Confidentiality', McGill Law Journal., 1982, Vol.27, p.196.

Martin, G.A., "The Role and Responsibiblity of the Defence Advocate", Criminal Law Quarterly., 1969-70, Vol.12, pp.376-393.

McMillian, T. & D.L. McMurtry., "The Role of Defense Lawyer in the Juvenile Court- Advocate, or Social Worker", St. Louis University Law Journal., 1970, Vol.14, p.561.

Ministry of the Attorney General of Ontario., Report of the Attorney General's Committee on the Representation of Children., 1978.

Mnookin, Robert H., Child, Family and State: Problems on Materials on Children and the Law., Toronto: Little, Brown & Co.(Can.) Ltd., 1978.

Mnookin, Robert H., David L. Chambers, Michael S. Wald, Stephen D. Sugarman, Franklin E. Zimring, Rayman L. Solomon., In the Interest of Children: Advocacy, Law Reform, and Public Policy., New York: W.H. Freeman and Company, 1985.

Morris, Allison, Henri Giller, Elizabeth Szed, Hugh Geach., Justice for Children., London: Mancmillan Press, Ltd., 1980.

Morris, Allison, Henri Giller (eds.), Providing Criminal Justice for Children., London: Edward Arnold Publishing Ltd., 1983.

Moyer, Sharon, Peter Carrington, Marion Gillies, Faigie Kopelman, Jane Palmer., A Description of the Toronto Juvenile Court, 1981., A report to The Research Division, Solicitor General of Canada, June 1984.

Moyer, Sharon & Peter Carrington., The Attitudes of Canadian Juvenile Justice Professionals Towards The Young Offenders Act, Programs Branch User Report, Solicitor General of Canada, 1985.

Murphy, Margaret Anne., A Study of the Roles of Duty Counsel and the Defence Lawyer Youth Court., Centre of Criminology, University of Toronto., 1985 (unpublished thesis)

Ontario Ministry of the Attorney General., Office of the Official Guardian, Child Representation Program., 1980 Workshop Presentation., The Official Guardian's Position Paper For Independent Representation of Children in C.W.A. Part II - Matters., 1981.

Ontario Ministry of Community and Social Services, Children's Social Division., The Role of The Lawyer in Legal Representation of Children. Toronto, 1981.

Packer, H., "Two Models of the Criminal Process", University of Pennsylvania Law Review, 1964, Vol.113, pp.1-69.

Parker, Howard., Maggie Casburn, David Turnbull., Receiving Juvenile Justice: Adolescents and State Care and Control., Oxford, England: Basil Blackwell Publishing ,Ltd., 1981.

Parsloe, Phyllida., Juvenile Justice in Britain and The United States: The Balance of Rights and Needs., Boston: Routledge and Kegan Paul, Ltd., 1978.

Piazza, Thomas., "The Analysis of Attitude Items"., American Journal of Sociology., 1983, Vol.83(3), pp.584-603.

Platt, Anthony, Howard Shecter and Phyllis Tiffany., "In Defense of Youth: A Case of the Public Defender in Juvenile Court"., Indiana Law Journal., 1968, Vol.43, pp.619-640.

Reichel, Philip L., "Getting to Know You: Decision-Making in an Institution for Juveniles", Juvenile and Family Court Journal., 1985, Vol.36(1), pp.5-15.

Reid, Susan., "The Juvenile Justice Revolution in Canada: The Creation and Development of New Legislation for Young Offenders", Canadian Criminology Forum., 1986, Vol.7(1), pp.1-14.

Reid, Susan A., Marge Reitsma-Street., "Assumptions and Implications of New Canadian Legislation for Young Offenders", Canadian Criminology Forum., 1984, Vol.7(1), pp.1-19.

Rieffel, Alaire Bretz., "Spotlight on Juvenile Justice: How to Defend Kids In Criminal Court", Criminal Justice Bulletin, A.B.A Section of Criminal Justice., 1984, Vol.11(3)(4).

Rummel, R.J., "Understanding Factor Analysis", Conflict Resolution., 1982,Vol.6(4), pp.444-479.

Sarri, R & Y. Hansfield (eds.), Brought to Justice? Juveniles, the Courts and the Law., University of Michigan, Ann Arbor., 1976.

Schwartz, Howard & Jerry Jacobs., Qualitative Sociology: A Method to the Madness., New York: The Free Press, 1979.

Solicitor General of Canada., The Attitudes of Canadian Juvenile Justice Professionals Towards The Young Offenders Act., Sharon Moyers & Peter J. Carrington., Users Branch Report.,1984.

SPSS-X User's Guide., 2nd Edition., Toronto: McGraw-Hill Book, Company, 1986.

Stapleton, W.Vaughan , Lee E. Teitalbaum., In Defense of Youth: A Study of the Role of Counsel in American Juvenile Courts., New York: Russell Sage Foundation., 1972.

Streib, V. "The Juvenile Justice System and Children's Law: Should Defense Lawyers be Replaced with Children's Lawyers?", Juvenile and Family Court Journal., 1980, Vol.31, p.53.

Stubbs, R. St. George., "The Role of The Lawyer in Juvenile Court", Manitoba Law Journal., 1974,Vol.6, p.65.

Sudnow, David., "Normal Crimes: Sociological Features of the Penal Code in a Public Defenders Office", Social Problems, 1965,Vol.12, pp.255-276.

Susmann, Alan., "Practitioner's Guide to Changes in Juvenile Law and Procedure", Criminal Law Bulletin., 1978, Vol.14, p.311.

Tabachnick, Barbara G., Linda S. Fidell., Using Multivariate Statistics., New York: Harper and Row, Publishers, 1983.

Thomson, George M. "Commentary on the Young Offenders Act", Provincial Judges Journal., 1983, Vol.7, pp.27-34.

Thomson, George M., "Eliminating Role Confusion in the Child's Lawyer: The Ontario Experience", Canadian Journal of Family Law., 1983, Vol.4(2), pp.125-151.

Thomson, George M., The Child As Person Before the Court: Legal Representation of Children - A Lawyers Training Program with an Interdisciplinary Perspective., Toronto: Justice For Children and Osgoode Hall Law School.,1981.

Treadwell, William M. "The Lawyer in Juvenile Court Dispositional Proceedings: Advocate, Social Worker, or Otherwise", Juvenile Court Judges Journal., 1965-67, Vol.16/17, pp.109-115.

Wallace, Ruth A., Alison Wolf., Contemporary Sociological Theory., Englewood Cliffs N.J.: Prentice-Hall , Inc., 1980.

West, Gordon W., Young Offenders and the State: A Canadian Perspective on Delinquency., Toronto: Butterworth & Co.(Can.) Ltd., 1984.

Williams, Linda S., "Juveniles: Right To Counsel at Detention Hearings",(Survey of Developments in West Virginia Law)., West Virginia Law Review., 1983, Vol.86, pp.618-621.

Wilson, Larry C., Juvenile Courts in Canada., Toronto: Carswell Co., Ltd., 1982.