CROWN CAUTIONS AND PRE-CHARGE SCREENING IN NOVA SCOTIA:

AN EVALUATION OF PILOT PROJECTS IN YOUTH JUSTICE

SUBMITTED TO

YOUTH JUSTICE POLICY

DEPARTMENT OF JUSTICE, CANADA

BY

DON CLAIRMONT

Atlantic Institute of Criminology
Dalhousie University

AUGUST 8, 2002

TABLE OF CONTENTS

INTRODUCTION

THE TASK AT HAND

In November 1999, after two years of preparatory work, the Department of Justice, Nova Scotia, launched its system-wide, restorative justice initiative. Restorative justice philosophies and strategies, in one form or another, were, over a three to four year time period, to apply to all offences, all offenders and victims, and all areas of the province (Nova Scotia, Department of Justice, 1998). On paper at least, the program (hereafter NSRJ) put the province in the forefront of provincial / state level governments with respect to adopting the restorative justice approach as a major feature of its justice system (Clairmont, 2000; Archibald, 2001). In this context it is not surprising that the Public Prosecution Service of Nova Scotia (hereafter PPS) would seize the opportunity to initiate pilot projects in two areas of alternative justice procedures designated in the federally-legislated, new Youth Criminal Justice Act (see below). The pilot projects began in the spring of 2001 and were completed in December 2001, with analyses and reports completed by the project coordinator (herself a crown prosecutor with the PPS) by the spring of 2002. This report is an evaluation of that initiative.

The purposes of these two related projects, crown caution and pre-charge screening, as stated in the interim report #2 of the project coordinator, and in the funding agreement between Youth Justice Policy of the Department of Justice Canada and the Public Prosecution Service of Nova Scotia, are "to provide youth with meaningful consequences for offending behaviour to ensure their long term rehabilitation, and to keep relatively minor behavioural problems out of the Criminal process". Nova Scotia has had over the past decade a high rate of incarceration of young offenders (Clairmont, 2000). The Nova Scotia Department of Justice is not

only attempting to reduce that incarceration rate but has committed itself to a specific undertaking which requires a substantial reduction in the occupancy level (i.e., number of beds utilized) at the provincial youth closed custody facility of Waterville within two/three years. This particular PPS youth justice project, as noted, has occurred in the context of an extensive, system-wide, restorative justice initiative (NSRJ) which has now been institutionalized as part of Court Services and has program status in the Government of Nova Scotia. The PPS project could well be seen as contributing considerably to the NSRJ program by focusing especially at the crown prosecutor level, the key to a restorative justice program which aspires to go well beyond the former alternative measures programming.

Data on youth crime in Nova Scotia and elsewhere (Clairmont, 2001) indicate that a small number of repeat offenders account for the bulk of offences, both serious and otherwise. Under these circumstances early effective intervention can be crucial. Moreover, projects such this, while not focused per se on serious offences, can contribute indirectly by reducing the court caseload and 'releasing' court officials (i.e., prosecutors, judges), probation officers and others to commit more of their resources to serious offences. As will be discussed below, justice initiatives such as this PPS project (especially crown cautioning) are not commonplace throughout Canada; accordingly, on a national level, there would be a basis for meaningful comparison to projects elsewhere and perhaps implications and lessons for transportability to other jurisdictions.

KEY ELEMENTS OF THESE PPS PILOT PROJECTS

Cautioning and pre-charge screening refer, respectively, to formal letters of caution being utilized (i.e., sent to the accused youth and parent/guardian) instead of prosecution by the crown, and to crown prosecutors collaborating with police prior to

either the crown-level diversion or court processing of an offence. In the Youth Criminal Justice Act (YCJA), that is to replace the YOA in 2003, there is allowance for formal cautioning at both the police and prosecutorial levels (i.e., sections 6, 7 and 8). As well, section 23.1 of the YCJA permits the Attorney General in each province to establish a pre-charge screening program wherein the latter's consent must be obtained before a young person is charged with an offence. The caution and pre-charge screening projects being evaluated here represent limited implementation of these prerogatives.

There were several key components of the PPS initiative. It was implemented at the crown level. It was directed solely at youths aged 12 to 15 years old in the metropolitan Halifax area who had committed primarily level one offences, to use NSRJ terminology, that is, directed at theft under, mischief, summary assault, and, more generally, non-violent, minor property offences. The projects were to run for a one-year period with the collection of information (i.e., case discussions) for the pre-charge screening project to be carried out between June and November. There were two changes made in the course of implementation, namely the charge of break and enter (section cc348 and a level 2 offence in the NSRJ protocol) was included in the later phases of study, and the pre-charge screening consultations were extended for an additional month; both changes were reportedly due to positive interactions and requests between the project coordinator and the police officers.

Conventionally, in the Halifax region, all such charges for youth between 12 and 15 years of age are laid, and their prosecution carried out, at one courthouse - Devonshire, located in north-central Halifax - with offenders coming there from the diverse urban and rural sectors of the metropolitan region. Two police services, the R.C.M.P. (four detachments) and the Halifax

Regional Police Service (H.R.P.S.), lay informations for the different parts of the region. The PPS project coordinator had an office at the Devonshire courthouse and communicated with police officers either in person there or via telephone.

It would appear that, overall, the objectives of the pilot project could be seen as four-fold, namely (a) basic exploratory work in cautioning and pre-charge screening which could provide the basis for feasible protocols for crown cautioning and police-crown collaboration in the charging/diversion process. It should be noted - and will be elaborated below - that a protocol for police cautions has been in place for two years under the NSRJ program, while pre-charge screening has been controversial in Nova Scotia since the famous Marshall Inquiry in 1986; (b) impacting directly on cautions given by police officers and also on referrals made to restorative justice agencies established under the NSRJ program; (c) facilitating the criminal justice system's capacity to deal with more serious offenders and offences by reducing the court caseload; and (d) contributing to the NSRJ program's objectives in Nova Scotia. Other objectives could be inferred from these general ones such as indirect positive effects on police formal cautioning and restorative justice referrals (e.g., increasing their frequency and their scope), and on the attitudes and behaviour of crown prosecutors with respect to these forms of alternative justice; in Nova Scotia, as often elsewhere (Hund, 1999; Archibald, 2001; Clairmont, 2001) crown prosecutors have been reluctant to refer cases to restorative justice without explicit positive police recommendation. An important aspect of the evaluation has been to examine more fully the objectives of the project as detailed in project documents and reports, and as perceived by the major participants or stakeholders (the project coordinator, police, crown prosecutors, and Nova Scotia Department of Justice officials and selected community advocates).

PROCESSES AND OUTCOMES

Process issues concern what was actually done in the project and whether the implementation was appropriate to the project's objectives. Implementation of the PPS project necessitated, at the field or operational level, consultations by the project coordinator with crown prosecutors, police officers handling youth cases, NSRJ officials, and the local community restorative justice agency. It involved developing, through these contacts and with superiors in the Department of Justice, some protocols (or basic recommendations) for crown cautioning which would detail the content and form of the caution letter, the circumstances under which cautions would be given and who would issue them. The pre-charge screening process could also be subject to protocols (e.g., how and when consultations are to occur and differences among police and crowns reconciled or recorded). Part of the implementation process also focused around the issues of access to information that the project coordinator had to have (and which crown prosecutors giving cautions in the future will need) in order to determine the appropriateness of the caution strategy in any particular case and to ensure full and meaningful participation by crown prosecutors in the pre-charge screening consultations.

Outcomes could be many and both direct and indirect. Development of feasible protocols - or perhaps, better, researched issues and suggestions advanced about protocols - concerning crown cautions and pre-charge screenings would be important. The number and types of pre-charge screening consultations engaged in, their results, and the implications that emerged from these consultations for future program evolution were central concerns for evaluation. The impact the pilot project may have had on extant police cautioning and police and crown restorative justice referrals was salient. The analyses of the extant cautioning system coupled with the identification of issues emerging from the

pre-charge screening consultations were expected to yield important outcomes impacting on the future viability of similar initiatives. Identifying, and developing an operational model, for the information system requisites for crown cautioning and pre-charge screening, was also considered a valuable possible outcome. All these impacts or outcomes could contribute significantly to the successful implementation of similar projects in other provinces. It was anticipated that a cost-benefit analysis might be undertaken but it soon became clear that the PPS project aimed more at establishing a system, an approach, than at testing the system over a large number of cases. There was, in the PPS pilot project, virtually no direct contact with young offenders and/or their parents/guardians. Still, the types of youth and types of offences diverted (whether by caution or pre-charge screening consultations) and those not diverted were examined and such comparisons evaluated in the context of youth crime patterns in Nova Scotia and the NSRJ program. Also, an important outcome would be the impact on the attitudes and behaviours of other important partners and stakeholders such as the police (especially the officers dealing with youth crime), prosecutors and Justice officials.

EVALUATION APPROACH

The assessment focused on the objectives, process issues and anticipated outcomes as described above. Always, the descriptions and analyses/assessments were done in context (in relation to both Nova Scotia and elsewhere in Canada) in order that obstacles, effective strategies and the generalizability of the PPS project's experiences can be appreciated. The evaluation had the character of a formative evaluation as well as that of a summary evaluation, that is, the evaluator worked closely with the pilot project's coordinator and the departmental sponsors, consulting on the research design and advancing recommendations for subsequent program evolution as appropriate. The methods included examining

records and reports, documenting salient activities, interviewing, one on one, key players using an interview guide (see appendices), analysing and comparing data concerning the targeted population and larger data context (e.g., NSRJ data), and locating the project itself vis-à-vis other similar projects in Canada and the NSRJ program. As anticipated, there was some interviewing of youth and parents in relation to the current cautioning system, although only a modest sample of twenty-five persons was employed.

EVALUATION COMPONENTS

The evaluation was directed at the following components but of course additional, unforeseen opportunities were pursued if they could contribute to a higher quality evaluation (e.g., examining patterns and trends in cautioning, looking at how police discretion impacts on cautioning). Also, the themes or question areas designated below are just that, themes to be fleshed out and added to as a result of interacting with the knowledgeable informants (see appendices for the interview guides utilized with the different role players). The components are

1) THE PROJECT: Interviews with the project coordinator and examination of reports, case records, and other relevant project materials. Here the emphasis was on what was done, what were the salient experiences and issues identified, what patterns were identified in the pre-charge screening, what needs and obstacles have been identified, what has emerged concerning the desired protocols, and what was - and could be in the future - the "value-added" of these initiatives in the context of existing programs (i.e., police cautioning, restorative justice referrals and intensive supervision). Required materials were available including the final PPS pilot project report prepared by the project coordinator in the Spring of 2002. There was frequent contact with the PPS project coordinator.

2) THE OTHER KEY PARTICIPANTS: Interviews were carried out on a 'one-on-one" basis with key collaborators in this pilot project (see appendices for a listing of interviewees). These included seven police officers (RCMP, HRPS), NSRJ agency staff, and four Youth Court Justice Personnel (prosecutors, Legal Aid lawyer). These interviews focused on experiences with and views about cautioning and pre-charge screening, how the pilot project impacted on these role players and how a more elaborate program might in the future (i.e., the value-added factor), and suggestions concerning protocols.

3) THE ORGANIZATIONAL CONTEXT: Here there were interviews with Justice personnel, including officials in the Public Prosecution Service, the supervisor of the pilot project being evaluated, the Youth Justice Strategy coordinator, and the NSRJ coordinator. These informants were interviewed on themes similar to the above but in addition they were asked concerning their expectations for the pilot project and their ideas about where such initiatives fit in the overall provincial approach to youth justice (e.g., the challenges, opportunities and so forth).

4) THE OTHER STAKEHOLDERS: Interviews were also carried out with other stakeholders such as crown prosecutors, youth NGO agency personnel and parents/guardians who would be affected were the cautioning and pre-charge screening continued and extended to 16 and 17 year old youths. Three prosecutors were interviewed (there was a designated prosecutor for youth aged 16 and 17 in the provincial court in Dartmouth but not in the Halifax court). These persons were interviewed on all the themes identified above and also on particular issues that might apply in the case of the older youths with whom they are involved. In addition, some modest amount of interviewing was carried out with youths and parents/guardians of youths who have been cautioned under the extant program, and with a few leaders of community-based agencies

serving youth in the metropolitan area. The former were asked about their experiences with cautioning while the latter were be asked more about their expectations as to the efficacy of these alternative approaches to youth crime.

5) DATA ANALYSES AND COMPARISON: There were two basic data sets for analyses, namely (a) the records of pre-charge screening cases provided by the pilot project coordinator (e.g., assessment of cases, major findings regarding why the cases were not initially targeted by police for alternative justice, recommendations); and (b) the cautions that have been rendered under the existing program (e.g., number, type of offence, offender characteristics, impact of the cautioning and so forth).

Apart from these major components, the restorative justice literature was perused for possible heuristic value in framing questions and carrying out analyses. It was of limited use. Several interviews were conducted with knowledgeable officials concerning crown-level initiatives in British Columbia, New Brunswick and Prince Edward Island.

THE CONTEXT

The PPS project has occurred in a particular context that must be appreciated in order to evaluate its objectives, processes and outcomes. The four key contextual considerations are the new Youth Criminal Justice Act (i.e., YCJA), the special Nova Scotian court structure and crown-police relations, the NSRJ program, and the Devonshire court features.

THE YCJA

The YCJA represents the culmination of a process which began with the replacement of the longstanding Juvenile Delinquency Act by the Young Offenders Act (YOA) introduced in the 1980s subsequent to the promulgation of the Charter of Rights and Freedom. The YOA, revised several times over the past 15 years, was deemed to be more congruent with the Charter. It represented an effort to achieve an appropriate balance between adult-level rights and responsibilities on the one hand, and, on the other, attention to justice alternatives emphasizing rehabilitative and non-incarceral sanctions for youth. The YCJA, too, seeks the elusive "right balance" between adult and youth rights and responsibilities (e.g., granting youth the right to parole) and punishment and rehabilitation (longer sentences for some offences and more use of restorative justice principles and conferencing). The YCJA clearly encourages the use of extra-judicial measures to deal with relatively minor offending behaviours, reserving judicial proceedings for the more serious offences. In that respect it is not unlike the YOA but it goes beyond the latter in many respects, encouraging police and crown systems of cautioning, calling for pre-charge consultation / screening between police and crowns to re-channel cases otherwise marked for court processing, and discounting any admission of responsibility on the part of the accused youth as a prerequisite for extra-judicial measures. At the same time, the YCJA indicates a concern that youth be provided

with meaningful (e.g., timely, effective) consequences for their offending behaviour. The PPS projects fit in well with YCJA principles and objectives in that they sought to explore where and how crown-level cautioning might contribute in Nova Scotia justice as an extra-judicial measure given the existence of the NSRJ program, to re-engage police and crowns more formally at the pre-charge level given the unique history of that collaborative relationship in Nova Scotia, and to assess the implications for information-access and protocols of PPS initiatives (e.g., what information do crown prosecutors need for the pre-charge screening or consultations?, what should a caution letter state to be meaningful?).

SPECIAL ASPECTS OF THE CJS IN NOVA SCOTIA

In Nova Scotia youth crime is dealt with by two different court systems. Where the young accused person is charged with an offence occurring when s/he was 12 to 15 years of age, the matter is dealt with by either a Family Court judge or Superior Court judge (Family Division). Where the young person was 16 or 17 years of age at the time of the offence, the matter is processed through the Youth Court of the regular provincial criminal courts. In the former instance, the young accused is distanced from the physical building where regular adult criminal matters are processed, and his or her case is considered in a milieu deemed to be more accommodating to the special rehabilitative needs of the very young. As noted above, the PPS projects were focused on the 12 to 15 year old youths so they were implemented in a family court context, presumably a highly supportive milieu for extra-judicial measures and one where one could expect keen sensitivity among all CJS role players to the possible trauma for youths of being charged and appearing in court.

In terms of pre-charge screening, it is relevant to note that a number of specific events have shaped the norms and actual

behaviours of the crown prosecutors - police officer relationship in Nova Scotia over the past fifteen years. Perhaps the three most important have been the Marshall Inquiry, the prosecution of ex-premier Gerald Regan, and the prosecution of a Halifax doctor for allegedly hastening the death of a terminally ill patient. In all three events a major issue was the determination of the appropriate roles to be taken by police and crown in their interaction. The Marshall Inquiry established that police should lay charges on the basis of their best judgment without interference from crown prosecutors who of course may decide not to proceed further on the charge. Both parties, the police and the Public Prosecution Service (itself a by-product of the Marshall Inquiry and unique among Canadian provinces in its statutorily based independence) were expected to exercise their discretionary authorities independently of one another. While this recommendation, and subsequent provincial policy did not preclude police consultations with crown prosecutors prior to making their own decision, it certainly put a damper on such activity.

The two other events occurred subsequent to the Marshall Inquiry and have reinforced the sensitivity of police and prosecutors to their independence and to what their appropriate relationship "should" be, even while pre-charge consultations have reportedly re-assumed their pre-Marshall level of frequency. Under these circumstances, it is easy to appreciate that a crown cautioning project might raise hackles when the police already have their own cautioning program. More importantly, though, would be the possible controversy concerning the pre-charge screening project. The language of the YCJA (section 23.1) specifically states that a pre-charge screening program could be established wherein the consent of Attorney General (in Nova Scotia, presumably the PPS) "must be obtained before a young person is charged with an offence", something which would appear to be counter to the Nova Scotian norms about the distinct roles of

police and prosecutors. Under such circumstances, one would expect significant consultation between the CJS parties, at high levels in the respective organizations, to have preceded implementation of the screening project and indeed these did take place. How the pre-charge screening actually worked out and what impact the project might have on the future evolution of the distinctive Nova Scotian police-prosecutor relationship is clearly an interesting aspect of the PPS project and, of course, will be discussed below. It may be noted that in some Canadian provinces (Quebec, British Columbia and New Brunswick), pre-charge screening is already mandatory, while several other provinces (Prince Edward Island, Saskatchewan, Manitoba), stimulated by the YCJA, are apparently considering this possibility and/or have pilot projects currently underway (Quigley, 2002; evaluation interviews, 2002).

THE NOVA SCOTIA RESTORATIVE JUSTICE PROGRAM

The development of the NSRJ program has been discussed above. It is one of three overlapping restorative justice programs in Nova Scotia, the others being the RCMP's community justice forums which deal with adults as well as youth, and the Mi'kmaq Young Offender Project which serves native persons and exercises some independence in determining its mandate and protocol. At present, the NSRJ program is province-wide and exclusively dealing with young offenders. In the NSRJ protocol, the actual restorative justice services are carried out by community-based, non-profit, agencies which are funded by the provincial government. The agencies have a combination of paid staff and volunteers, who have been trained in restorative justice philosophy and styles (e.g., conferencing). The referrals to these agencies can come from any of the four entry points of the CJS, namely the police, the PPS, the judiciary, and correctional officials. Different types of offences may be eligible for referral at different entry points but, theoretically at least, all offences save spousal/partner violence and sexual assault, could be referred. In practice, not

surprisingly, the bulk of the referrals have come from the police level and involved relatively minor offences (Clairmont, 2001). The NSRJ program has become institutionalized (i.e., it is now a program not a project) and has been slowly evolving in the sense of handling more serious offences and youth offenders and receiving slightly more referrals from beyond the police entry point. A crucial concern has been to secure greater collaboration at the crown level since it is primarily through crown-level referrals that the NSRJ can transcend its current "alternative measures" characterization. Clearly, then, the PPS projects have been implemented in a situation where there is much related activity and where it could be expected that these projects would enhance the restorative justice programming already in place and perhaps provide a needed stimulant by encouraging more crown level collaboration.

An integral part of the NSRJ program has been the province-wide system of police cautioning for young offenders who take responsibility for the offence in question. The police cautions can only be issued for the most minor (i.e., level one) offences but these offences have made up a significant part of the court caseload and, in the past, represented almost the entire caseload of the community agencies providing alternative measures services. Police cautioning not only reduces the workload of the courts but also facilitates the capacity of community restorative justice agencies to focus on more serious offences and offenders than they dealt with in their earlier alternative measures phase. There will be a very detailed discussion of police cautioning in Nova Scotia below but suffice it here to say that it is subject to considerable "between and within" police service variation and, overall, has experienced quite modest growth in terms of quantity and quality of offences or offenders dealt with.

Beyond Nova Scotia, there does not appear any province in Canada which has systems of formal cautioning at both the police and the crown levels. British Columbia and Alberta have crown cautioning, while Saskatchewan (at crown level) and New Brunswick (Saint John police) have informal systems (Quigley, 2002). Several provinces (Ontario, Manitoba), have, like Nova Scotia, recently mounted pilot project to examine the costs and benefits of crown cautions. In assessing the Nova Scotian initiative, there are a number of key questions that must be answered, such as, what is the value-added of having crown cautioning when a viable police caution system is already in place?; what are the special issues raised by having crown cautioning?; what would the impact of crown cautioning be for police, court workload, and the restorative justice agencies? The PPS projects, crown cautioning and pre-charge screening, were not apparently driven by grass-root demand among crown prosecutors or police nor by any especial critique of the NSRJ program; consequently, there have been no explicit hypotheses nor specific demonstration effects advanced at the outset (and explicit in project materials).

THE DEVONSHIRE COURT SYSTEM

It was noted above that these PPS projects pertain to cases involving youths between 12 and 15 years of age, cases normally processed in Nova Scotia through a family court milieu. The fact that this milieu is the Devonshire court system is also significant. This court exclusively serves all metropolitan Halifax young offenders aged 12 to 15. It has the benefit of a full-time, senior crown prosecutor dedicated solely to the prosecution of such youth matters. It also has the reputation of featuring close collaboration among the police, crown prosecutors and legal aid lawyers who work there. Crown prosecutors at the Devonshire court have accounted for at least two-thirds of all the crown referrals to the province's restorative agencies over the past two years, while exercising jurisdiction over less than 40%

of the eligible youths in Nova Scotia. The fact that the PPS projects were limited to Devonshire could have both benefits and disadvantages. The benefits relate to the very positive environment for introducing crown cautions and pre-charge screening; clearly, there would be much to build upon and presumably less resistance. The disadvantages relate to the fact that the Devonshire court system was not representative of other areas of Nova Scotia and reportedly was functioning quite well to begin with.

PROCESSING YOUTH CASES IN NOVA SCOTIA

The PPS projects, as noted, were implemented in a specific CJS context in Nova Scotia. This section describes and analyses how youth offences have been processed and locates cautioning and its impact to date. First, there is a discussion of general court patterns for young accused persons, drawn from data available through the Nova Scotian court data system called Justice Oriented Information System (JOIS). Then, there is an analysis of how the Nova Scotia Restorative Justice program has affected the processing of youth cases, drawn from the Restorative Justice Information System (RJIS). Finally, there is a focus on the cautioning patterns themselves, data being drawn from the RJIS and from special data files prepared for this project in collaboration with the Halifax Regional Municipal Police Service.

YOUTH CASES PROCESSED IN COURT

Tables 1, 2 and 3 present an overall view of court-processed, youth cases from November 1, 1999 - the beginning of the Nova Scotia restorative Justice initiative - until the end of 2001. Prior to this period, youth cases were either processed in court or, if minor and involving first time offenders, perhaps dealt with through the extensive, government-funded alternatives measures program delivered by non-profit community agencies. Table 1 describes the court-processed charges that have occurred over the restorative justice era. The youth court load declined by roughly 6% between 2000 and 2001, from processing 8,750 charges to 8,205 charges. It will be seen below that this decline was largely due to fewer minor offences being processed in court because of the NSRJ program and its accompanying police caution program.

It is clear from table 2 that males accounted for most of the charges (i.e. 84%) and that 16 to 17 year old youths were the chief offending age grouping (i.e., accounting for 58% of court-

processed charges). Approximately 37% of the charges were minor or level one offences as defined by the Nova Scotian protocol. These offences, technically at least, would have been eligible for either cautioning or referral to the restorative justice agencies. Level two offences, such as break and enter, constituted almost 60% of all charges processed in court. These offences, theoretically, could have been referred to restorative justice, either pre-charge or post-charge. Levels three and four offences - offences, such as robbery, murder, sexual offences and impaired driving, that could only be referred to the restorative justice agencies post-conviction - accounted for 4% of the charges. It is also clear from table 1 that a significant minority of charges did not result in conviction; only 54% led to convictions but roughly 10% of the total charges remained to be processed. Of course, charges could be withdrawn by the crown in the course of prosecution (e.g., "plea bargaining").

A number of cross-tabulations were carried out to examine the relationships among age, gender, offence seriousness and conviction/disposition. Table 2 depicts those relationships. While males were much more likely to face charges, there was surprisingly little difference between males and females in terms of the proportion involved in minor or ambiguous or major offences, although the direction of difference was for males being more involved in more serious offences. Age was significantly related to offence seriousness; the percent involved in minor offences declined from 46% among the 12 and 13 year old to 32% among the oldest youths. Comparing convictions with acquittals / dismissals / withdrawals, age of youth was positively related to conviction (i.e., the highest rate of conviction was among the 16 and 17 year old). There was no significant gender effect associated with convictions though males did have a slightly higher rate. Offence severity, whether measured in terms of levels as defined by the Nova Scotia protocol or by conventional

criteria, was inversely related to conviction; the less serious charges were more likely to result in conviction. As for sentence disposition, major offences were more likely to have received closed custody sentences and/or probation, while charges of minor and ambiguous seriousness were almost exclusively likely - and equally likely too - to have received fines and court costs. Overall, then, older youths and male youths were more likely to have committed serious offences and to have been convicted. Serious offences generated more severe sanctions but had a lower conviction rate. Analyses of "pending" and "other" dispositions revealed little variation by age or gender but significant differences by offence severity; major offences were much more likely than the minor or ambiguous to be 'other' (106 to 19 and 31) or 'pending' (685 to 534 and 474).

The entire analysis above was replicated for cases (i.e., all charges laid against a specific person on the same date constituted one case). Essentially, the same basic results were obtained as for charges, save that on the conviction cross-tabulations, the percent convicted increased by a "constant" 10% in each category; for example, the conviction percentage among 16 and 17 year old went from 64% to 74%, the conviction percentage for minor offences went from 63% to 73%, the male percent convicted went from 62% to 72% and so forth. Specific sentence sanctions also only differed by a constant factor in the case analyses. The difference in conviction percentages between charges and cases is presumably due to a number of charges laid being subsequently withdrawn or dismissed in the course of a youth being convicted on other charges related to the same incident.

Table 3 provides information on patterns of recidivism among youth whose cases were processed through the courts. It yields only a limited snapshot since the time frame is but twenty-six months and there are no supplementary data about any previous

youth criminal record or subsequent adult court involvement. The table indicates that during the two year period roughly 60% of the youths appeared in court as an accused on only one occasion but almost one quarter faced charges on three or more occasions (i.e., recidivated twice or more). The several cross-tabulations point to significant patterns by seriousness of first offence and by gender. Males and those youths whose first offence in this time frame was major (as defined throughout this report) were more likely to recidivate. Age at first offence was also significantly related to recidivism but it is difficult to interpret this effect since, by definition, the different age groups were differently exposed to youth court (e.g., seventeen year old youths subsequently recidivating might have been processed in adult court since they might have turned eighteen by that time).

In summary, analyses of court-processed youth charges and cases indicated that the NSRJ program and police cautioning did have a modest effect in reducing the court load further than under alternative measures. Still, more than a third of all charges and cases dealt with in court were minor or level one offences. Youth aged 16 or 17 - not dealt with in the PPS projects - were the chief young offenders in terms of number of offences and serious offences. The minor level offences handled in court typically result in probation, fines or court costs, singly or in combination. Even in the limited time frame of the data set and the absence of data on criminal record information prior to November 1999 or in adult court for those who reached 18 years of age, the court data indicated there was significant recidivism.

TABLE 1

COURT–PROCESSED CHARGES

November 01, 1999 to December 31, 2001 - By Selected Features, JOIS

		Number	Percent
By Year:	**November – December, 1999**	1,380	7%
	2000	8,750	48
	2001	8,205	45
By Gender:	Female:	2,838	16%
	Male:	15,472	84
By Age:	12 – 13 year olds	1,547	8%
	14 – 15 year olds	6,268	34
	16 – 17 year olds	10,510	58
By Offence Type:			
	Theft / Possession Under	2,686	15%
	Simple Assault	935	5
	Mischief / Damage	1,089	6
	Public Order	223	1
	Provincial Statutes (Including LCA & Municipal)	1,912	10
	Subtotal of Offence Types Above:	**6,845**	**37%**
	Break & Enter	1,462	8
	Fraud	298	2
	Theft / Possession Over	529	3
	Weapons	255	1
	Drug Possession	316	2
	Drug Trafficking	233	1
	Major Assault	494	3
	Admin. Justice	1,590	9
	Joy Riding	266	2
	Other Federal (Mostly YOA)	2,928	16
	Motor Vehicle Act	1,629	9
	Other Criminal Code	835	5
	Subtotal of Offence Types Above:	**17,680**	**96%**
	Robbery	241	1
	Sexual Offences	292	2
	Impaired Driving	93	1
	Kidnapping	21	
	Attempted Murder	2	
	Unknown	6	
	Total of All Offence Types Above:	**18,335**	**100%**
By Disposition:	Conviction	9,910	54%
	Acquitted / Dismissed	1,987	11
	Withdrawn	4,291	23
	Pending	1,983	11
	Other	164	1

TABLE 2

COURT–PROCESSED CHARGES

November 01, 1999 to December 31, 2001 - By Selected Cross-Tabulations, JOIS*

DISPOSITION**	AGE					
	12 – 13 yrs		14 – 15 yrs		16 – 17 yrs	
	#	%	#	%	#	%
Conviction	770	56%	3,222	58%	5,909	64%
Acquittal / Dismissal/Withdrawal	602	44%	2,338	42%	3,325	36%

DISPOSITION**	GENDER			
	Female		Male	
	#	%	#	%
Conviction	1,416	60%	8,485	62%
Acquittal / Dismissal/Withdrawal	959	40%	5,306	38%

DISPOSITION**	YEAR			
	2000		2001	
	#	%	#	%
Conviction	4,853	60%	3,764	64%
Acquittal / Dismissal/Withdrawal	3,195	40%	2,110	36%

DISPOSITION**	SERIOUSNESS OF OFFENCE A***					
	Minor		Ambiguous		Major	
	#	%	#	%	#	%
Conviction	3,803	63%	3,663	68%	2,245	52%
Acquittal / Dismissal/Withdrawal	2,254	37%	1,710	32%	2,286	48%

DISPOSITION**	SERIOUSNESS OF OFFENCE B***			
	Levels 1 and 2		Levels 3 and 4	
	#	%	#	%
Conviction	9,655	62%	246	44%
Acquittal / Dismissal / Withdrawal	5,950	38%	315	56%

* The X_2 values for age and seriousness of offence were significant at <.000

** 'Pending' and 'Other' dispositions were not considered in these cross-tabulations.

*** See text for description of these labels.

COURT–PROCESSED CHARGES
November 01, 1999 to December 31, 2001
By Selected Cross-Tabulations, JOIS
(…continued)

SENTENCE SANCTION*	SERIOUSNESS OF OFFENCE					
	Minor		Ambiguous		Major	
	#	%	#	%	#	%
Closed Security	24	0.6%	38	1.0%	77	3.2%
Probation	1755	46.1%	1,376	37.6%	1,689	69.6%
Fine	1383	36.4%	1,422	38.8%	53	2.2%
Court Costs	1164	30.6%	1,259	34.4%	10	0.4%

*** Other sentence sanctions were excluded. All sanctions by offence type effects had X_2 values significant at <.000**

SERIOUSNESS OF OFFENCE	GENDER			
	Female		Male	
	#	%	#	%
Minor	963	37.7%	4,713	33.6%
Ambiguous	883	34.6%	4,995	35.6%
Major	708	27.7%	4,308	30.7%

SERIOUSNESS OF OFFENCE	AGE					
	12 – 13 Yrs		14 – 15 Yrs		16 – 17 Yrs	
	#	%	#	%	#	%
Minor	631	45.7%	1,980	35.5%	3,065	31.8%
Ambiguous	338	24.5%	1,773	31.8%	3,767	39.2%
Major	411	29.8%	1,821	32.7%	2,784	29.0%

TABLE 3

PATTERNS OF YOUTH RECIDIVISM, COURT-PROCESSED CASES

November 01, 1999 to December 31, 2001, JOIS

AMOUNT OF RECIDIVISM		
LEVEL:	**#**	**%**
No Recidivism	2941	61
Once Re-offended	841	17
Twice Re-offended	347	7
Three Re-offences	204	4
Four or More Re-offences	513	11
Total:	**4846**	**100 %**

FIRST OFFENCE SERIOUSNESS						
	Minor		**Ambiguous**		**Major**	
LEVEL:	**#**	**%**	**#**	**%**	**#**	**%**
No Recidivism	1326	60	1078	66	525	53
Single Repeat	380	17	264	16	192	19
Multiple Repeat	95	23	286	18	282	28
Total:	**2201**	**100 %**	**1628**	**100 %**	**999**	**100 %**

GENDER *				
	Female		**Male**	
	#	**%**	**#**	**%**
No Recidivism	736	69	2195	58
Single Repeat	175	16	662	18
Multiple Repeat	155	15	908	24
Total:	**1066**	**100 %**	**3765**	**100 %**

AGE OF FIRST OFFENCE						
	12 – 13 yrs		**14 – 15 yrs**		**16 – 17 yrs**	
	#	**%**	**#**	**%**	**#**	**%**
No Recidivism	197	47	647	50	2087	67
Single Repeat	70	16	210	16	557	18
Multiple Repeat	155	37	437	34	471	15
Total:	**412**	**100 %**	**1294**	**100 %**	**3115**	**100 %**

* These cross-tabs yielded X_2 values significant at <.000

Tables 4 to 7 provide an overview of cautions and restorative justice referrals in comparison with court processed youth offences. The data are for the years 2000 and 2001 and in each year the tables provide information on charges and cases (again, all charges laid against the same offender on the same date are considered to constitute a single case). It will be noted that in all these tables there are two columns devoted to charges/cases directed to court, one from the NSRJ checklist data and the other from the JOIS system referred to above. For our purposes here the court comparison is represented by the JOIS column and no further reference will be made to the column, "Charges Laid: RJ Checklist" (this column is a measure of police compliance in filling out and sending in checklist forms even when they are proceeding with a matter by laying a charge). The columns of interest in the tables, then, are the four central options for handling youth offences, namely police caution, police referral, crown and other post-charge referrals, and court-processed cases. Data for the first three option come from the RJIS while, for the latter, from the JOIS.

Examination of these tables, for charges, indicates that cautions and referrals (total = 1906) dealt with about 18% of all youth charges in 2000 (cautions, police and other referrals and JOIS which totalled 10656) and 21% of the 10339 total in 2001, a modest gain, even if one discounts the roughly 1% for the impact of the other regions becoming part of the NSRJ program in the fall of 2001. Clearly, police cautions and referrals went up 10% and 20% respectively (crown and other referrals remained the same) as JOIS recorded charges declined by about 6% from 8750 to 8205. In terms of youth cases, there were comparable findings, with cautions and referrals accounting for roughly 21% of total cases (6354) in 2000 and 25% of the total 6062 in 2001 - the same patterns hold as for charges, namely that police cautions and

referrals were up 10% and 20% respectively, while JOIS cases were down 10% (again assuming a 1% discount from the 25% for new agencies cases). There were no significant gains in referrals to restorative justice beyond the police level from 2000 to 2001.

In all four tables the subtotal row refers to what has been called level one offences, offences which would be eligible, under the NSRJ protocol, for cautioning, as well as for referral to the restorative justice agencies. These are the types of offences that were eligible for diversion in the alternative measures era and thus make up what could be referred to as the "AM template". They include simple or summary assault, theft and possession under, public order offences, mischief and provincial statutes (including Liquor Control Act and Municipal by-laws). The subtotals indicate that the vast majority (80% plus) of the police cautions and referrals were of the "AM template" type. There was little variation by year in the proportion of police cautions or restorative justice that were level one or the "AM template". Still, as expected, police referrals were modestly less likely than cautions to be limited to level one offences (roughly 6% less likely). Crown and other referrals were, however, much less likely to be such level one offences, and, by 2001, only roughly 55% fit that category. This fact underlines the importance of the NSRJ program's encouragement of crown-level collaboration if it is to achieve much value-added vis-à-vis the earlier alternative measures program. The tables also show that level one or AM template charges and cases constitute a significant portion of court activity but, at least with respect to cases, there was a decline over the two year period, from 42% in 2000 to 40% in 2001.

The tables indicate that there has been some change in the type of offences that receive cautions or referrals (e.g., fewer shoplifting charges and cases in 2001) which reflect the diversity of police discretion. There are few offences that have not, at

some time, been cautioned or referred by some police officer. It is clear, also, that there were some charges and cases which were cautioned that appear to be outside the NSRJ protocol. The large majority of these "outlyers" were cautions rendered by RCMP officers, reflecting perhaps the different mandate that that police service may have had (recall that there are several overlapping restorative justice programs in Nova Scotia). But even the NSRJ protocol allows for some discretion; the sexual assault cautioned in 2001 is a good case in point since it involved a 12 or 13 year old dropping his trousers and inviting a girl to touch him - there was apparently no physical contact.

Overall, then, tables 4 to 7 indicate that cautions and restorative justice referrals have gained a modestly larger share of the total youth charges or cases since 1999. Nova Scotia courts are dealing with modestly fewer level one or minor youth offences. Both police cautions and police referrals increased significantly in 2001 while crown and other referrals (judicial and corrections levels) remained essentially at their 2000 numbers. Police cautions and police referrals essentially focus on level one or minor ("AM template") offences and there has been little change in that regard over the first 25 months of the NSRJ program. Crown and higher level referrals have moved decidedly in the direction of involving more serious youth charges but that benefit, from the NSRJ perspective, has been somewhat mitigated by the lack of growth in the number of "crown and other" referrals. The tables also point to the diversity of cautioning and restorative justice referring; there are clearly some police services and some police officers more likely than others to exercise the discretion to caution or refer a youth crime.

TABLE 4

PROFILE OF YOUTH CHARGES BY CJS OPTION, 2000, NOVA SCOTIA

(Number and Percentages)

Offences	Police Caution		Police Referral		Crown / Other Referral		Charges Laid: RJ Checklist		Court Processed: JOIS	
	#	%	#	%	#	%	#	%	#	%
Simple Assault	26	4.6	65	7.1	44	10.4	137	8.5	448	5.1
Theft Under $5,000	235	41.7	349	38.0	96	22.7	276	17.2	915	10.5
Possession Under $5,000	162	28.7	171	18.6	69	16.3	200	12.5	427	4.9
Public Order	15	2.7	4	0.4	11	2.6	25	1.6	96	1.1
Mischief / Damage	26	4.6	111	12.1	44	10.4	148	9.2	547	6.3
Provincial Statutes	33	5.9	50	5.4	20	4.8	59	3.7	960	11.0
Sub-Total:	**497**	**88**	**750**	**82**	**284**	**67**	**845**	**53**	**3393**	**38**
Other Criminal Code	20	3.5	15	1.6	14	3.3	82	5.1	305	3.5
Drug Possession	5	0.9	15	1.6	11	2.6	5	0.3	160	1.8
Theft Over $5,000	1	0.2	7	0.8	11	2.6	37	2.3	122	1.4
Weapons	5	0.9	4	0.4	12	2.8	16	1.0	119	1.4
Break & Enter	2	0.4	59	6.4	19	4.5	111	6.9	709	8.1
Fraud	4	0.7	17	1.8	9	2.1	30	1.9	120	1.4
Major Assault	3	0.5	10	1.1	14	3.3	46	2.9	195	2.2
Admin. Justice	1	0.2	4	0.4	7	1.7	119	7.4	647	7.4
Drug Trafficking	-	-	3	0.3	2	0.5	1	0.1	96	1.1
Other Federal (YOA)	7	1.2	3	0.3	10	2.4	193	12.0	1442	16.5
Motor Vehicle Act	13	2.3	6	0.7	5	1.2	8	0.5	794	9.1
Joy Riding	2	0.4	12	1.3	9	2.1	24	1.5	104	1.2
Possession Over $5,000	4	0.7	4	0.4	8	1.9	43	2.7	173	2.0
Robbery	-	-	2	0.2	4	0.9	18	1.1	96	1.1
Sexual Assault	-	-	-	-	3	0.7	3	0.2	133	1.6
Arson	-	-	6	0.7	1	0.2	6	0.4	29	0.3
C.C. Traffic	-	-	1	0.1	-	-	9	0.6	68	0.7
Morals (Sex)	-	-	1	0.1	-	-	7	0.4	34	0.4
Kidnapping	-	-	-	-	-	-	1	0.1	7	0.1
Other	-	-	-	-	-	-	2	0.1	4	0.1
Total:	**564**	**100**	**919**	**100**	**423**	**100**	**1606**	**100**	**8750**	**100**

TABLE 5

PROFILE OF YOUTH CHARGES BY CJS OPTION, 2001, NOVA SCOTIA

(Number and Percentages)

Offences	Police Caution		Police Referral		Crown / Other Referral		Charges Laid: RJ Checklist		Court Processed: JOIS	
	#	%	#	%	#	%	#	%	#	%
Simple Assault	31	4.9	91	8.4	27	6.5	174	8.4	423	5.2
Theft Under $5,000	247	39.1	362	33.4	88	21.1	301	14.5	722	8.8
Possession Under $5,000	156	24.7	153	14.1	54	12.9	183	8.8	427	5.2
Public Order	5	0.8	12	1.1	13	3.1	33	1.6	111	1.4
Mischief / Damage	56	8.9	138	12.7	31	7.4	139	6.7	424	5.2
Provincial Statutes	74	11.7	126	11.6	22	5.3	83	4.0	816	10.0
Sub-Total:	**569**	**90**	**882**	**81**	**235**	**56**	**913**	**44**	**2923**	**36**
Other Criminal Code	14	2.2	17	1.6	20	4.8	123	5.9	336	4.1
Drug Possession	17	2.7	35	3.2	18	4.3	15	0.7	126	1.5
Theft Over $5,000	-	-	1	0.1	1	0.2	20	1.0	66	0.8
Weapons	1	0.2	4	0.4	3	0.7	32	1.5	112	1.4
Break & Enter	12	1.9	68	6.3	40	9.6	164	7.9	632	7.7
Fraud	5	0.8	18	1.7	13	3.1	33	1.6	119	1.5
Major Assault	1	0.2	16	1.5	28	6.7	105	5.1	274	3.3
Admin. Justice	4	0.6	7	0.6	6	1.4	235	11.3	854	10.4
Drug Trafficking	-	-	8	0.7	9	2.2	12	0.6	117	1.4
Other Federal (YOA)	-	-	1	0.1	11	2.6	251	12.1	1294	15.8
Motor Vehicle Act	5	0.8	4	0.4	12	2.9	12	0.6	719	8.8
Joy Riding	2	0.3	15	1.4	12	2.9	43	2.1	147	1.8
Possession Over $5,000	1	0.2	2	0.2	3	0.7	27	1.3	105	1.3
Robbery	-	-	-	-	2	0.5	42	2.0	129	1.6
Sexual Assault	1	0.2	-	-	1	0.2	11	0.5	94	1.2
Arson	-	-	3	0.3	2	0.5	2	0.1	15	0.2
C.C. Traffic	-	-	-	-	-	-	26	1.3	110	1.3
Morals (Sex)	-	-	3	0.7	1	0.2	2	0.1	15	0.2
Kidnapping	-	-	-	-	1	0.2	3	0.1	14	0.2
Other	-	-	1	0.2	-	-	-	-	4	0.1
Total:	**632**	**100**	**1085**	**100**	**418**	**100**	**2071**	**100**	**8205**	**100**

TABLE 6

PROFILE OF YOUTH CASES BY CJS OPTION, 2000, NOVA SCOTIA

(Number and Percentages)

Offences	Police Caution		Police Referral		Crown / Other Referral		Charges Laid: RJ Checklist		Court Processed: JOIS	
	#	%	#	%	#	%	#	%	#	%
Simple Assault	24	6.2	61	9.1	39	15.5	100	12.1	317	6.3
Theft Under $5,000	235	60.4	321	47.8	80	31.7	222	26.9	583	11.6
Possession Under $5,000	6	1.5	7	1.0	4	1.6	21	2.5	64	1.3
Public Order	12	3.1	4	0.6	6	2.4	11	1.3	42	0.8
Mischief / Damage	24	6.2	94	14.0	26	10.3	82	9.9	278	5.5
Provincial Statutes	32	8.3	47	7.2	14	5.6	42	5.1	836	16.6
Sub-Total:	**333**	**86**	**534**	**80**	**169**	**67**	**478**	**58**	**2120**	**42**
Other Criminal Code	14	3.6	8	1.2	4	1.6	34	4.1	147	2.9
Drug Possession	5	1.3	15	2.2	11	4.4	4	0.5	131	2.6
Theft Over $5,000	1	0.3	6	0.9	6	2.4	30	3.6	76	1.6
Weapons	5	1.3	4	0.6	4	1.6	6	0.7	35	0.7
Break & Enter	2	0.5	51	7.6	14	5.6	71	8.6	360	7.1
Fraud	4	1.0	12	1.8	5	2.0	16	1.9	53	1.1
Major Assault	2	0.5	10	1.5	10	4.0	30	3.6	117	2.3
Admin. Justice	1	0.3	2	0.3	2	0.8	46	5.6	290	5.8
Drug Trafficking	-	-	3	0.4	2	0.8	1	0.1	48	1.0
Other Federal (YOA)	7	1.8	2	0.3	5	2.0	48	5.8	661	13.1
Motor Vehicle Act	10	2.6	6	0.9	4	1.6	3	0.4	690	13.7
Joy Riding	1	0.3	10	1.5	8	3.2	17	2.1	56	1.1
Possession Over $5,000	4	1.0	-	-	2	0.8	10	1.2	53	1.1
Robbery	-	-	2	0.3	3	1.2	13	1.6	66	1.3
Sexual Assault	-	-	-	-	2	0.8	2	0.2	67	1.3
Arson	-	-	5	0.7	1	0.4	6	0.7	22	0.4
C.C. Traffic	-	-	1	0.1	-	-	3	0.4	28	0.5
Morals (Sex)	-	-	1	1.0	--	--	7	0.8	16	0.4
Kidnapping	-	-	-	-	-	-	-	-	2	0.1
Other	-	-	-	-	1	0.4	1	0.1	3	0.1
Total:	**389**	**100**	**672**	**100**	**252**	**100**	**826**	**100**	**5041**	**100**

TABLE 7

PROFILE OF YOUTH CASES BY CJS OPTION, 2001, NOVA SCOTIA

(Number and Percentages)

Offences	Police Caution		Police Referral		Crown / Other Referral		Charges Laid: RJ Checklist		Court Processed: JOIS	
	#	%	#	%	#	%	#	%	#	%
Simple Assault	28	6.2	87	10.5	25	9.8	131	12.0	298	6.6
Theft Under $5,000	242	53.3	330	39.9	63	24.8	228	20.8	481	10.6
Possession Under $5,000	4	0.9	13	1.6	3	1.2	17	1.6	75	1.7
Public Order	4	0.9	8	1.0	8	3.1	15	1.4	50	1.1
Mischief / Damage	53	11.7	114	13.8	24	9.4	77	7.0	195	4.3
Provincial Statutes	63	13.5	116	14.0	15	5.9	58	5.3	722	15.9
Sub-Total:	**394**	**86**	**668**	**80**	**138**	**54**	**526**	**48**	**1821**	**40**
Other Criminal Code	14	3.1	11	1.3	10	3.9	54	4.9	150	3.3
Drug Possession	17	3.7	31	3.7	16	6.3	9	8.0	99	2.2
Theft Over $5,000	-	-	1	0.1	1	0.4	16	1.5	37	0.8
Weapons	1	0.2	4	0.5	2	0.8	11	1.0	32	0.7
Break & Enter	11	2.4	50	6.0	23	9.1	97	8.9	309	6.8
Fraud	4	0.9	13	1.6	4	1.6	13	1.2	42	0.9
Major Assault	1	0.2	16	1.9	23	9.1	75	6.8	137	3.0
Admin. Justice	3	0.7	5	0.6	3	1.2	109	10.0	335	7.4
Drug Trafficking	-	-	7	0.8	4	1.6	6	0.5	41	0.9
Other Federal (YOA)	-	-	-	-	5	2.0	81	7.4	579	12.8
Motor Vehicle Act	5	1.1	3	0.4	8	3.1	6	0.5	631	13.9
Joy Riding	2	0.4	13	1.6	9	3.5	36	3.3	90	2.0
Possession Over $5,000	1	0.2	-	-	1	0.4	5	0.5	24	0.5
Robbery	-	-	-	-	2	0.8	33	3.0	89	2.0
Sexual Assault	1	0.2	-	-	1	0.4	8	0.7	55	1.2
Arson	-	-	3	0.4	2	0.8	2	0.2	10	0.2
C.C. Traffic	-	-	-	-	-	-	6	0.6	38	0.9
Morals (Sex)	-	-	2	0.2	1	0.4	-	-	7	0.2
Kidnapping	-	-	-	-	1	0.4	2	0.2	4	0.1
Other	-	-	1	0.1	-	-	-	-	-	-
Total:	**454**	**100**	**828**	**100**	**254**	**100**	**1095**	**100**	**4526**	**100**

The RJIS yielded some useful comparisons between cautions and referrals to restorative justice. Table 8 provides several cross-tabulations on all restorative justice referrals since the NSRJ initiative was launched in November 1, 1999. It depicts the patterns by offenders' gender and age, for both charges and cases, by source of referral (i.e., police or post-charge levels). While police cautions (see table 12 below) were quite evenly distributed among female and male youths, it is clear that restorative justice referrals were given more to males who, of course, were considerably more likely to have committed eligible offences. Post- charge referrals were the most likely to be directed at male youths (i.e., 67%). The age category 14 to 15 received the most referrals but the distribution of referrals was more skewed to older youths than was the distribution of police cautions. Whether discussing charges or cases, post-charge referrals were modestly more likely than police referrals to be directed at males, older youths and incidents where the accused faced more than one charge (presumably a weak indicator of seriousness).

Table 9 provides an examination of recidivism using data from the RJIS. Recidivism, based on cases rather than charges, was calculated and cross-tabulated with mode of first case processing (i.e., how an offender's first case recorded in this data set was processed). It is clear that cautions have been least likely to lead to recidivism, followed by restorative justice referral. The court-processed category is well behind - over 50% here recidivated and continued to do so, as indicated in the high level of double and triple-plus recidivism. It must be acknowledged that in the NSRJ program there was no random assignment of cases to the restorative justice or court paths, so one definitely cannot assume that the lesser recidivism can be solely, or even in large measure, attributed to restorative justice processing; but, at least, the finding is positive and in keeping with the hopes of the NSRJ program. Also, the bias of RJIS data set is evident

since in it the court-processed column has only 850 records. The more serious offenders and the older youth are less likely to be adequately represented in the RJIS and this is another reason to be cautious in interpreting the data.

Table 10 controls for gender while considering the relationship between first case processing and recidivism. The male and female breakdowns in the various categories - how the first case was processed, the level of recidivism in cautions, restorative justice referrals and court-processed cases - were identical on a percentage basis, though clearly there were a lot more male offenders. The pattern of more recidivism being associated with the court option was strong for both male and female, supporting the idea that how one's first case was processed might have an impact on the likelihood of recidivism.

Table 11 examines the impact of gender and age on first case processing. It shows that, for both females and males, younger youths were significantly more likely to receive cautions and less likely to have their first case processed in court (in this data set) than older youths. A similar difference exists for females compared to males.

Overall, then, the RJIS data gathered through the NSRJ program indicates that males and older youths are proportionately more likely than females and younger youths to receive a restorative justice referral than a caution. Post-charge referrals enhance that difference, not surprising given that these types of referrals are less likely to focus on level one or minor offences. Recidivism was shown to be less likely if one's first case processed in this data set was done so as either a caution or referral. And while there are many caveats to acknowledge concerning this finding, at the very least, it is consistent with restorative justice objectives.

TABLE 8

POLICE AND POST-CHARGE REFERRALS, BY SELECTED FEATURES

November 01, 1999 to December 31, 2001

CHARGES				
	Police		Post-Charge	
	#	%	#	%
Gender:				
Male	1294	60	670	67
Female	843	40	428	33
Age:				
12 – 13 yrs	498	23	183	18
14 – 15 yrs	852	40	406	47
16 – 17 yrs	78	37	347	35
# Charges:				
One charge	1585	75	599	60
Two or more charges	552	25	371	40

CASES				
	Police		Post-Charge	
	#	%	#	%
Gender:				
Male	1011	63	395	66
Female	574	37	204	34
Age:				
12 – 13 yrs	354	22	114	19
14 – 15 yrs	638	40	256	43
16 – 17 yrs	593	38	229	38

TABLE 9

RECIDIVISM BY FIRST CASE PROCESSING, RJIS

November 1, 1999 to December 31, 2001

LEVELS OF RECIDIVISM *	FIRST CASE PROCESSING					
	Caution		Restorative Justice		Courts	
	#	%	#	%	#	%
None	708	92	1332	78	420	49
Once	48	6	251	15	191	22
Twice	10	1	80	5	103	12
Three Plus	6	1	45	3	136	16
TOTAL:	**772**	**100**	**1708**	**101**	**850**	**99**

***** X_2 value significant at <.000

TABLE 10

RECIDIVISM BY FIRST CASE PROCESSING AND GENDER, RJIS, November, 1 1999 to December 31, 2001

FEMALE						
Level of Recidivism	**FIRST CASE PROCESSING**					
	Caution		**Restorative Justice**		**Courts**	
	#	**%**	**#**	**%**	**#**	**%**
None	326	93	534	83	105	47
Once	17	5	79	12	55	25
Twice	3	1	20	3	28	13
Three Plus	2	1	9	2	34	15
Total	**348**	**100**	**642**	**100**	**222**	**100**

MALE						
Level of Recidivism	**FIRST CASE PROCESSING**					
	Caution		**Restorative Justice**		**Courts**	
	#	**%**	**#**	**%**	**#**	**%**
None	381	90	798	75	315	50
Once	31	7	172	16	136	22
Twice	7	2	60	6	75	12
Three Plus	4	1	36	3	102	16
Total	**423**	**100**	**1066**	**100**	**628**	**100**

TABLE 11

FIRST CASE PROCESSING, AGE AND GENDER, RJIS,

November 1, 1999 to December, 31 2001*

MALE				
First Case Processed As	**12 – 14 Years**		**15 Plus Years**	
	#	**%**	**#**	**%**
Caution	206	26	214	16
RJ Referral	403	52	663	50
Court Charge	171	22	457	34
Total:	**780**	**100**	**1334**	**100**

FEMALE				
First Case Processed As	**12 – 14 Years**		**15 Plus Years**	
	#	**%**	**#**	**%**
Caution	187	35	161	24
RJ Referral	272	51	370	54
Court Charge	72	14	150	22
Total:	**531**	**100**	**681**	**100**

***X_2 values < .000**

TABLE 12

CHARGES, POLICE CAUTIONS IN NOVA SCOTIA, 2000 AND 2001 BY SELECTED FEATURES

		#	%
BY YEAR:	**2000**	501	48
	2001	537	52
BY GENDER:	**Female**	549	50
	Male	560	50
BY AGE:	**12 – 13 yr olds**	353	32
	14 – 15 yr olds	492	44
	16 – 17 yr olds	264	24
BY ETHNICITY:	**Aboriginal**	12	1
	African Canadian	134	12
	Caucasian	910	82
	Other	24	2
	Unknown	29	3
BY AGENCY:	**Halifax Police**	666	60
	RCMP	335	30
	Cape Breton Regional	22	2
	Other	86	8
BY COUNTY:	**Halifax**	742	67
	Cape Breton	50	4
	Valley Area	194	17
	Cumberland	61	5
	Other	55	5
	Out of Province	7	1
BY OFFENCE TYPE:	**Theft / Possession Under**	812	73
	Simple Assault	60	5
	Mischief / Damage	102	9
	Public Order	26	2
	Provincial Statute	23	2
Sub-total of all the offence types above:		**1023**	**91%**
	Major Assault	6	1
	Break & Enter	14	2
	Weapons	4	1
	Fraud	6	1
	Drug Possession	3	-
	Adm. Justice	5	1
	Other CC	34	3
	Other Federal	1	-
	MVA	9	1
Total:		**1109**	**101%**
BY PRIOR CC:	**No**	1100	99
	Yes	9	1
BY PRIOR RJ:	**No**	1088	98
	Yes	21	2
BY PRIOR CAUTION:	**No**	1086	98
	Yes	23	2
BY VICTIM TYPE:	**Business / Corporate**	789	71
	Public Property	52	5
	Person	268	24

TABLE 13

OFFENCE SERIOUSNESS BY GENDER, AGE AND POLICE SERVICE POLICE CAUTIONS IN NOVA SCOTIA, 2000 AND 2001

GENDER				
	Female		Male	
	#	%	#	%
Minor Offence	329	95	322	86
Ambiguous Offence	13	4	24	7
Major Offence	5	1	27	7
Total:	**347**	**100 %**	**373**	**100 %**

AGE						
	12 – 13 yrs		14 – 15 yrs		16 – 17 yrs	
	#	%	#	%	#	%
Minor Offence	207	91	294	93	150	84
Ambiguous Offence	7	3	16	5	14	8
Major Offence	13	6	5	2	14	8
Total:	**227**	**100 %**	**315**	**100 %**	**178**	**100 %**

POLICE SERVICE				
	Halifax Regional		Metro RCMP	
	#	%	#	%
Minor Offence	343	98	83	84
Ambiguous Offence	2	1	5	5
Major Offence	4	1	11	11
Total:	**349**	**100 %**	**99**	**100 %**

TABLE 14

HALIFAX REGIONAL POLICE: CAUTIONS AND RJ REFERRALS, 2001*

CAUTIONS (N=179)							
FEMALES (N=104)				**MALES (N=75)**			
"Whites" (N=87)		**Afro-Canadian** (N=17)		**"Whites"** (N=58)		**Afro-Canadian** (N=17)	
Shoplifting (N=85)	**Other** (N=2) CC 264 EPPA	**Shoplifting** (N=16)	**Other** (N=1) EPPA	**Shoplifting** (N=50)	**Other** (N=8) 4 EPPA 4 LCA	**Shoplifting** (N=13)	**Other** (N=4) 2 EPPA MVA CC430

RJ REFERRALS (N=165)							
FEMALES (N=89)				**MALES (N=76)**			
"Whites" (N=82)		**Afro-Canadian** (N=7)		**"Whites"** (N=66)		**Afro-Canadian** (N=10)	
Shoplifting (N=61)	**Other** (N=21) 8 CC 266 3 CC 430 3 CC 380 CC 264 3 EPPA 2 LCA	**Shoplifting** (N=5)	**Other** (N=2) 2 CC 266	**Shoplifting** (N=33)	**Other** (N=33) 8 CC 266 13 CC 430 3 CC 348 3 CC 267 CC 264 LCA EPPA CC 213	**Shoplifting** (N=2)	**Other** (N=8) 3 CC 335 2 CC 430 CC 266 CC 267 CC 88

***** Based on HRPS Monthly Reports, 2001

TABLE 14 (…continued)

HALIFAX REGIONAL POLICE, YOUTH CHARGED BY GENDER AND ETHNICITY, 2001*

	Female (N=109)		Male (N=283)	
	"Whites" (N=85)	**Afro-Canadians** (N=24)	**"Whites"** (N=208)	**Afro-Canadians** (N=75)
One Incident	58	17	121	37
Two Incidents	13	2	38	13
Three or More Incidents	14	5	49	25

***Based on HRPS Monthly Reports, 2001**

TABLE 15

A SNAPSHOT OF YOUTH CASE PROCESSING, HALIFAX REGIONAL POLICE, JANUARY 1 TO DECEMBER 5, 2001*

OFFENDERS IN 2001 WITH A 2000 RECORD		
ONE 2000 OFFENCE # = 58	**TWO 2000 OFFENCES # = 18**	**THREE OR MORE 2000 OFFENCES # = 35**
48 = Charges Laid	17 = Charges Laid	33 = Charges Laid
7 = Referred to RJ 4 CC334b 1 CC430 1 CC335 1CC267a	1 Referred to RJ CC334b	
3 = Letter of Caution 3 CC334b		2 = Letter of Caution CC334b 31EPPA

OFFENDERS IN 2001 WITH NO 2000 RECORD		
ONE 2001 OFENCE # = 426	**TWO 2001 OFFENCES # = 49**	**THREE OR MORE 2001 OFFENCES # = 46**
164 = Charges Laid	38 = Charges Laid	38 = Charges Laid
147 = Letter of Caution	6 = Letter of Caution 1 CC334b 2 31EPPA 1 CC430	2 = Letter of Caution 1 CC334b 1 CC31EPPA
115 = Referred to RJ	5 = Referred to RJ 1 CC267A 3 CC334b 1 CC430	6 = Referred to RJ 1 CC264 2 CC266 1 CC430 1 CC335 1 CC267

***** The offenses identified here are CC334b (theft under), CC430 (mischief), 31EPPA (provincial statue), CC335 (motor vehicle), CC264 (uttering), and CC266/CC267 (assault)

CAUTIONS IN NOVA SCOTIA

In the NSRJ program, police services throughout the province are empowered to issue formal letters of caution to youths who have taken responsibility for certain types of offences. These latter are referred to, in the program, as "level one" and only include minor property offences (especially shoplifting, cc334/354), mischief (cc430), minor assaults (cc266a), disorderly conduct (cc175) and provincial statute offences (e.g., EPPA). The decision whether to issue a formal letter of caution is generally left to the investigating officer or the officer responsible for the police service's youth bureau. There is no formal restriction of the caution option to first time offenders and in fact a less restrictive policy is advocated by the Department of Justice (Restorative Justice, Nova Scotia, p12). The letter of caution is addressed to the youth in an envelope sent to the parent or guardian. The letter (see appendix) communicates four points, namely that the youth has accepted responsibility for a specified offence, that the police have decided not to proceed with a formal charge with the hope that the youth will profit from this opportunity, that, by way of the letter, the parent/guardian is being notified, and, finally, that, while the caution will not lead to a criminal record, the information will be maintained in police files and may be taken into account should the youth be involved in any further offences. On the latter point, it appears that very few cautions issued by municipal police services (even Halifax Regional Police) are formally entered on CPIC and, indeed, among the RCMP the policy has been to leave the matter to the discretion of the detachment commander.

In analysing the Nova Scotia caution program, two files available through the Nova Scotia Department of Justice were accessed. One had 1123 records where each record referred to a specific charge. The other file had 1285 such records. Each file contained some data that the other file did not (e.g., ethnicity

of the youth) so both were utilized. In general, the files upon analysis yielded the same percentage results in frequencies and cross-tabulations. It is also important here to appreciate the differentiation between charges and cases or incidents. Often, for example, a single shoplifting incident or case would entail two charges, namely theft under (cc334b) and possession under (cc355b). A letter of caution is given for a case or incident so clearly there will be more charges cautioned than there will be letters of caution rendered.

As noted with respect to tables 4 to 7, for charges and cases in 2000 and 2001, cautions increased significantly in 2001, going from 497 to 564 charges and 333 to 389 cases, a gain in both instances of about 10%. The type of offences cautioned remained roughly the same and the entire 10% increase has been basically a function of more minor or level one offences being cautioned rather than any change in the types of offences cautioned. Nevertheless, there has been a slight increase in drug possession and break and enter cases being cautioned which suggests perhaps the direction of possible, future changes in the cautioning program.

Table 12 describes the police cautions that were made in 2000 and 2001 based on one of the available caution files. The table indicates that cautions increased in 2001, that male and female youths were equally common recipients of caution letters, and that cautions were well-distributed among the three youth age categories but least common among youth aged 16 years or older. African-Canadian youth received at least 12% of the caution letters. As noted above approximately 90% of the cautions were for minor, level one offences. Formal cautions were rarely given to repeat offenders (all told about 96% of the caution recipients were first-time offenders). For the most part the victim was a corporate retailer and the offence was shoplifting but 24% of the

cautions involved incidents with person victims. The practice of cautioning was clearly different in different regions of Nova Scotia. Halifax Regional Police and Halifax County (where corporate retailers are concentrated) accounted for the majority of caution cases (60% and 67% respectively). The RCMP, over its forty-three detachments, issued letters of caution for some 335 charges, about one-third of the total. Cape Breton, despite its having a larger population that the Valley area or Cumberland County, saw fewer charges cautioned than these areas (i.e., 4% to 5%).

Table 13 provides cross-tabulations exploring interactions among gender, offence, age, police service and cautioning. It can be seen that variation was quite modest but there was a slight tendency for males and older youth to be cautioned for more serious offences. Police Services also were largely similar in processing charges but there was a slight tendency for RCMP officers, compared to the Halifax Regional Police, to caution more serious offences.

It was observed above that there were two caution files available for analyses. The second file contained about one hundred and fifty more records and was derived from an updated RJIS. The frequencies for different variables or subcategories of variables did not appreciably diverge from the above analysis in any respect in terms of percentages. For example, in both files, 44% of the police cautions were given to youths aged 14 or 15 years. When cases rather than charges were analyzed, the results also were basically similar in terms of percentage distributions for the different variables. Overall, then, formal police cautions have increased with the length of the Nova Scotia restorative justice initiative and have been very largely restricted to level one offences and first time offenders. There was some interesting variation in the issuing of cautions by police service and by

region. There was some modest variation by age, gender and ethnicity (e.g., males received letters of cautions more often for serious offences).

It was possible to examine in more detail the cautions rendered by the Halifax Regional Police Service (HRPS). According to HRPS records, the police service issued 196 letters of caution in 2000 and 179 (i.e., 10% fewer) in 2001. Since shoplifting (i.e., cc334B/355B) accounted for slightly over 90% of the cautioned incidents in both years and since few repeat offenders ever received cautions, it is not surprising that female youths were more frequent recipients of letters of cautions than their male counterparts. In 2000 111 females and 85 males were cautioned while in 2001 the figures were 104 females and 75 males; each year then, since the inception of the formal caution program, girls have received roughly 30% more caution letters than boys from HRPS. Apart from shoplifting, trespassing under a provincial statute, not the criminal code (i.e., 31EPPA or E13PPA), has been the chief charge to which the formal caution has been directed. Trespassing involves such matters as staying away from certain sites such as malls for a designated time period.

Table 14 provides a breakdown of formal cautions by gender, ethnicity and offence for HRPS in 2001. It can be seen that Afro-Canadian youths received roughly 20% of all HRPS formal cautions (about five times "actuarial" expectations based solely on demographics). Male and female Afro-Canadian youths obtained the same number of formal cautions. As noted above, the charge in almost all HRPS cases was shoplifting but almost 10% of the charges were EPPA (i.e., trespassing). There was no difference between "Whites" and Afro-Canadians in terms of the offences for which they were formally cautioned. The table also yields information on the cases the HRPS referred to the community restorative justice agencies in 2001 and on the cases sent to

court. Overall, the referrals were slightly less in number than the formal cautions. The difference between females and males was less (i.e., 89 to 76) and the proportion of referrals received by Afro-Canadian youths was also less at roughly 10%. While shoplifting remained the primary offence, even at the restorative justice referral level, other offences accounted for 40% of the entailed charges and these offences were quite diverse. Simple or summary assault and mischief/damage each accounted for 10% of the referrals. There were clear differences by gender, for both Afro-Canadians and "Whites", in terms of the referral offences; females were mostly involved in shoplifting while males had committed a wide range of offences and less than 50% of their referred offences were shoplifting. Overall, then, at restorative justice referral level, the charges and incidents dealt with were modestly more complicated and serious than at the caution level. The patterns shifted more profoundly when it came to the charges laid. Here, males outnumber females almost 3 to 1, the % Afro-Canadian increases to 22% for females and to 27% for males, and there is significant recidivism (i.e., 18% of the females and 27% of the males charged had been accused in three or more incidents in 2001.

Table 15 further illustrates the case processing by HRPS. In an eleven month period in 2001, young accused persons with a 2000 record of any sort (i.e., a caution, referral or court charge) were overwhelming (about 90%) sent on to court; about 4% received letters of caution. Those youths accused of an offence in 2001, and who did not have a 2000 record, were slightly more likely (i.e.,8%) to receive a letter of caution even if they were repeat offenders in 2001 but it is clear that cautions were usually reserved (i.e., 147 of the 155 issued in 2001) for those youth who had committed a single offence in 2001 and did not have a 2000 record. The monthly records for 2002, to the time of this report, reproduce these same 2001 patterns.

Records were accessed which shed further light on the cautioned persons' background and why some first time offenders committing level one offences did not receive a letter of caution. While very few cautioned youths had a criminal record or a previous caution/rj referral experience, police files identified the accused as "known" to them (i.e., as an accused, suspect or witness) in about 10% of the cases. Additionally, in about 10% of the cases, mostly the same cases where the youth was "known", one or other of the youth's immediate family members had a criminal record. In the case of the Afro-Canadian youth, about one-third of those cautioned were identified as "known" to the police, and in 20% of the cases, an immediate family member had a criminal record. Overall, then, in the large majority of cases, especially for the "White" youths, neither the youths cautioned nor their immediate family members had had any previous involvement with the police or any criminal record. Of course, there were cases where a young person was a first time offender and committed a minor offence, but still did not receive a caution. Detailed records reveal two primary reasons advanced by HRPS for proceeding to court in these cases. First, often the youth's parent or guardian reported that the youth was getting out of control and needed the attention and "jolt" provided by either a restorative justice session or a court appearance. Secondly, by the time the officer responsible for issuing cautions had received the incident report, the youth was facing charges on new incidents, thus rendering the preventative aspect of the caution letter less salient. These two factors were not always sufficient to prevent a letter of caution from being issued.

CONCLUSIONS

Overall, then, analyses of the processing of youth cases in Nova Scotia have found that cautions and referrals have reduced the court load by some 6% compared to the alternative measures era but that about one-third of the court load still involves minor or

level one offences. Recidivism is high among those going to court and those going to court are especially likely to be males and aged 16 or 17. Both cautions and restorative justice referrals have increased significantly since 1999 and together now account for over 20% of all youth charges or cases. Cautions and police referrals have remained focused primarily (over 80%) on minor level one offences where the offender is a first-time offender. Still, there was variation in police use of discretion in this regard. Crown and other referrals typically involved more serious offences and offenders but the numbers here have shown little increase over the first two years of the NSRJ program. There is some evidence that cautioning and restorative justice referral reduce recidivism, compared to court processing, but it is difficult to draw firm conclusions given the limitations of the data sets and lack of random assignment in the NSRJ program. Detailed analyses of HRPS processing of youth crime underlined the point that police cautions were basically given to first time offenders primarily for shoplifting. That combination has accounted for roughly 90% of all HRPS cautions since November 1999. It is clear then that the PPS projects could make a substantial contribution to the NSRJ program by, in the long run, reducing more significantly the court load for minor offences, by encouraging more crown level collaboration in cautioning and referral, by contributing to a more diverse caution-referral system (different offences and repeat as well as one time offenders), and by possibly facilitating more equity given the differences in the exercise of discretionary authority within and among police services.

POLICE USE OF DISCRETION IN RESTORATIVE JUSTICE

The PPS projects on crown cautioning and pre-charge screening clearly involve considerations of the police officers' use of their discretionary authority. Crown cautioning presumably would occur subsequent to the police deciding neither to caution a youth nor to refer him or her to the restorative justice agencies. It would clearly be important to understand why the police officers did not exercise that discretion, in order to appreciate the advantages, and perhaps disadvantages, of crown cautioning, When police officers decide to lay a charge they are required to provide written reason(s) whenever the incident involved level one or level two offences (i.e., 97% of all charges). Such written reasons provide strong clues as to how the officers construct the justifications of their decision. Examining these reasons, therefore, can shed light on how the police might respond in the pre-charge screening consultations carried on with the PPS project coordinator. In this section, there is a general analysis of police discretion drawn from - and updated for 2001) - from NSRJ checklists (where the police reasons are given) for 2000. Subsequently, there are analyses of police discretion as detailed in the 129 pre-charge screening consultations that constituted the pre-charge screening project.

Examination of a representative sample of over 500 checklists, available through the NSRJ program for 2000, found that police reasons for not cautioning or referring a case fell into one of five broad categories, each having a few subcategories, namely

(a) victim-oriented reasons (30 times or 6% of all comments)
    victim wishes
    aggravating factors in victimization
(b) "legally relevant” reasons (270 times, 54% of the comments)

criminal record
breached court conditions/requirements
facing other court charges

(c) youths' attitudes/characteristics (160 times, 32% of all comments)
lack of remorse, uncooperative
"out of control", violent
no responsibility taken for the offence

(d) officers' judgment (20 times, 4% of all comments)

(e) special conditions or factors (20 times, 4%)

It is clear, that the police officers' reasons for proceeding with charges and court action primarily focused on legally relevant factors and on the attitudes and disposition of the youth. The former included the youth having a criminal record (almost always the comment referred to several convictions, not simply one), breach of probation or other court-directed undertakings, seriousness of the offence (e.g., "a violent crime", "a high speed chase"), other charges laid or pending (usually the comments stated that such charges involved more serious offences than did the incident under consideration), and previous opportunities provided for cautioning and referrals (here the officers typically wrote that these options had been not deterred the youth). In citing youths' negative attitudes and disposition regarding the offence, the comments were roughly equally divided among those emphasizing a lack of remorse and cooperation ("displayed a lack of caring", "lied"), those suggesting the youth was violent and out-of-control at home, school and in general ("out of control" was a commonly used expression), and those reporting the youth did not take responsibility for the offence and thus was ineligible by the NSRJ protocol (often here it appeared that the youth simply refused to say anything about the incident).

Other reasons provided by police officers for not diverting youth from court processing were less frequent. For some officers victims' wishes were quite important, especially if the incident involved a repeat violation (e.g., shoplifting at the same store where previously caught, persistent threatening). In a small number of cases the police officer expressly cited his or her judgment on the matter (e.g., "accused needs court-imposed conditions", "the writer feels that the [NSRJ] program will not help her"). Finally, there was a score of cases where the comments were specific but more idiosyncratic (e.g., "can't locate the youth", "the protection of society", "car theft is a problem plaguing society") or suggested that "post-charge referral may be considered" (the implication here appears to be that officers sometimes think that laying the charge is itself a deterrent).

In addition to the above sample, special forms were completed by two police services (Halifax Regional and Cape Breton Regional) which went into greater depth concerning how they perceived the offender and his/her family, social life etc and why they did or did not divert in particular cases. In both police services the most important factors in their discretion were the nature of the offence and whether or not the youth had a criminal record; for example, level two offences were rarely subject to diversion and shoplifting was diverted almost as commonly when the youth was deemed to have a negative attitude, poor home environment and high prospects for re-offending. In both police services' samples, it was rare to find a youth with a criminal record receiving either a caution or restorative justice referral. But there were occasional anomalies where it was unclear on what basis the case was diverted or where the type of victim seemed to be important (e.g., school officials wanting diversion). Perhaps the most important finding was how different the two police services were in opting for either cautions or referrals. HRPS gave as many letters of caution

as they did referrals, while the Cape Breton Regional (CBRPS) unit gave no cautions whatsoever.

Updating these findings for the year 2001 essentially reproduced all the patterns reported above. Legally relevant factors (a criminal record, breaches, serious offences, other charges pending) as discussed above constituted the chief written comments provided by officers for insisting on laying charges. Negative attitudes, poor disposition and/or an unwillingness to accept responsibility for the offences on the part of the young accused were commonplace reasons and in roughly the same proportion as in the analyses above (i.e., about one third of all comments). Slightly more frequent than in 2000 were comments by the police officers that the youth had previously been cautioned or referred to the restorative justice agencies, implying either that the youth had used up any credit or that the non-court option was an ineffective deterrent. Interestingly, the HRPS and CBRPS follow-ups also yielded identical patterns to those of 2000. Offence and criminal record dominated their exercise of discretion exactly as noted above. In 2001, it remained rare for a youth to receive a caution (and only slightly less common to receive a referral to restorative justice) if s/he had a prior criminal record or diversion experience. And, as in 2000, while HRPS issued as many cautions as referrals, the CBRPS unit gave no cautions. The latter finding is interesting since the CBRPS unit in question collaborates well with the local restorative justice agency in advancing the NSRJ program. Still, whether by police service policy or officer discretion, cautions are not issued even in the case of shoplifting done by a remorseful youth, without any criminal record and having a strong, positive family supporting her or him.

Overall, then, examination of police discretion in both 2000 and 2001, and incorporating both checklist and special follow-up

data, establishes that police most commonly cite legally relevant factors as reasons for neither cautioning nor referring young accused persons. It is very uncommon for a youth to be diverted - certainly to be cautioned - where the offence is level two or greater or where the youth has a criminal record including previous diversion opportunities or where the youth has breached probation or a court undertaking. Officers also appear to rigorously apply the NSRJ protocol which requires that the youth take responsibility for the offence in question and this bars many from being diverted. Negative attitudes and dispositions, drawn from police experience and contact with the accused youth are also important factors but they appear to be usually trumped by the legally relevant factors and the "taking responsibility" prerequisite. Diversion is generally seen as an earned privilege and there appears to be a widespread sense that it is a "soft" option. There also is evidence of significant difference in the exercise of diversion discretion within and between police services.

Given the police mandate (e.g., do not induce admissions of responsibility by promises of benefits, some acknowledgement of responsibility is required, be sensitive to the needs and wishes of victims), the police subculture (e.g., break and enter is a major crime, criminal subsystems are difficult to wean youths from, respect on the street is important), and the police responsibility to exercise discretion, it is not surprising that so many youths have been directed to the courts. Also, at the police-accused contact point, one can well often expect to find youths denying responsibility and being uncooperative and without apparent remorse (such police-accused contact relationships appear common between police and Afro-Canadian youths). Certainly, officers appear to understand what is permitted under the cautioning and restorative justice protocols and are acting on their sense of what is appropriate at their level of CJS. There

seems little doubt that, at this level, the "cream offender pool" is being diverted but, in so far as that concept refers to youths with minor offences, no criminal record and with attitudes that the police consider cooperative and remorseful, one could expect nothing less. It may be possible to socialize police into adopting a more expansive liberal view of alternative justice but it would seem that the crown prosecutors, and less so, the judges, are pivotal if more different youth and offences are to be handled through cautioning and restorative justice. At these levels one might expect both to encounter more youth cooperation and apparent remorse, and to balance the divergent societal objectives bearing on the various offences (e.g., punishment, rehabilitation, cost-reduction etc). Certainly, the PPS projects could be seen as having such effects by opening up the possibilities for crown cautions (for equity, for emphasizing the act perhaps more than its context, and other reasons) and through pre-charge screening and other strategies impacting on police and crown prosecutors' views regarding alternative justice.

POLICE DISCRETION: THE PPS PRE-CHARGE SCREENING PROJECT

This is a snapshot sample of cases where the outcome of police discretion was to lay an information and have the case processed through the court. This sample is interesting since it involves largely minor offences (cc266, cc334, cc430 and, later, cc348) where the accused youths were between 12 and 15 years of age. There are 129 cases, a roughly 10% sample of the total number of these four offences that HRPS and RCMP officers filed between June and December 2001 at the Devonshire court which handles all criminal cases for youth in the Halifax Regional Municipality. In the following analysis the focus is on the reasons the police officers provided for their decision to lay a charge rather than caution the youth or refer the matter to a restorative justice community agency. NSRJ policy required that a reason be provided by the police officers in such instances.

Approximately half of the 129 accused youths were identified as having "priors", whether these be criminal code convictions, police cautions or restorative justice referrals. The other half were equally divided between those youths for whom it was known that they had no "priors" of any kind, and those for whom such information was unavailable or incomplete. As noted, the 129 cases were distributed over a six to seven month period with almost two-thirds being filed in the three months of September, October and November. Simple or summary assaults accounted for 49 cases while theft under (typically shoplifting) cases numbered 41, mischief 17 cases, and break and enter 25 cases. A reason for laying the charge was provided by the officers in 113 of the 129 instances, and the distribution by reason is provided in the following table 16

TABLE 16
FACTOR EMPHASIZED BY OFFICER IN LAYING CHARGES
DEVONSHIRE COURT SAMPLE, 2001

FACTOR	NUMBER	PERCENT
NO RESPONSIBILITY TAKEN	18	16%
BAD ATTITUDE OF YOUTH	19	17
PARENT/VICTIM WISH	17	15
OTHER CHARGES PENDING	19	17
CRIMINAL RECORD	23	20
THE OFFENCE ITSELF	6	5
OTHER OPTIONS INADEQUATE	11	10

Officers, in about one third of the cases, wrote that they were laying a charge because the young accused person had either refused to take responsibility for the offence or exhibited a bad attitude by showing flippancy or no remorse or by lying on some

pertinent issue (e.g., lying about not having had a previous rj experience). While these two reasons are distinct in theory and in justice policy (i.e., an accused "taking responsibility" is a formal prerequisite for an officer cautioning or referring a case), in practice they blended into one another. Some officers, for example, defined taking responsibility as clearly admitting guilt while others employed a more liberal operationalization of the concept. Failure to cooperate in the investigation was also taken by some officers as evidence of a bad attitude, if not shirking responsibility. The range of police comments reflects the shifting boundaries; in one instance an officer commented straight-forwardly that "this youth does not accept any responsibility for his activities in this matter", while, in another case, an officer wrote "accused's attitude at the time appeared indifferent to being charged", and, in still another case, the officer noted, "accused showed no remorse, refused to cooperate with police to get back the missing property". One officer's comments expressed well the view of many other officers who laid charges in these youth cases, namely "suspect does not show any remorse and in the opinion of this officer will re-offend".

As noted, the officers were required to state reasons only when laying a charge, not when resorting to alternative justice strategies. Still, in a few cases, referrals were accompanied by comments and these underlined the emphasis on attitude and atonement (e.g., "offender very emotional, sorry for the incident, seemed to be afraid of the consequences"; "the accused paid for any damage done to the vehicle that occurred from the theft"). In a case of burglary where none of the three accused youths had a record of priors, two were referred to restorative justice because they were deemed to be remorseful, while the third youth faced charges because "[he] was uncooperative, untruthful and would not take responsibility for his actions". In some instances the

allegation of "bad attitude" referred to a serious disorder or behavioural problem, as in the comments of one officer, namely "accused is very violent and becoming more threatening over time ... determined to harm the victim, feels no remorse" or, as another officer wrote in a different case, "accused took pleasure in assaulting a defenceless victim by kicking victim in the head, leaving the imprint of sneaker on victim's forehead, choked and punched victim". There is evidence in the officers' remarks that they have become very sensitive to societal concerns about bullying among youth; several officers referred to bullying to justify laying charges, as in the following comments, "accused involved in numerous incidents and intimidating other youth".

In roughly one-sixth of the cases, officers in rejecting alternatives to court action, cited the wishes of the parents/guardians or other victims. In the former instances it was often stated that the youth "was out of control". While sometimes it was not clear what the parents' wishes were (e.g., "officer believes accused will continue violence and rebellion with parents and police; she fled from police and parents"), in most instances the officers indicated that the parents were at the end of their tether (e.g., "dad fed up and frustrated; kid has mental health and drug problems"; "abusing mom in all ways for a long time and this time she finally called police"). Police, like many parents, tended to contend that processing the case through the courts was necessary to bring the youth "back into line". One officer, recommending court action for a thirteen year old with no record of any kind, who had been accused of simple assault, commented that "it is a domestic situation [violence against parents] that will escalate unless steps are taken to control the problem". In another case the officer wrote, "ma wants a charge as [accused] has been getting into lots of trouble and there have never been any consequences". In a variety of comments the police officers exhibited sensitivity and sympathy to victims, especially to the

wishes of parents, guardians and counsellors (e.g., group home staff) and apparently believed that, given the victimization of these presumably supportive, authority figures, neither cautioning nor restorative justice referral would be an effective intervention.

In over 40% of the cases the police officers rejected cautioning or restorative justice referral on the stated grounds that the youth had a criminal record and/or was facing other charges ("other charges pending"). This factor was especially common where the pending charges involved more serious offences than the offence under consideration or where the youth had breached probation or an undertaking or where the youth had re-offended within a year or less; such features caused some police officers to define the youth as a more serious offender whose actions required courtroom sanctioning. In a few instances the officer specifically focused on the offence itself as requiring court action; for example, in one case where a youth charged with simple assault was neither cautioned nor referred, the officer wrote "accused spit in mom's face, has been charged numerous times".

In about 10% of the cases the police officers specifically indicated that, in their view, alternatives to court processing would be inadequate. In a few instances, the officers wrote that the youth had previously been referred, unsuccessfully, to the restorative justice agencies (e.g., youth did not complete all the rj requirements or continued to commit the offence). One officer, for example, rejected cautioning or referral on a provincial statute offence, noting "many repetitions of the same offence. Been through the [rj] program; obviously no help". It would appear, too, that some police officers think the restorative justice alternative is out-of-its-depths when youths with serious problems are involved. A common comment in the police remarks was

"youth out of control". This latter theme is reflected in the remarks of one officer who did not refer once more a youth who earlier had been cautioned and also sent to restorative justice, namely "kid violent parents say; restorative justice can't handle all his problems". In another case where the youth had no criminal record but had received an earlier caution, the officer commented, "police are having dealings with the accused, charges are pending, mother can't control him". In still another case, where the youth had prior convictions and restorative justice referrals, the officer's commented, "a bully, needs to have some CT [court] measures to curtail her activities". Clearly, the police remarks suggested that, in their view, court direction provided "something" that restorative justice did not, as far as dealing with problem youth was concerned. It was never specified what this "something" was but the implication was at least a good scare if not probational supervision.

In conclusion, the sample drawn the from "post-charge" screening consultations yielded patterns similar to those found with other samples of police discretion, with respect to cautioning and referring cases to restorative justice. Legally-relevant variables were highlighted by police (e.g., the seriousness of the offence, breaches, criminal record and "other charges" pending). A few patterns were more pronounced in this sample. The blending of negative attitudes or dispositions with reported failure to accept responsibility (a prerequisite for diversion under the NSRJ protocol) was quite evident. The wishes of the victims seemed to be heeded more, especially if the victim was seen by police as supportive and in an authority relationship vis-à-vis the youth (e.g., parent, group home counsellor). The need to bring more sanctions to bear on problem youths acting up was also highlighted. In the PPS project's context - Devonshire family court, youths aged 12 to 15, minor offences - it seems reasonable to conclude that police on the whole see cautioning and

restorative justice referral as a "soft" alternative (e.g., providing a less intimidating milieu, yielding no criminal record), something that the youth has to deserve (e.g., by completing well any previous participation in the NSRJ program, by not re-offending too quickly, by cooperating with police and so on), and limited in their interventionist efficacy (e.g., not able to deliver a stern message, unable to cope with potential serious offenders or youths rebelling against parents and guardians). It is interesting, then, to determine how the PPS projects impact on such discretionary acts and premises. What could crown cautioning bring to the table for appropriate diversion? As will be seen below, perhaps the central advantages of crown cautioning centre around the different context of crown-case contact or relationship (e.g., the passage of time and more formal relationship may discount negative attitudes or dispositions on the part of accused youth) and the issue of "taking responsibility". With respect to pre-charge screening, what would crown prosecutors bring to the consultation that would be different from police officers' views and priorities? As will be reported below, perhaps the central difference might be the crown's re-focusing the issue of discretion by highlighting the act more than the context (e.g., the specific offence more than the criminal record or the youth's disposition and social environment).

CROWN CAUTIONING PROJECT

IMPLEMENTATION AND OUTCOMES

There were no crown cautions issued in this project for several reasons. First, the project coordinator noted that she was not authorized to do so. Secondly, given that there is an established police cautioning program in Nova Scotia, the chief task of the crown cautioning project was seen, by both the project coordinator and her supervisor, as being to identify why and how to introduce a parallel process at the crown level. What would the value-added be? What arguments could be advanced to justify this additional cautioning system, especially since few of the common-law provinces have a formal cautioning program and none have formal letters of caution being issued at both police and crown levels. The project coordinator did engage in extensive discussions with police officers (at the field level and in management), fellow crowns in the PPS, NSRJ officials, Corrections Nova Scotia personnel and others. She made a formal presentation on both the PPS projects to the annual meeting of Nova Scotia's crown attorneys and did a modest survey of the prosecutors' views on crown cautioning. Issues were analysed, informational and other needs identified, and protocol possibilities specified. A draft crown letter of caution was prepared (see appendix E). Information was sought on police and crown cautioning programs, either in existence or being considered, in the rest of Canada.

As a result of her work the project coordinator advanced several strong reasons to introduce crown cautioning and backed these up with supplementary observations and arguments. She put forth essentially three chief reasons for establishing a crown cautioning system. First, crown cautions can be seen as an appropriate step on the extra-judicial continuum since there is already in Nova Scotia police cautioning at the pre-charge stage and changing circumstances (e.g., timing factors for remorse,

contacting the accused etc) can make cautions appropriate after the investigatory phase has been concluded. Secondly, crown cautioning can enhance the "limited options" available to crown prosecutors at the pre-arraignment stage; here, for example, it is argued, that in the current system, if the crown decides to withdraw a charge in the public interests, the process is completed swiftly in the courtroom with minimal explanation to the youth or parent (i.e., "you are free to go"), while a letter of caution might convey to both parties a more meaningful message. Thirdly, crown cautioning can contribute significantly to a more equitable justice system in Nova Scotia, given the different patterns of discretion in cautioning found within and among police services in Nova Scotia. It provides a check or back-up, helping to ensure complete and equitable access by all youth to all available extra-judicial measures within the province.

Several important observations were made and arguments advanced in support of these three chief reasons for a crown cautioning system. One postulate was that, often in processing a case, time factors are crucial. In the NSRJ program, "taking responsibility" by the accused is a prerequisite for cautioning or referral to restorative justice. Sometimes, after a "cooling off" period, and perhaps subsequent to discussions with parents or advisors, the youth, previously characterized by police as "having an attitude" is prepared, and perhaps even eager, to acknowledge responsibility. Another important observation made by the project coordinator was that sometimes a file arrives at the prosecutor's desk with a note from police that - for a variety of reasons and often because they want to send a message by laying a charge - they are forwarding it but do not oppose an extra-judicial disposition. The crown attorney does a pre-arraignment review and may well determine that in such cases a caution may be more appropriate than a referral to restorative justice or a withdrawal of charges. Another supporting argument, directed more to the

equity issue, is that, for whatever reason (e.g., fear, subcultural traditions of police-youth relations, adult advice), the young accused person will not communicate cooperatively with the police. Given the trauma and stigma of being investigated and being charged in court, this communication problem should not prevent cautioning when one is dealing with a very minor crime, some remorse, and it is in the public interest.

In making the case for crown cautioning, there was concern for avoiding crown jeopardy, that is, "the crown attorney cannot give legal advice to the youth and must avoid a situation where that is perceived to be the case by the youth or the youth's parent / guardian". Clearly, a communication gap could exist at the crown-young accused level as well. Is there remorse now? Does the accused want the option of contesting the charge rather than an getting an informal record (the incident would presumably be filed, see below)? Is there a complete and accessible record of the youth's criminal justice record? The project coordinator noted several ways to deal with this issue, such as by requesting the police to re-interview the accused at a post-charge, later date, by more collaboration with defence lawyers (virtually all youth have representation and in the vast majority of times, it is Legal Aid), or by the PPS employing a paralegal to obtain pertinent information. It may be noted that the new YCJA does not require an admission of responsibility for cautioning so perhaps another option would be changing the Nova Scotian policy in this regard.

In her final report, the project coordinator makes a number of recommendations concerning a possible crown cautioning program and submits a draft crown caution letter to be sent to the youth and guardian. It is suggested that crown cautions be reserved for young offenders with no previous neither record nor alternative justice experience who have committed minor property offences (shoplifting and property damage are mentioned). The caution would

be issued by the attending crown attorney and sent to both youth and parent / guardian by separate cover. A record of Crown Caution letter should be maintained at crown's office and the letter should advise the youth and the parent that such records will be considered in any future police allegation of unlawful behaviour by the young person. The draft letter emphasizes that the police have reported that the youth has committed the offence, and that the PPS is not proceeding with criminal charges but leaving "the resolution of this matter to you as parent/guardian". It is added that a copy of the letter will be on file in the PPS office and "will be considered" in determination of an appropriate crown response should there be further offences.

The crown caution protocol advanced by the project coordinator is consistent with the NSRJ protocol for police cautions in that the eligible offences are minor, level one offences. It differs in that it limits crown cautions to first time offenders, a surprisingly restrictive recommendation which would be out-of-step with the premises of both the NSRJ and the YCJA and inconsistent with arguments made in the pre-charge screening consultations (see below). Limiting cautions to first time offenders would also mean that crown attorneys would have less discretion power than police officers. On the other hand, the draft crown letter differs from the police caution letter in that it makes no mention of the youth having taken responsibility for the offence in question, a tactic that would mean greater crown attorney discretion. In any event, the guidelines and the draft crown letter are just that, a draft document, and a starting point for discussions within the PPS.

The project coordinator also carried out a brief survey with crown attorneys attending an annual assembly. Thirteen or 43% of the thirty attending crown attorneys completed the survey probing the potential of formal crown cautioning program. All were full-

time attorneys practising in the provincial court and 77% reported that young offenders occupied less than 10% of their time (the remaining 23% spent between 10% and 25% of their prosecutorial time on youth cases). Most, but not all of the crowns, (70%) were aware of the potential for crown cautioning programs under the new YCJA. All but two were aware of the police cautioning program but the majority reported themselves unsure or unaware of the specific offences that police typically cautioned, and only two had ever actually seen a police caution letter. None had had any contact with parents regarding their child being police-cautioned. None raised objections to using crown cautions should PPS adopt the program, and half reported that they would indeed use it themselves. Generally, they thought that crown cautions should be used for less serious offences, especially theft under (100%), mischief (100%) and provincial statutes (100%), the classic level one offences. There was more diversity when it came to other offences such as summary assault (60%) and obstructing police (46%). Like police officers (and the NSRJ protocol), the crown attorneys did not see break and enter as warranting a caution letter. The views of the crown attorneys match up well with those of police officers concerning what a caution program should entail. Unfortunately, the survey did not ask about the eligibility of repeat offender; this might well have been an area of difference, presumably with the crown attorneys more inclined to allow cautions in the case of repeat offenders. The survey provided limited information but raising consciousness among crowns as to cautioning may have been as important as getting responses.

FORMAL CAUTIONS: VIEWS OF PARENTS/GUARDIANS AND YOUTHS

As noted, there were no crown caution letters issued in the PPS project; accordingly, to explore the impact of the caution letter, it was necessary to examine the impact of the formal letters of caution issued by police officers. In order to assess

the response of the cautioned youths and their parents/guardians to the police cautions, a small sample was selected with the collaboration of Halifax Regional Police. Since youths were involved, HRPS officials determined that the appropriate procedure would be for the evaluator to select a small representative sample of twenty-five cases from the lists of youths cautioned in 2002 and then the HRPS youth officer would contact the parents / guardians and seek approval for the evaluator to interview by telephone them and/or the youths. This procedure was implemented and in all but two cases, the parent / guardian agreed to participate. There was one refusal and one instance where the youth and his family moved to another country. The offending youths were quite evenly split between males and females (10 to 13). In all but two cases, the offence in question was "theft under", always involving dollar theft amounts of less than $50. The victims in the thefts, with one exception. were corporate retailers (e.g., Zellers, Shoppers). Two of the twenty-three youths had records for previous offences and two had re-offended since the incident which generated the caution. An interview guide was created for the telephone interviews. The guide, found in the appendix A to this report, dealt with four themes, namely, (a) the situation attendant on the offence but prior to receiving the letter (e.g., awareness of options, expectations), (b) the caution letter (e.g., clear and meaningful? to be filed by police?), (c) impact of the caution experience (e.g., on family relationships, on the youth, consequences for the youth), and (d) assessment of the caution option (e.g, plus and minuses, how extensively should letters of caution be used, were the objectives of the caution option met?). It was understood between the evaluator, the HRPS and the consenting parent that the telephone interview would be brief. Unfortunately, in five cases, telephone contact could not be established, despite repeated calls, and thus only eighteen interviews were obtained, fifteen with parents and guardians and only three with the young offenders. Nevertheless,

the final sample appears quite representative of the kinds of persons to whom caution letters are typically sent and fits well the pool of anticipated caution participants recommended in the PPS project.

Caution participants generally had no awareness of the caution option prior to being so informed in person by the investigating police officer or the HRPS youth officer by telephone. Often the guardian was called down to the corporate retailer to collect his or her youth but in a few instances the officer brought the offender home to inform the guardian. In the sole instance where there was stated knowledge of the diversion option, it was expressed by a young offender who commented; "I was unsure [about what was going to happen] but I wasn't worried because I had gone through it [restorative justice] before". Typically, there was a period of suspenseful waiting before the offender and his or her guardian could be certain that the youth was going to receive a caution rather than a referral to restorative justice or be charged in court. Most adults (and the other two youths) indicated that the waiting, while creating some tension, was beneficial since it produced appropriate anxiety on the part of the young offender, causing him or her to reflect on the wrongdoing. One youth's mother commented, "I hoped he would get a caution but glad about the uncertainty .. it gave him time to think about what he got involved in". Clearly, all these participants, adults and youths, hoped that the caution option would be exercised by the police. Almost one-third of the adults indicated that police officers (probably the HRPS youth officer) presented them with the choice of the youth either going to restorative justice or being cautioned. They preferred the caution option but their stated reasons for doing so were rather obscure (e.g., "the caution would be more of a wake-up call") reflecting perhaps their lack of familiarity with the restorative justice

process. All these guardians expressed appreciation for being allowed some input into selecting the option.

The participants typically thought that the letter of caution was clear and straight-forward; as one parent commented, "you don't need a high IQ to understand the letter". A few persons claimed never to have read the letter, either because they had not received one or because another household member read it and explained matters to them. The letter itself was considered as a simple, straight-forward message but a few respondents highlighted its symbolic importance by, for example, temporarily at least, tacking it on the wall in the youth's room. Virtually everyone indicated that they understood the letter would be on file at HRPS and would be recalled in the event of another offence on the youth's part but few had questions about how long it would be on file and so forth; the few who raised such questions were critical of the letter's lack of detail in this regard. More common was the sentiment that direct contact from the police officers - whether in person or by telephone - was far more informative and meaningful for deterring further offending than the letter itself.

In almost all cases - even in the few households where the parents and other family members had criminal records and were themselves well-known to the police - the guardians and the youths reported that the arrest and the letter of caution had had an impact. Deep family discussions were reported ("it was a big deal in this household") and behavioural sanctions (e.g., grounding for a period, no television viewing allowed, no co-accused friends allowed in the house, no sleep-overs) were directed at the youth. In most cases, these family discussions reportedly had improved guardian-youth relationship. Commonly, it was reported by parents and youths that being arrested and receiving a letter of caution would be an effective deterrent for the youth. They all contended

that the youth was remorseful and expressed confidence that the youth would not re-offend.

Adults and youths saw the caution option in very positive terms in their own instance. None suggested negative implications for their family or their youth but, interestingly, they frequently expressed the opinion that the option could be abused if parents did not really care and/or if the youth perceived it - and some would they believed - as an easy way out. Indeed, in a number of instances, the youth's offence had taken place in a group context (e.g., several kids shoplifting together) and the parents and youths interviewed suggested that the co-accuseds and their parents were more flippant about the arrest and letter of caution. Few participants, adult or youth, felt that the cautioning option should be extended to repeat offenders (some allowed for a few chances) or to more serious crimes.

Overall, the participants identified the objectives of the caution option as to "scare, warn and give a break to" typically good kids whose offence was well within the normal experience of youths (e.g., a fluke thing", "part of growing up", "she did it for a thrill as kids do"). And, in these respects, they considered that the police cautioning program had indeed met its objectives and would deter future crime in their case anyways. A grandparent commented, "This little crime scared the shit out of him and made him realize he did not want to be involved in criminal activity and to stop associating with [the co-accused]". Respondents frequently mentioned, in assessing the impact of the caution option, that the direct contact with the police officer, by telephone or in person, was crucial, not the actual letter. Most participants reported that there were meaningful consequences accompanying the caution letter. There was a very positive valuation of the caution option by the offenders and their parents / guardians.

CROWN CAUTIONING PROJECT: THE INTERVIEW DATA

All interviewees were well aware of the PPS crown cautioning program, through various contacts (personal talks, public presentations) with the project coordinator, and readily expressed their views on it. This was despite the fact that the project clearly did not reflect any grass-roots pressures. Virtually no one identified the project as responding to a major problem in the current system of extra-judicial measures in Nova Scotia nor, for that matter, was anyone particularly enthused about the concept of crown cautions. Instead, the project was seen as responding to possibilities advanced in the new YCJA. Several persons had in fact expected that crown cautions would have already been issued. With a few interesting exceptions, the CJS role players - police, prosecutors and others - saw crown cautioning as an appropriate supplement to the police cautioning, but something that would be used much less frequently (i.e., "in special circumstances") and perhaps more strategically (e.g., more in areas where police cautions were not as commonly issued as elsewhere in the province, more in certain situations where minority-police relationships were strained). It would be an additional tool for the crown attorneys rounding out their authority to refer cases to restorative justice and to withdraw charges in court.

Crown cautioning was posited as providing a check on police consistency given regional, police service, and individual officer variation in discretion. With one exception, all police officers interviewed made this argument and, not surprisingly, especially so, officers who were in supervisory or coordinating roles within their police service (presumably because they would have been more aware of the variations in the use of discretion). There was acknowledgement, too, of other equity issues such as ethnic patterns and family background which could, inadvertently and without intent, impact on whether a youth received a police

caution rather than face a court arraignment. Police and PPS officials recognized that as time passes and conditions change, there might well be a "cooling down" phase, subsequent to which a caution could be an appropriate response but, happening after the investigation is closed, such cautioning would have to come from the crown prosecutors. One minority officer observed that this might well happen more in the African-Canadian community where police-community relations are tense and thus "remorse and common sense adjustment may come later". Several respondents noted as well that different factors needed to be weighed at the crown level (e.g., costs and public interest) which contributed to the salience of what one police supervisor called "a sober second thought about cautioning". Finally, several police officers, perhaps because they are closer to the scene and aware of the common parents / guardians' viewpoints on hoping the youth will "learn his/her lesson", considered that getting a crown caution rather than a police caution may sometimes be more of a deterrent since the police laying a charge, and prospect of court action entailed by it, would produce a lot of productive anxiety for the youth and the parent.

The CJS respondents did raise a number of issues concerning a crown cautioning program. A police officer who did not think a crown cautioning program was necessary or would have any "value-added", pointed out that police cautions are often accompanied by much contact between the police and the youth and his or her guardian. His concern was that, if crown cautioning simply meant "whipping off" letters without contact - as he feared it would given the lack of PPS resources and the information and communication gap between crown prosecutors and offenders / offenders' parents - then it might well simply discredit the cautioning option. A crown prosecutor did not support the idea of crown cautioning because of the belief that current options are adequate; already police can caution or refer and the PPS can

refer or simply withdraw the charge, the prosecutor noted, adding, "besides, I have some philosophical problems with it [crown cautioning] because my responsibility is not simply oriented to the offender". Certainly, several respondents would need to be persuaded that, given the current system of options, the benefits of a crown cautioning program would significantly outweigh the potential costs (e.g., the worry about jeopardizing the crown's role in dealing with accused persons, resource and informational requirements). A few respondents, while not objecting to the concept of crown cautioning and appreciating that it could be another tool for the crowns, discounted its value by arguing that the crown attorneys do not, at present, use the discretionary authority that they have to divert cases from the court process. In this vein, a few respondents suggested that there might well be much reluctance to use cautions in rural areas and among per diem crown attorneys, with the result that crown discretion would reinforce police discretion rather than be a counterweight to it in such regions. Both a few prosecutors and other CJS role players suggested that what was needed was not crown cautioning but more crown referrals to the restorative justice agencies.

In considering the priority to be associated with the crown cautioning option, another issue raised was how the crown cautioning would be delivered and how information on criminal and diversion record, and on the youth's attitudes and background, would be obtained. If done with thoroughness then what would be the resource implications? If done basically simply on the basis of the information sheet (crown file), would it be meaningful? In the latter instance in particular, some respondents, officers and prosecutors, wondered, too, how crown cautioning could be said to be part of restorative justice if letters were issued without prior acknowledgement of responsibility on the part of the accused youth. Of course, the response could be made that cautions release court time and also could facilitate the restorative justice

agencies' concentration on cases requiring offender-victim-community conferencing. Generally, it was held that if crown cautioning is to become institutionalized in Nova Scotia, it should be directed at all youth and all crown attorneys should be empowered to issue cautions (sparingly of course). It was understood that such empowerment would have to be accompanied by some training and orientation sessions for the crown attorneys, and that records would have to be maintained and be accessible for all the extra-judicial options (i.e., police and crown cautions, police and crown referrals to restorative justice).

CONCLUSION

The PPS crown cautioning project was not occasioned by a burning problem in the Nova Scotia CJS nor by grass-roots or bureaucratic demands; rather, it was a response to opportunities conveyed through the new YCJA. The PPS took up the challenge to identify the potential value-added of crown cautioning, assess the chief reasons for it and the arguments for how it might complement the extensive and innovative NSRJ program with its protocols for police-level cautioning and restorative justice referrals from all entry points, including the crown prosecutors, of the CJS. While no crown cautioning was authorized or carried out, there was much information gathering and assessment done by the project coordinator. The latter recommended that the PPS endorse crown cautioning and also drafted guidelines, including a draft crown caution letter, for discussion within the PPS and Nova Scotia justice circles.

Among a select CJS sample interviewed for this evaluation, there was rather modest enthusiasm for the crown caution option but objections were few and, in general, respondents considered that crown cautioning could advance the interests of justice in Nova Scotia. There appeared to be a consensus that, used sparingly and perhaps strategically, crown cautioning would complement well

the NSRJ initiative and be a useful additional tool for crown prosecutors. Typically, too, the reasons and underlying argumentation advanced by the project coordinator in favour of crown cautioning were acknowledged by the interviewed CJS role players. There were some objections, largely centered around how the crown cautioning would actually work and whether the resources and other infrastructure requirements for an effective crown cautioning program would be met. Interviews with parents and youths who had participated in the police cautioning program revealed that the caution option did produce meaningful consequences for the youth, impacted on the family, and was rated very positively by all interviewees. At the same time, these participants highlighted the significance of the police contact as much as, if not more than, the caution letter itself. That level of police involvement would probably never be matched at the crown attorney level and would ensure that the lion's share of all cautions would continue to be delivered by the police services.

PRE-CHARGE SCREENING PROJECT

IMPLEMENTATION AND OUTCOMES

The pre-charge screening project was largely an exploratory initiative by the PPS in Nova Scotia, occasioned by the encouragement of such practice in the new YCJA. As noted earlier, in Nova Scotia the autonomy and integrity of the respective roles or domains of police and prosecution (i.e., PPS) had become a major theme of the CJS. The police were deemed to have complete and exclusive authority with respect to the investigation of criminal behaviour and the subsequent laying of charges. The Marshall Inquiry, as noted, was a watershed event in this regard. Police-crown, pre-charge consultations did not vanish, and in fact by time these PPS projects were launched, might well have been back to the pre-Marshall levels; however, the consultations were basically at the discretion of the police officers. At the Devonshire family court, where criminal cases for 12 to 15 year olds were processed, there was an informal team approach among the CJS role players so, clearly, consultations were extensive and intensive there. The PPS, mindful of the tradition of autonomy, wanted to examine in a sensitive fashion how the YCJA's imperative might play out given the Nova Scotian legacy. It was anticipated that "any significant change to the current roles of police and crown would be met with resistance". Accordingly, discussions were held with senior officers of the metropolitan police services (i.e., HRPS and RCMP) where their support for a pilot project was obtained. Also, the pre-charge screening was only to be carried out in the Devonshire court and only for minor level one offences.

There was much uncertainty concerning how the pre-charge screening project would work out. The very term, pre-charge screening, found in the YCJA, was considered problematic by both police and PPS officials since it connoted veto authority, over the laying of charges, by the crown prosecutors, quite contrary to

the Nova Scotian policy. A PPS memo sent to police officers at the outset of the pre-charge screening project specified the procedure agreed upon by PPS and the police services. If the police at the Devonshire court were not going to caution a criminal case of the designated type or refer the matter to restorative justice agencies, they would be expected to contact the PPS project coordinator and discuss the case with her. No charges were to be laid until this discussion had taken place. Subsequent to this discussion, the project coordinator was to convey her views to the police officer on how the case might be processed, and the officer, then, would make the final decision.

Compliance with the above protocol varied by police service and was noticeably less among RCMP officers; only a modest proportion of the eligible cases that were to have been directed to the project coordinator were so directed. For the RCMP officers at least, it appears that compliance fell somewhere between an order and a voluntary decision (see Interview data below). Contact between the project coordinator and the police officers advancing the criminal cases was either by telephone (primarily so in the case of RCMP officers) or in person (usually so in the case of HRPS). Essentially, in the contact, the project coordinator and the officer discussed why the case was being directed to court. While the information exchange was perhaps the major priority of the project, clearly the project coordinator was always concerned about the possibilities of extra-judicial measures and, not surprisingly, the police officers generally considered that they were explaining and justifying their decision to send the case to court. In the course of the exchange, officers and the project coordinator often raised different arguments and conveyed different priorities (see the next section); for example, while both parties might agree on the intimidation factor in laying charges and going to court, officers might argue that it was needed in these cases to discipline the youth, whereas the project

coordinator might have stressed the traumatic (negative) implications of being charged and/or appearing in court, in suggesting otherwise. In any event, usually at the conclusion of the conversation, and without delay, the project coordinator's position and the officer's final decision were communicated; invariably, when the former disagreed with the latter, the latter (i.e., the police officer) maintained his/her initial decision to lay the charge.

In the course of the project, the coordinator examined pre-charge screening experience in other jurisdictions and also met with a number of prosecutors, Corrections and NSRJ officials. Important issues of informational access (i.e., access to part of the NSRJ program's data base) were also explored. There was no contact with the accused youths, their parents or their victims in the pre-charge screening project. In the original project proposal it was indicated that the categories of offences to be considered could be broadened or narrowed depending upon the cross-jurisdictional review and the experience of the pilot project. By June, 2001, virtually at the outset of the project, cc348, break and enter, was added to the list of mandated offences (Quigley, 2001). Another implementation modification was the decision to extend the pre-charge screening consultations by one month, to the end of December 2001.

Data provided in the final report on this project indicate that, over the seven month period from June to December 2001, the project coordinator consulted with police on 129 eligible youth cases (plus on a number of other cases falling outside the project's terms of reference). Male accused youths outnumbered their female counterparts by a 3 to 1 margin (i.e., 96 to 33 cases). The consultations peaked in October and November where half the total occurred. The specific offences dealt with were summary assault (49 cases of cc266), theft under (41 cases of

cc334), mischief (17 cases of cc430) and break and enter (25 cases of cc348). Overall, in the later months, more serious youth cases were discussed with police than in the earlier months. Perhaps this pattern partially accounted for the fact that the project coordinator virtually always concurred with the police officers' decision to lay a charge in the last three months (October through December) whereas, in the first four months, the project coordinator disagreed, in about 40% of the cases, with the police decision to lay a charge rather than process the matter through cautioning or restorative justice referral. Other factors that may have impacted the changing level of disagreement include the police officers' possibly changing their patterns of discretion and cautioning or referring more frequently the more minor eligible cases, or the coordinator's focusing on other issues in the face of the officers' reluctance to change their initial positions; the latter (i.e., the coordinator's change) would seem to have been more likely than the former (i.e., changes in patterns of police discretion).

While the pre-charge screening project did not result in significant redirection of cases headed for court processing, it explored the issue of pre-charge screening well. It generated valuable information on the commonalities and differences in police/prosecution perspectives, identified important informational needs and resource implications should the project be extended or pre-charge screening be routinized in Nova Scotia. In the final report, the project coordinator suggested, perhaps as a starting point for internal PPS policy deliberations, that pre-charge screening become mandatory in Nova Scotia as it apparently is in some other Canadian jurisdictions. The recommendation was not accompanied by details concerning its implementation or costing.

THE PRE-CHARGE SCREENING CONSULTATIONS

As noted, the project coordinator reported that there were at least 129 consultations with the metropolitan area police (i.e., HRPS and RCMP) involved with the Devonshire Family and Youth Court where all metro criminal offences of 12 to 15 year old youth are handled. RCMP and HRPS leaders agreed to collaborate with the pilot project and, accordingly, there was an expectation that, for the specific offences under the project's mandate, police would consult with project coordinator prior to formally laying the charge. Presumably, too, there was some expectation that there would be instances where, instead of a charge being laid, the case, subsequent to the pre-charge screening activity, might be re-directed through a formal police caution or referred to the restorative justice community agencies.

In the case of HRPS, the project coordinator met regularly with the police service's designated youth officer, stationed at the Devonshire Courthouse, who for several years had been the conduit through whom passed all HRPS youth cases processed through the court or via alternative / restorative justice. While the investigating officers were encouraged to make recommendations for the processing of their cases, the youth officer, experienced and very knowledgeable about youth and youth justice matters, could change their recommendations and, indeed, usually took responsibility for determining the appropriate course of action, especially for youths aged between 12 and 15 years old. In the case of the RCMP, three detachments were the primary contributors to youth cases at Devonshire, namely the Lower Sackville, Tantallon, and Cole Harbour detachments. Here the pattern of contact between the RCMP and the project coordinator varied somewhat by detachment and the project coordinator dealt with investigating officers as well as, sometimes, with the court officers. These RCMP officers did not have offices at the

Devonshire courthouse and their contact with the project coordinator was usually by telephone.

It is not clear what percentage of the designated offences dealt with by the Devonshire court were actually subject to this pre-charge screening process but, clearly, 129 cases over a six month period would be a modest percentage, probably about 10% to 15%. The following discussion of the consultation process and outcomes assumes then that a reasonably representative sample of designated offences was considered, an assumption consistent with the available information. Both the project coordinator and the police officers interviewed indicated that no more than a very few cases, if indeed any at all, were redirected to cautioning or restorative justice, but that the major benefit of the consultations was in the consultations themselves (e.g., appreciating one another's perspectives, learning more about police and prosecutorial imperatives vis-a-vis youth cases). Overall, in roughly 20% of the 129 cases, the project coordinator disagreed with the police decision to have the case processed in the court. These divergent views were all (save one or two instances) concentrated in the first half of the project's existence; over the last three month there was virtual unanimity concerning the cases, namely that charges should be laid and processed through court.

Analysis of the cases, where the project coordinator and the police disagreed on the best course of action to follow in handling a youth accused of crime, sheds light on the different perspectives and could be valuable for appreciating cautioning and restorative justice initiatives at these different levels in the CJS. After examining the coordinator's files, 32 instances of disagreement were identified, 9 of which could be labelled "reluctant agreement" rather than "disagreement". With one exception, the disagreements concerned the mandated offences of

theft under (14 cases), simple assault (13 cases), and mischief (4 cases).

There were several considerations that the project coordinator, representing a crown prosecutor's perspective, raised about the police decision to lay charges. In a few instances charges were being laid basically because the accused youth could not be located either by the police or the restorative justice agency to which the police had earlier referred the matter; here, the coordinator was inclined to suggest "try harder". In a few other instances the basis for disagreement was whether a repeat offender should be given further opportunities to go to restorative justice; as the project coordinator contended in one instance, "just because the youth had a previous restorative justice experience is not a good reason not to refer again". In several other instances, the divergence related more perhaps to different viewpoints concerning the significance for justice processing of matters such "other charges pending" or "being wanted on a warrant"; examples of these latter issues would be the coordinator's critique in one instance that "the [police] decision seems to be made on the basis that [a different police service] may have pending charges", and the coordinator's contention in another case that the out-of-province warrant was a quite minor issue which, given the minor offence under review here and now, should not veto a possible restorative justice referral. Police typically were reluctant to caution or refer on charges when other charges were pending, while the coordinator was more likely to focus on the charge in question, even to the point sometimes of suggesting a split in a multiple charge scenario, with the minor offence being diverted. Police appeared to be of the view that if the youth had committed a more serious offence too then restorative justice would be meaningless on the minor one.

This latter divergence reflected another, related one, namely how best to teach the youth a lesson or get the youth help - where and how to intervene. It appears that police, in their exercise of discretion, were more likely to posit that some deviant behaviour would escalate "unless steps were taken" via court action, while the coordinator, occasionally even in the case of a multiple repeat offender, might ask "could this accused have a referral and then [thereby] see if any help was possible". Police seemed particularly more inclined to contend that where authority figures were the victims (e.g., agency or group home staffers), then court sanctions (including the intimidation of actually being in court) would be valuable in bringing the youth back in line, while the coordinator saw some value of restorative justice in such cases, especially given the age of the offender and the modest nature of the offence.

Without doubt the area where disagreement between police and coordinator was most common was with reference to the matter of the youth's negative attitude and failure to take responsibility. These were very common reasons police officers advanced for laying a charge. Given the NSRJ guidelines for police cautioning and referrals, a prerequisite was the youth's "taking responsibility"; if the officer did not perceive such an admission, then presumably there was, at the police level, no appropriate course of action but laying a formal charge. Often the police would indicate simply then that the youth "won't take responsibility" or some version of "his attitude is bad, [is] indifferent to being charged". It may be recalled from the discussion of police discretion above that not taking responsibility, having a negative attitude and not cooperating in the investigation often blended into one another so "taking responsibility" was not quite as cut-and-dried as may first appear. Clearly this could be frustrating for a coordinator looking at a modest offence frequently committed by youngsters without a record or a very limited one - remember that the

mandated offences for this project were basically the most minor criminal offences, what the Nova Scotia restorative Justice Initiative would define as level one offences. Frequently, the coordinator requested more information on these cases, wondered whether the options had been fully explored by the police, and speculated on whether it would be appropriate, or too much of an imposition, to ask the investigating officer to do a follow-up on the matter. Certainly, as a crown prosecutor, the coordinator was very sensitive to the changes that time, new pressures and new thoughts bring to bear on accused persons (and victims), and appreciated that, subsequent to the police contact, youth might be more inclined to express remorse and take responsibility in the matter.

In the most general terms, analyses of the pre-charge screening consultations revealed that police officers were focused more on the context and relationships entailed by the youth's act, while the project coordinator (prosecutorially based) focused more on the act itself. Police, with their more detailed knowledge of the youth, his or her social milieu, the criminal context, and the victims, quite reasonably, considering their role in the CJS, took all these factors into account in deciding whether to lay charges or divert. The coordinating prosecutor lacked that rich detail and had inadequate informational access but, perhaps more importantly, by professional training and sense of what is legally relevant to prosecution, focused more on the fact that what was being considered were "minor offences by young kids". Where police and the PPS project coordinator disagreed on a case, police explained their decision to charge in terms of this larger contextualism; perhaps only a counter-argument based on different or re-considered contextual factors could have changed their minds; clearly, arguments based solely on the act and the value of extra-judicial measures were not effective in doing so.

PRE-CHARGE SCREENING: THE INTERVIEW DATA

There was virtual unanimity among the police officers interviewed that the pre-charge screening program was neither necessary nor desirable in Nova Scotia. While, typically, officers did not think it would be valuable even for particular types of offences, they did support the kind of informal team approach that, they suggested, characterized the Devonshire court scene. Officers identified the pre-charge screening consultations as situations where they explained to the project coordinator why they were laying a charge in a particular case. From their perspective, it was more or less a matter of their marshalling the rich detail they had and of which the project coordinator was unaware, in demonstrating that extra-judicial measures (i.e., cautioning or referral) would be inappropriate. All officers participating in consultations, reported that the consultations had never resulted in their changing their initial decision to lay charges.

Officers considered that pre-charge screening was superfluous ("an extra-step that did not accomplish a whole lot"), and an expensive and time-consuming "add-on", which, if made widespread, would require significant new resources for both police services and the PPS. A few suggested that, for ambiguous offences or circumstances, clear guidelines would be more effective. Several officers mentioned that there was much grumbling among officers about the "requirement" to consult. Of course, given the Nova Scotian legacy on charging, it was not surprising that some police criticisms were more generalized. One officer, for example, expressed a common view in contending that pre-charge screening, if regularized, would negatively impact on police status in the community, weakening the police in the eyes of the offenders and the victims, by forcing them to obtain crown approval before charging (clearly an overstatement of the pre-charge screening protocol). Other officers argued that the word "screening" implied

that, in the eyes of the PPS, the police were not referring appropriate cases to cautioning or restorative justice; the implication was deemed to be erroneous.

While essentially critical of the pre-charge screening concept, the police officers were typically quite supportive of the PPS project coordinator. There was no personal animus. In fact, several officers commented on the value of information she gave regarding how a case might play out in court, and also on the useful advice they had obtained on some cases outside the project's frame of reference. A few officers queried why the project focused on the Devonshire court (where, it was posited, there was smooth running collaboration among the police, the crown and legal aid) and not the provincial criminal courts where the challenges would have been greater and some "value-added" perhaps found with respect to police-crown consultation. Despite their criticisms, it did not seem that police would be much opposed to more pre-charge "conferencing" on an adhoc basis (i.e., for specific offences for specific time periods in order to sort out problematic issues).

There was not much enthusiasm for pre-charge screening expressed by other CJS respondents. The prosecutors were mindful of the Nova Scotian legacy and uncertain about any advantages associated with circumventing it. One prosecutor asked rhetorically, "an issue for the crowns might be, do I want to know about rumours, family background, the times that the accused was a suspect etc". Another crown attorney contended that while police-crown consultation is probably not as great as before the Marshall Inquiry, still it exists, and "there is no great value in demanding that police confer before laying a charge; it would be like we are supervising their work and would also require a lot of meetings and resources". Typically, the prosecutors did not believe that pre-charge screening could hold up to a cost-benefit

analysis and some had principled objections to the idea. At the same time, they perhaps even more than the police officers, were open to the strategy of adhoc pre-charge conferencing in problematic sub-areas (e.g., sexual assault, bullying).

Citing the Marshall Inquiry and its legacy for police-crown relations, other interviewees expressed gratification that the ill-named pre-charge screening project ("conferencing" was much preferred to "screening") experienced positive police-crown collaboration and may have facilitated a more realistic and complex normative model of police-crown relations. It was contended, too, that there could be positive benefits for both parties. These latter benefits would include sensitizing the police more to equity concerns and encouraging more PPS involvement in the NSRJ program. They also considered that pre-charge conferencing might be most beneficial if applied to special and more serious offences.

CONCLUSION

Overall, the pre-charge screening project would appear to have had limited value if redirecting youth cases headed for court was the major objective. At least in the short-run, there was little impact on the police discretionary styles in advancing or diverting youth cases or on crown prosecutors' referring youth cases to restorative justice agencies. However, if, as was the case, the objectives were to set the stage for more formal and regularized conferencing by police and prosecutors, to ascertain commonalities and differences in how police and prosecutors consider youth cases, to identify informational and resource needs (e.g., paralegal assistance?) at the PPS level in the event of future, extensive pre-charge conferencing, then the pre-charge screening project has well-served the PPS. There was not much enthusiasm from any quarter for an extensive, institutionalized, pre-charge conferencing program, which was seen as unnecessary,

expensive and threatening to an important Nova Scotian legacy (i.e., independence of roles and domains). There was greater openness to the concept for particular offences and particular issues. For example, all parties responded positively to the suggestion that, in light of the current moral panic about bullying and given that the bullies are also youths and subject to the concerns of the YCJA and Nova Scotia's NSRJ program, such assaults or threats might be directed to pre-charge conferencing for a limited period of time to explore the best Justice solutions. And all interviewees praised the informal team style that has characterized the Devonshire court system's handling of youth criminal cases.

OVERVIEW

Overall, these PPS projects constituted not a bold step forward but, rather, a cautious foray into an area of Nova Scotia Justice where much had been happening in recent years and where special institutions and relationships had been established. The bar was set low in terms of focusing on minor offences by younger youth, in a family court context at the Devonshire court where significant collaboration existed among police, crowns and legal aid lawyers. No crown cautions were issued and the pre-charge screening initiative was implemented in a purposefully non-controversial manner. The emphasis in these projects was on exploring the possibilities envisioned by the YCJA in the Nova Scotian context. The central objective was getting a sense of how such crown cautioning and pre-charge screening could work in a CJS where there was significant recent innovation (e.g., the NSRJ program of police cautioning and extensive restorative justice at all levels of the CJS, and other programs of restorative justice) and where the Marshall Inquiry and other events had established a legacy of domain autonomy and role independence between police and prosecution on the issue of laying charges (i.e., laying charges was the responsibility of the police and something that they were expected, and indeed required, to insist upon), Under these circumstances, the cautious foray appears to have been the right strategy. No common-law jurisdiction in Canada has both police and crown caution, so clearly it would be useful to see how the two might complement one another. And the Nova Scotia legacy of the Marshall Inquiry made even the use of the concept "screening" problematic when referring to how police and crown might collaborate in the charging process, so clearly, it was useful to explore the implications in a "team-type" milieu such as the Devonshire family court.

The PPS projects were not driven by a pressing problem in Nova Scotia Justice nor by grass-roots pressures for change,

though there was some concern within the PPS and the Department of Justice to have the crown prosecutors become more involved in the NSRJ program. The impetus, then, was, as one PPS interviewee stated: "let's see how this might work since it is in the act". Opening up more formal lines of communication with the police on the charging process, analysing advantages and disadvantages of crown cautioning and "screening", identifying informational and resource needs, and generating recommendations to the PPS based on this experience and that of other jurisdictions - these were the chief practical objectives. In these respects, the PPS pilot projects have been quite successful as detailed in the previous pages of this report.

In order to appreciate the possibilities of crown cautioning and pre-charge screening, analyses were undertaken of the current processing of youth cases and of patterns of police discretion in directing cases to either the courtroom or extra-judicial measures. In the former instance, it was found that police cautioning and the use of restorative justice alternatives are well-entrenched in Nova Scotia and have been increasing over the short time that the NSRJ program has been in effect. The workload of the court has diminished significantly because of these developments but it remains the case that about one-third of the cases dealt with by the courts involve minor offences that might well be deemed eligible for extra-judicial measures, according to the principles and agendas of NSRJ and YCJA.

There has been less dramatic growth regarding the use of restorative justice agencies by crown prosecutors and one might well argue that if extra-judicial measures are to become more utilized, there will have to be more involvement at the PPS level. Police diversion accounts for most of the increase in the use of extra-judicial measures, but the police focus remains on minor offences committed by the first-time offender. As shown in the

discussion on patterns of police discretion, police do not typically caution or refer minor crimes if the youth has a criminal record (whether a criminal conviction or a caution or a referral to restorative justice) or if the youth does not sufficiently exhibit remorse by taking responsibility for the offence and cooperating in the police investigation (taking responsibility is a formal prerequisite for extra-judicial measures under the NSRJ program). The nuances of police discretion were examined in several samples including one drawn from the PPS' pre-charge screening program. In addition to exploring police constructs on diverting or charging youths, the significant variation was observed, by region, police service and individual officers, in police patterns of cautioning and referring. Both these factors - police conceptualization of appropriate diversion, and variation in the exercise of police discretion - were shown to be important in appreciating the possibilities for pre-charge conferencing and the strategic value of crown cautioning.

THE PPS PROJECTS

Both the PPS pilot projects were implemented largely as planned. The outcomes, in terms of information gathered, arguments developed, resource needs specified, and recommendations generated for PPS deliberations, were meaningful. This latter evaluation would especially apply to the crown cautioning project. The project coordinator recommended the adoption of both crown cautioning and mandatory pre-charge screening or conferencing but the case made was more compelling for crown cautioning than for mandatory pre-charge conferencing. Also, interviews with parents and youths to whom police letters of caution were sent, indicated that cautioning did apparently have meaningful consequences for the young offenders, had a positive impact on family relationships. and was considered a very appropriate Justice option by all. Interviews with CJS personnel, on the possibility

of crown cautioning, revealed a widespread sense that crown cautions, used infrequently and strategically, could complement well the police caution, reduce the court load in appropriate ways, and be cost-effective. The value-added of pre-charge conferencing was more problematic. Few convincing arguments were advanced in support of the idea and there was little empirical evidence offered for it. Analyses of the pre-charge screening consultations established that police and prosecution had different priorities and perspectives on youth cases but there was little evidence that the consultations added anything to the way youth cases would be dealt with. The interviewed CJS personnel generally considered pre-charge screening as a mandatory feature of the CJS to be unnecessary, an expensive add-on, and even detrimental in some respects (e.g., to police status, to the Marshall Inquiry's legacy).

FUTURE DIRECTIONS: 5 KEY AREAS

1) Crown cautioning did not generate much enthusiasm but almost all CJS role players could conceive of it as contributing to the way justice is delivered in Nova Scotia. It was seen as something that could have strategic value in effecting greater equity (e.g., regionally, for ethnic and social class differences) and in responding to changing case circumstances, while being used infrequently vis-à-vis police cautions. Its mandate should not be as limited as suggested in project's final report but rather should be at least as expansive as the NSRJ police caution protocol in being open to repeat offenders and congruent with the extra-judicial measures thrust of the NSRJ and YCJA. Two major issues appear to be whether the issuance of the crown caution letter should require a "taking of responsibility" on the part of the young accused, and what kind of information and contact with respect to the accused would crown attorneys be expected to have. "Taking responsibility", a prerequisite in the NSRJ program, is not a prerequisite for extra-judicial measures in the YCJA nor is

it required in the crown cautioning protocol of British Columbia. If it were to be a requirement in Nova Scotia, there could be significant implications since crown prosecutors do not at present have ready means to independently establish whether the accused "takes responsibility"; also, the proper role of the crown vis-à-vis an accused could be jeopardized if the crown is seen in any way as advising or negotiating with an accused with respect to extra-judicial measures. Police contact with accused youth is often extensive and at least significant. It constitutes an important aspect of effective cautioning, as parents and youth report. Unless the crown's role were to change appreciably (e.g., special meetings with accused youths), it is likely and indeed preferable that the lion's share of cautions be police cautions.

2) Future directions for pre-charge screening are more uncertain but there are three points worth noting. First, while CJS personnel were either neutral or negative about institutionalizing a pre-charge consultation requirement across the board, there was more interest in the ad hoc use of mandatory pre-charge consultations for particular offences or criminal issues such as sexual assault, bullying offences and so forth, where there is either much ambiguity in the eyes of CJS personnel concerning the appropriate CJS response or where moral panics create the need for careful examination of what would be the appropriate CJS response. The concept of a limited time requirement where police and crown attorneys would consult on such cases prior to the laying of charges seemed quite acceptable and useful to most interviewees. Secondly, there was considerable enthusiasm among police, prosecutors and legal aid personnel working out of the Devonshire court for the informal team approach that had been developing there. Such an approach would appear to accomplish most of the objectives associated with the pre-charge screening strategy, Thirdly, whatever happens, it would certainly be preferable in the Nova Scotian context to substitute words such

as conferencing and formal consultations for the word "screening". Future developments along the above lines would benefit from a more clear and detailed specification of objectives.

3) There was much enthusiasm among CJS personnel for the style of dealing with youth criminal case extant at the Devonshire courthouse. Ironically, that use of that family court context was in transition as the PPS projects' final report was produced. Youth (12 to 15 year olds) criminal case have been transferred out of the Devonshire courthouse, at least for the short term. There is much speculation that such youth cases will be merged with those of 16 and 17 year olds and handled at the regular provincial court either in Dartmouth or in Halifax. While interviewed CJS personnel liked the idea of all youth cases being processed at the same court(s), there was sharp criticism that the team approach developed at Devonshire would be lost and that the youth should not co-mingle with adult accused persons at a common provincial court. Having all youth together makes sense since it is congruent with legislation and since the major young offenders are usually the 16 and 17 year olds; innovative processing of their cases represents significant but worthwhile challenges. A widespread position among CJS personnel was that in the future all young offenders in metropolitan Halifax should be processed together at one court where a collaborative team approach was emphasized; such a strategy, it was felt, would achieve the essence of the YCJA imperatives on extra-judicial measures.

4) The project coordinator for the PPS pilot projects identified major problems in accessing information for both projects. Apart from the JOIS, court-based system, there were serious shortfalls in available and completed, NSRJ-required checklist sheets which police are expected to complete and which ideally provide data on the accused, the offence, and any previous involvement by the youth in extra-judicial measures (i.e.,

cautions or restorative justice referrals). The coordinator, also, did not have access to the restorative justice information system (RJIS) which contains all the checklist information plus additional useful information on the offender and the victim. At present, the police policy on recording cautions on CPIC, and in ways readily accessible to other police services, is inconsistent. The situation would become more complex if the PPS develops its own record system for crown cautions. Clearly, there is a major need for the Department of Justice to establish firm policies for integrating and making accessible the informational bases for crown prosecutors and police services across the province. Clearly, too, the informational requirements for effective PPS collaboration in future pre-charge conferencing initiatives may be more substantial than for crown cautioning (presuming the latter would have a mandate as suggested above and not require any admission of responsibility on the part of the accused youth) and might well require some para-legal assistance.

5) There were no details provided in the PPS projects' report concerning the resource requirements of either a crown cautioning program or pre-charge conferencing. If cautions are to be issued by all full-time crown attorneys, then, perhaps, the program's chief costs would be for orientation and training sessions with the crown prosecutors, with additional resources required for record maintenance and occasional technical support, As noted above, effective crown prosecutor collaboration in any pre-charge conferencing might well require the use of para-legal assistance to access pertinent data and even, though less likely, to contact accused and victims. In other jurisdictions, such as Manitoba and Saskatchewan, pre-charge screening was deemed to be a too-expensive add-on. If the Department of Justice strategy was to create a stand-alone youth court - as many CJS personnel would contend, is more of a priority than crown cautioning or formal

pre-charge conferencing - then clearly that could have significant resource implications.

APPENDICES

APPENDIX A: CAUTION SURVEY THEMES Below are the themes and questions which structured the basic interview guide used with offenders (i.e., O) and offenders' supporters (i.e., OS, parent or guardian). The trained interviewer would raise these questions or themes in a manner appropriate to the sophistication of the person being interviewed, so the precise wording will be flexible and the interviewer will adjust language as appropriate.

Below are the themes and questions which structured the basic interview guide used with offenders (i.e., O) and offenders' supporters (i.e., OS, parent or guardian). The trained interviewer would raise these questions or themes in a manner appropriate to the sophistication of the person being interviewed, so the precise wording will be flexible and the interviewer will adjust language as appropriate.

CAUTIONS PROGRAM THEMES/QUESTIONS

A) PRIOR TO RECEIVING THE LETTER OF CAUTION

CONTACT WITH OFFICER (TYPE OF, FREQUENCY, WHO INITIATED)?
GIVEN ADEQUATE INFORMATION RE THE INCIDENT? (OS)
WHAT ABOUT ADEQUACY OF INFO RE THE CAUTION SYSTEM?
YOUR REACTION TO THE POSSIBILITY OF CAUTIONING - PLUSES AND MINUSES OF THAT OPTION?

YOUR EXPECTATIONS RE WHAT WOULD HAPPEN BEFORE YOU HAD THIS CONTACT?
HAD YOU HEARD OF THE CAUTION PROGRAM? HOW?
WHAT DO YOU THINK THE PURPOSES OR OBJECTIVES OF THE CAUTION PROGRAM ARE?

B) THE LETTER OF CAUTION

WAS THE LETTER CLEAR IN WORDS AND MEANING? ANY AMBIGUITY? ANY DESIRABLE FURTHER INFO THAT SHOULD HAVE BEEN ADDED?
WAS IT CLEAR THAT THE YOUTH HAD ACCEPTED RESPONSIBILITY?
WAS IT CLEAR THAT THE INCIDENT WOULD BE RECORDED IN POLICE FILES?

C) IMPACT OF THE CAUTION

ANY FAMILY DISCUSSION OF THE INCIDENT AND THE CAUTION LETTER?
REACTION OF O TO THE LETTER? OF OS TO THE LETTER?
ANY IMPACT ON ATTITUDE AND BEHAVIOUR OF O?
ANY IMPACT ON THE O-OS RELATIONSHIP?

D) ASSESSMENT OF THE CAUTION LETTER OPTION

THE PLUSES OF THE CAUTION LETTER OPTION?
THE MINUSES OF THE CAUTION LETTER OPTION?
WOULD YOU RECOMMEND THE CAUTION IN OTHER SIMILAR INCIDENTS? IN REPEATED INCIDENTS BY THE SAME OFFENDER? IN MORE SERIOUS INCIDENTS?

RECALLING OUR DISCUSSION RE THE OBJECTIVES OF THIS PROGRAM, DO YOU THINK THEY WERE MET IN THIS CASE?

NOW YOU HAVE HAD SOME EXPERIENCE WITH THE CAUTION LETTER PROGRAM, ARE THERE ANY CHANGES YOU WOULD RECOMMEND TO THE LETTER OR TO THE PRE-LETTER CONTACT OR TO THE WHOLE IDEA OF LETTERS OF CAUTION?

APPENDIX B: INTERVIEW GUIDE FOR POLICE

Below is the interview guide that was used by the principal investigator in interviewing police officers, and some other criminal justice system (i.e., CJS) role players about the crown cautioning and pre-charge screening projects.

CROWN CAUTION / PRECHARGE SCREENING THEMES FOR CJS PERSONNEL

A) POLICE - PRECHARGE SCREENING (PCS)

EXPERIENCE WITH THE PCS - ORIENTATION, CASE CONTACTS, TYPE OF CONTACT?

OBJECTIVES OF PCS - AWARENESS OF, ASSESSMENT OF, NECESSARY? VALUABLE?

MAIN CONSIDERATIONS PROVIDED BY CROWN? MAIN RESPONSES TO THEM?

WAS THE INTERACTION ONE OF INFORMATION EXCHANGE? OF DIFFERENT PREMISES OR VALUE POSITIONS BEING ADVANCED?

IMPACT RE CASES DISCUSSED? IMPACT RE PROPENSITY TO GIVE CAUTIONS OR MAKE REFERRALS?

ASSESSMENT OF THE PROJECT OVERALL?

SHOULD PCS BE CONTINUED IN THAT FORMAT? IN A DIFFERENT FORMAT?

SHOULD PCS BE EXTENDED TO ALL TYPES OF OFFENSES? TO ALL YOUTH? TO ADULTS?

PRECHARGE SCREENING AND/OR POSTCHARGE SCREENING?

B) POLICE - THE CROWN CAUTION OPTION

FIRST DISCUSS POLICE CAUTIONS - VIEW OF EFFECTIVENESS, USE OF THEM, STRENGTHS AND WEAKNESSES RE POLICE ROLE, RE TREATING YOUTH, RE EFFICIENT JUSTICE

CROWN CAUTIONING - VIEW OF ITS VALUE, CIRCUMSTANCES UNDER WHICH IT WOULD BE WARRANTED, PLUSES AND MINUSES RE POLICE ROLE, RE TREATING YOUTH, RE EFFICIENT JUSTICE

IF INSTITUTED, SHOULD LANGUAGE BE SAME AS POLICE CAUTION? SHOULD IT BE LIMITED TO CERTAIN TYPES OF PEOPLE (YOUTH VS ADULTS) AND CERTAIN TYPES OF OFFENSES (WHAT TO EXCLUDE?)

APPENDIX C: INTERVIEW GUIDE FOR PROSECUTORS/OTHERS

Below is the interview guide used by the principal investigator to interview crown prosecutors and some other CJS personnel. Here the interviewees differed greatly in their role vis-à-vis the two subprojects so the themes and questions different much depending upon who was being interviewed.

CROWN CAUTION / PRECHARGE SCREENING THEMES FOR CJS PERSONNEL

A) CROWN PROSECUTORS - PRECHARGE SCREENING (PCS)

ROLE VIS-A-VIS THE PCS INITIATIVE?

EXPERIENCE WITH THE PCS - ORIENTATION, CASE CONTACTS, TYPE OF CONTACT?

OBJECTIVES OF PCS - AWARENESS OF, ASSESSMENT OF, NECESSARY? VALUABLE?

EXPECTATIONS RE MAIN CONSIDERATIONS PROVIDED BY CROWN? MAIN RESPONSES TO THEM BY POLICE?

WOULD THE INTERACTION BE ONE OF INFORMATION EXCHANGE? OF DIFFERENT PREMISES OR VALUE POSITIONS BEING ADVANCED?

EXPECTED IMPACT RE CASES DISCUSSED? IMPACT RE POLICE PROPENSITY TO GIVE CAUTIONS OR MAKE REFERRALS? RE CROWN PROPENSITY TO CAUTION OR REFER?

ASSESSMENT OF THE INITIATIVE OVERALL? POSSIBLE PLUSES AND MINUSES? ADVANTAGES AND DISADVANTAGES FOR CROWN ROLE? FOR ACCUSED? FOR JUSTICE SYSTEM?

SHOULD PCS BE CONTINUED IN THAT FORMAT? IN A DIFFERENT FORMAT?

SHOULD PCS BE EXTENDED TO ALL TYPES OF OFFENSES? TO ALL YOUTH? TO ADULTS?

PRECHARGE SCREENING AND/OR POSTCHARGE SCREENING?

B) CROWN PROSECUTORS - CROWN LETTER OF CAUTION

FIRST DISCUSS POLICE CAUTIONS - VIEW OF EFFECTIVENESS, USE OF THEM, STRENGTHS AND WEAKNESSES RE POLICE ROLE, RE TREATING YOUTH, RE EFFICIENT JUSTICE?

CROWN CAUTIONING - VIEW OF ITS VALUE, CIRCUMSTANCES UNDER WHICH IT WOULD BE WARRANTED, PLUSES AND MINUSES RE CROWNS' ROLE, RE TREATING YOUTH, RE EFFICIENT JUSTICE?

IF INSTITUTED, SHOULD LANGUAGE BE SAME AS POLICE CAUTION? SHOULD IT BE LIMITED TO CERTAIN TYPES OF PEOPLE (YOUTH VS ADULTS) AND CERTAIN TYPES OF OFFENSES (WHAT MIGHT BE EXCLUDED?)? SHOULD ALL CROWNS EXERCISE THE OPTION?

APPENDIX D: CJS PERSONNEL INTERVIEWED

Below are the CJS personnel interviewed by the principal investigator for this evaluation. There were many interviews (more than five with each) conducted with the two key operational role players, namely the project coordinator, and the youth officer for the Halifax Regional Police Service.

CJS PERSONNEL INTERVIEWED BY ROLE

POLICE - 7 PERSONS

ALL OFFICERS (RCMP AND MUNICIPAL) DEALING DIRECTLY WITH THE PROJECT COORDINATOR

TWO OTHER RCMP PERSONNEL COORDINATING THE RCMP'S CAUTIONING AND RESTORATIVE JUSTICE INITIATIVE

HALIFAX SUPERINTENDENT OVERSEEING HRPS' PARTICIPATION

PUBLIC PROSECUTION SERVICE - 6 PERSONS

THE PROJECT COORDINATOR

THE PROJECT SUPERVISOR AND MANAGEMENT REPRESENTATIVE

THE PROSECUTION SERVICE'S YOUTH JUSTICE POINT PERSON

THREE CROWN PROSECUTORS IN THE METROPOLITAN HALIFAX AREA

OTHER NOVA SCOTIAN CJS PERSONNEL - 5 PERSONS

LEGAL AID LAWYER AT DEVONSHIRE COURT

YOUTH JUSTICE STRATEGY COORDINATOR, N.S.

RESTORATIVE JUSTICE COORDINATOR, N.S.

POLICY AND PLANNING DIRECTOR, N.S.

CRIMINOLOGY PROFESSOR OF LAW AND RJ BOARD MEMBER

OTHER CONTACTS - 3 PERSONS

CAPE BRETON REGIONAL POLICE

P.E.I. YOUTH JUSTICE COORDINATOR

CROWN PROSECUTOR, CAUTIONS, BRITISH COLUMBIA

APPENDIX E: HRPS, RCMP AND PPS (DRAFT) LETTERS OF CAUTION

Halifax Regional Police
1975 Gottingen Street
Halifax, Nova Scotia
Canada B3J 2H1

David P. McKinnon
Chief of Police

Address all correspondence to:
The Office of the Chief of Police

1749-1999
250 Years of Policing in the Community

To Serve and Protect

FORMAL CAUTION

Surname _____ Given Name(s) _____

You have accepted responsibility for committing the offence of:

contrary to section _____ of the _____ on _____

The investigating police officer has decided not to proceed with a formal charge for this offence. You have been granted this opportunity in the hope that this experience with the criminal law process will be a learning one.

Your parent/guardian will be given a copy of this letter, and the victim will be advised of the decision to caution you.

You will not have a criminal record as the result of this caution, however, the information about the caution will be maintained in a police file. Please be advised that if you are involved in further offences, this caution may be taken into account, and more formal measures, including youth court proceedings, may be initiated.

Police Officer (Print Name) _____ (Signature) _____

Police Agency _____ File Number _____

Date _____

cc. Parent/Guardian
Police

CROWN CAUTION LETTER – YOUNG OFFENDER DRAFT

Date

Name of Young Person's Parents and or Guardian
Name of Young Person
Address

Dear * * *

Re: Name of Young Person
Offence / and code reference
Date of offence
Police file Reference

Our office has received police information alleging that your child has committed the offence of * * * on the * day of * 2002. We have reviewed the police file materials and discussed this matter with the investigating officer.

Instead of proceeding with the criminal charges that have been initiated against your child by way of prosecution in the Supreme Court, Family Division, we have decided to leave the resolution of this matter to you as parent /guardian of this child. We urge you to take prompt and appropriate action with your child.

A copy of this letter will be maintained in the crown attorney's office.

In light of our prosecutorial duty to protect the public, be advised that if we receive further reports alleging other offences committed by your child, this Formal Caution will be considered in the determination on whether or not we proceed with a future prosecution against your child.

If you have any questions concerning this matter please contact the undersigned.

Yours truly,

Crown name
Crown Attorney

RESTORATIVE JUSTICE

FORMAL CAUTION

Surname

Given Name(s)

You have accepted responsibility for committing the offence of:

contrary to section of the

on

The investigating police officer has decided not to proceed with a formal charge for this offence. You have been granted this opportunity in the hope that this experience with the criminal law process will be a learning one.

Your parent/guardian will be given a copy of this letter, and the victim will be advised of the decision to caution you.

You will not have a criminal record as the result of this caution, however, information about the caution will be maintained in a police file. Please be advised that if you are involved in further offences, this caution may be taken into account, and more formal measures, including youth court proceedings, may be initiated.

Police Officer

Signature of Cautioned Person

Police Agent

File Number

Date

cc: Parent/Guardian
Police File

P081 2000-03 (FLO)

BIBLIOGRAPHY

References Cited:

Archibald, Bruce, Democracy and Restorative Justice, paper presented at the conference International Network for Research on Restorative Justice for Juveniles, Leuven, Belgium, September 2001.

Clairmont, Don, "Restorative Justice", isuma, Volume 1, 2000

Clairmont, Don, The Nova Scotia Restorative Justice Initiative: Year One Evaluation Report. Ottawa, Department of Justice, 2001

Department of Justice, Nova Scotia, Restorative Justice: A Program For Nova Scotia. Halifax, Government of Nova Scotia, 1998

Hund, Andrew, Participatory Reintegrative Shaming Conference. On-line at <ajh9@axe.humboldt.edu>

Quigley, Karen, Youth Justice Pilot Projects: Interim Reports 1 and 2. Halifax: Public Prosecution Service, Nova Scotia, 2001

Quigley, Karen, Nova Scotia Pilot Project Final Report: Crown Cautions And Pre-Charge Screening. Halifax: Public Prosecution Service, Nova Scotia, 2002