

Unequal Before the Law? Immigrant Young Offenders and the Criminal Justice System

A preliminary investigative report
to identify the problems of access to
the criminal justice system with which
immigrant youths and their families
are confronted

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This report has been prepared for the Alberta Northwest Territories Network of Immigrant Women (ANNIW). Founded in 1986, the ANNIW is an inclusive umbrella organization which supports efforts and initiatives amongst member groups which foster equality, justice and learning for immigrant women through full participation in the social, economic and political life in Alberta and Canada. ANNIW's objectives are to represent the full diversity of immigrant women in Alberta and the Northwest Territories and to be a strong recognized voice advocating on issues affecting immigrant women. The Network is comprised of representatives from immigrant women serving agencies or immigrant women's groups within immigrant serving agencies. The Network's Board of Directors consists of the following:

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PURPOSE OF REPORT

This is a preliminary investigation to identify the problems that immigrant youths and their families encounter in dealing with the legal system. Given that there may be communication barriers and limitations within a system geared towards English speakers, it is important to examine how much accessibility immigrants have to the legal system. The study was conducted over a four month period; it focused on immigrant youths and specifically on their involvement with the criminal justice system.

The methods used to gather information include the following: interviewing youths and family members, discussions with members of the legal community (police, judges, lawyers), meeting various community youth workers, reviewing government documents, reviewing certain reference materials and attending youth court.

The paper begins with a discussion of immigration in Canada and a brief overview of the *Young Offender's Act, Statutes of Canada, 1980-81-82-83, c.110*. Next is an in-depth look into the profiles of three immigrant youths, their families and their involvement in the legal process. The following sections will deal specifically with the legal process from arrest to disposition and will include discussion of specific sections of the *Young Offender's Act*. The report also discusses the role of parents and community workers in the youth's legal experience. The study will conclude with a summary of the problems identified in gaining access to legal services.

In theory, our criminal justice system should treat immigrant youths as fairly as it treats any other Canadians; however, we need to examine whether this is actually the case. Immigrant youths may face greater obstacles to receiving fair treatment and correctional aid; the identification of these obstacles is only the first step in implementing changes necessary to more justly represent these youths and to address their needs.

I. INTRODUCTION

A. Immigration into Canada

There are different categories of foreign-born persons permitted to immigrate and settle in Canada, including family-sponsored persons, investors, entrepreneurs and refugees. While the integration process into the host community can be very different for immigrants in each of the categories, the rate and extent of integration can be different for people of different ages as well. Immigrant youths generally adapt or integrate into their new environment faster than their parents.

The phrase "integration process," as used in this report, is not intended as an equivalent to the "melting pot" where people lose their ethnic and cultural identity. Rather, the integration process includes finding suitable employment, learning English, adapting to life in a Canadian context, becoming a Canadian citizen and most importantly, feeling comfortable in Canada.

Usually, the priority for adults is to find employment, to support their families and, depending on their circumstances, to learn enough English so that they can function in their new environment. Schooling is the priority for children, who are placed into schools and grades according to their age. Generally, a 13 year-old immigrant child would be placed into grade seven, irrespective of his or her English ability or level of schooling.

Immigrants who come to Canada are similar to other Canadian-born residents in that the majority are law-abiding and contribute to the economic prosperity of Canada;¹ however, as in the general Canadian population, a small percentage of new Canadians become involved in criminal activity. Obviously, adult and juvenile criminal activity is a phenomenon that exists within the mainstream Canadian population as well as the newly arrived immigrant population. Juvenile crime has always existed and has been studied quite extensively. In fact, it is an area that is increasingly focused upon by the Canadian media and the community. Currently, there is a great deal of concern over the existing *Young Offender's Act*, and much debate over what many people feel is an ineffective law. At the present, more research needs to be done in order to determine the extent to which immigrant youths are involved in crime, as well as the causes and means of this involvement.

¹ H.G. Grubel, "The Economic and Social Effects of Immigration"; J.L. Simon, "The Economic Effects of Immigration: Theory and Evidence"; A. Nakamura, M. Nakamura and M.B. Percy, "Macroeconomic Impacts of Immigration," The Immigration Dilemma, ed. Steven Gloverman (Vancouver: The Fraser Institute, 1992).

B. The Young Offender's Act (YOA)

The YOA is relatively new federal legislation which came into force in 1984. Before the YOA, the *Juvenile Delinquents Act, Revised Statutes of Canada 1970, c. J-3*, (hereinafter referred to as the JDA) was the Act which dealt with juvenile delinquency and crime. The focus of the JDA was primarily the moral education of the youth. The philosophy was that youths who violated the law were not criminals but rather misguided and misdirected children in need of aid, encouragement, help and assistance.² The administration of the Act was non-legal and rehabilitative in nature. The JDA gave wide discretionary powers to persons in authority to do whatever they considered necessary in the child's best interests.

What was said to be in the child's "best interests" sometimes resulted in a youth serving a lengthier sentence than an adult convicted of the same crime, or detention in a reformatory school for a number of years until authorities felt that the youth was "rehabilitated." Cases such as these caused criticism from the public that the juvenile justice system was too harsh, unfair and ignored the legal rights of children. At the same time, there were also critics who alleged that the sentencing or dispositions were too lenient and did not adequately protect society. When the YOA was drafted in the 1970's, the emphasis of juvenile legislation shifted from aid, encouragement and assistance, to punishment.

Unlike the JDA, the YOA is clearly criminal law rather than child welfare legislation. The YOA applies to young persons who are twelve to seventeen years of age at the time of the offense. The YOA emphasizes due process, protection of society and the limits of discretionary power. The legal rights entrenched in the *Canadian Charter of Rights and Freedoms*³ also apply to youths who have been charged with violating the law. The YOA attempts to focus on the youth accepting responsibility for his or her criminal acts, while at the same time recognizing that youths have special needs and limited accountability.

² JDA, section 38.

³ Part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c.11

C. Young Offenders Generally

A discussion paper released by the Justice Department in Ottawa concludes that youth crime has stayed at about the same level over the past five to ten years.⁴ Dr. Hackler, a criminologist at the University of Alberta, takes the position that overall youth crime has in fact been decreasing over the past few years.⁵

The information provided by the Justice Department indicates that the types of crimes being committed have changed. There has been an increase in offenses such as shoplifting, car theft and violent offenses. Staff Sgt. Vern Fielding of the Calgary Police Department attributes this increase in violent youth crime to the police paying more attention to minor assaults such as slaps and also because of a growing tendency for girls to resolve their disputes using violence.⁶

Immigrant young offenders make up a relatively small percentage of the total number of young offender charges per year. For example, in 1992 there were 1,936 charges against young offenders for shoplifting in the city of Calgary. In contrast to this figure, there were approximately 50 shoplifting charges against immigrant youths in Calgary.⁷ So, immigrant youths make up approximately 2.5% of the shoplifting charges in Calgary. At present, foreign-born people generally make up a relatively low percentage of the inmates in Canada's federal prisons.⁸ However, despite the relatively small numbers of immigrant young offenders, the number of charges against foreign-born youths increases rapidly every year. It is presently unclear whether these statistics represent a real increase in the number of crimes committed or if they indicate the presence of other factors at work which have resulted in a disproportionately larger number of immigrant young offenders being charged with offenses.

⁴ Department of Justice, Canada, Toward Safer Communities, 1993, p. 3.

⁵ Dr. Hackler, Professor of Criminology, University of Alberta, Seminar: Annual General Meeting of the John Howard Society, Calgary, Alberta, June 1993.

⁶ Sollid, 1993, p. 3.

⁷ Information from the Correctional Services Division, Office of the Solicitor General, Government of Alberta.

⁸ Gloverman, 1992, p. 242.
Thomas, 1992, p. 13.

II. PROFILES

The following profiles are of immigrant youths chosen at random in Calgary during the 1993 year. We do not intend to infer that these represent the average immigrant young offender. However, it is important to note that many aspects of the family backgrounds are common amongst immigrant youths involved in crime. The names of all of the profiled youths have been changed to protect their identities.

A. "Danny"⁹

(i) Charges and Plea

From February to April 1993, Danny was charged with one count of failure to attend court, one count of conspiring to commit an offense and two counts of break and entering. He pleaded guilty to all of the above charges. A predisposition report (PDR)¹⁰ was ordered.

(ii) Circumstances of the Offense

The police had arrested Danny along with other youths in a car. They had committed a break and enter at one house and were apprehended with the goods in the car. They were allegedly en route to another house with the intent to break in and steal property.

(iii) Family Situation

Danny is a seventeen-year-old male from southeast Asia who immigrated to Canada in 1989 at the age of thirteen when he was sponsored by his brother. He lives in a two bedroom basement apartment with his elderly mother and two sisters. His father passed away in southeast Asia. Since Danny's mother is elderly and does not work or receive social assistance, she is financially supported by her four children, including Danny. His sisters work part-time at a factory but anticipate being laid off in June, 1993.

⁹ Information about this youth came from an interview with his mother, the PDR report and attendance in youth court.

¹⁰ A pre-disposition report examines the personal and family history and present environment of a young person made in accordance with section 14 of the YOA. A PDR is normally requested to assist in the disposition or sentencing of the young person. It forms part of the official record of the case.

Danny's mother does not speak English. His sisters' English skills are weak, but they are enrolled in English as a Second Language (ESL) programs. The extent to which Danny can read and write English is not known, but his conversational skills in English are satisfactory. Danny has only received about two years of schooling and ESL in Canada, so one may assume that his reading and writing skills are still at an elementary level. Danny is able to communicate with his family in his first language.

(iv) Relationship with Family Members

Since his older brother is married and lives elsewhere, Danny does not have a close relationship with him. Danny's mother rarely goes out of the immediate neighbourhood. She states that Danny is very helpful at home. He is not close to his sisters though they all live in the same residence. However, his mother comments that he is very cooperative with his sisters. Although he is somewhat alienated from many of his family members, Danny is still very responsible towards them, especially towards his mother. The family has no other relatives in Canada.

The social worker who compiled his PDR commented that Danny is very cooperative, polite and sociable.

(v) Education/Employment

Danny worked part-time in 1991 to help support his family. His attendance at school was sporadic, and he recently dropped out of school partly because of economic pressures, finding a full-time job as an unskilled labourer which paid \$7.00 per hour. Danny's income is essential to support the family.

(vi) Friends and Activities

Not much is known about Danny's friends. His mother is unfamiliar with them since he does not bring them home. He apparently talks to them frequently on the phone but his mother does not understand the conversations since they are in English.

(vii) Youth Court Proceedings

Previous Findings of Guilt/Criminal Record

No criminal record.

Submissions and Recommendations

PDR: recommended probation

Crown prosecutor: The police allege that Danny is a gang member and, although not proven, the Crown emphasized the "gang association." The Crown submitted that this, combined with the submission that the crime was serious, planned and conspiracy-like, should result in a term of custody.

Defense counsel: Denied police allegations of his client's involvement in a gang. Counsel stated that since there were so many positive factors--full-time job, no prior record, a positive recommendation by the PDR--Danny should not be placed in custody.

Danny's Mother: She attended the hearing¹¹ and requested that he be allowed to continue working since his income is needed to support the family.

Final Disposition

The judge expressed concern with the alleged "close association with a gang." The judge then decided to grant a term of lengthy probation since there were so many positive factors and because of the mother's point that Danny was responsible for supporting his family. Danny was given a probation term of 18 months with the usual conditions¹² and a curfew of 10:00 p.m. to 6:00 a.m. if not in school or employed. He was ordered to pay \$200.00 to the victim to cover the victim's insurance deductible and also to pay the amount owing to the insurance company.

What needs to be recognized in this case is the judge's emphasis on Danny's alleged association with a gang, although this was not proven. The premise of the criminal justice system is that a person is innocent until proven guilty.

¹¹ The mother was able to make her submissions to the court through an interpreter provided by the Calgary Association of Young Immigrants.

¹² Section 23(1) of the YOA states that the young person shall keep the peace, be of good behaviour, and appear in youth court when required to do so.

B. "Ben"¹³**(i) Charges and Plea**

In February 1993, in Calgary, Alberta, Ben was charged with one count of assault. A plea of guilty was entered, and a PDR ordered.

(ii) Circumstances of the Offense

Ben and his friends were on their way to see a movie in the downtown area of Calgary when a "drunk guy picked a fight" with them. According to Ben, this man verbally abused them and hurled racial insults at them. The information provided by the police to the Crown stated that this group of youths then beat up the man in retaliation, causing severe physical injury.

Sometime after the incident, that same man recognized Ben when he was alone and assaulted him. The police arrived on the scene and the man explained how Ben and his young friends had beat him up earlier at the movie theatre. The police arrested Ben and charged him with assault, but did not arrest the man who had assaulted Ben.

When Ben was interviewed, he said that the man had severely beat him up before the police arrived. Ben's parents were very alarmed when he came home that night covered in blood and bruises. Ben said that the police stood and watched the man beat him for awhile before the policeman said, "you can get off him now." Moreover, the man involved in the beating was an adult about twice the size of Ben. Ben states that the police discriminated against him by charging him but not charging the man who assaulted him.

(iii) Family Background

Ben and his family are all Canadian citizens. Ben is a fifteen-year-old male from southeast Asia. Born in Asia, Ben immigrated to Canada with his family when he was two months old. His father is employed as a mechanic and his mother as a member of the cleaning staff in a hotel. Also, he has an older brother who is seventeen years old. Before arriving in Canada, his family spent about three months in a refugee camp in Hong Kong.

Ben has grown up here in Canada and is fluent in English. Aside from very basic and rudimentary phrases, he does not speak his parents' first language. His

¹³ Information about this youth came from an interview with the youth, his PDR report, an interview with a youth worker and attendance at youth court.

parents, on the other hand, still communicate mostly in their mother tongue and have very little understanding of the English language.

Ben currently lives with his mother, father and brother. They have no other relatives in Canada.

(iv) Relationship with Family Members

Ben's father informs us that Ben was a very well-behaved child who always called his parents to let them know if he was at a friend's house and who always listened to his parents' advice. At the age of thirteen, however, Ben suddenly began to stay out late at night and disregard his parents. His father became frustrated trying to discipline him. Ben's parents worry a lot about him, and his father often waits up for him. According to Ben, his mother and father yell at him for skipping classes at school and for staying out late.

The father also recognized that communication between him and his son is very difficult due to the language barrier. Ben states that he feels bad for his parents but there is nothing he can do about it. His parents are very busy and have both worked full-time to support their family since they moved here. Both his mother and father say that they have a very hard time understanding Canadian ways and therefore have difficulty keeping up with what their son is doing in the community.

The social worker who prepared the PDR commented that Ben's father presented himself as a very caring and appropriate parent but that he does not understand his son's behavioural problems. She attributed this to the cultural and language barriers between Ben and his parents.

(v) Education/Employment

Ben attends a Calgary junior high school and is in grade eight. He is supposed to be in Grade nine but has failed a grade due to poor attendance and low marks, which average around 50%. Although his attendance at school is sporadic and infrequent, his behaviour when he is in school is satisfactory. Ben admits that teachers have tried to help him improve his grades. He states that he finds school very boring and, now that he has failed a grade, feels embarrassed to be in class with younger students. Ben will not be allowed to return in the fall to the school that he has been attending due to his age and his attendance record, so he will be sent to an industrial occupation school such as Jack James School in Calgary. Ben is not employed and receives an allowance from his parents. Ben hopes to finish high school and eventually work as a mechanic like his father.

(vi) Friends and Activities

Ben's circle of friends consists mostly of East Asian youths (Korean, Chinese, Vietnamese) and some mainstream Canadians of various ethnicities. He used to be involved in sports such as volleyball and hockey but has largely discontinued these. He likes to go out at night with his friends to play pool and watch movies. Ben usually stays out very late at night and then sleeps at home during the day. He said that he is not into drugs but he occasionally likes to have a beer with his friends.

According to his PDR, Ben considers himself a very happy and passive person.

(vii) Youth Court Proceedings**Previous Findings of Guilt/Criminal Record**

- 1991 He was found guilty of theft under \$1,000.00.
Disposition: He was required to do 10 hours of community service within a two month period.
- 1992 He was found guilty of a municipal by-law offense, and paid a \$40.00 fine.

Submissions and Recommendations

PDR: The probation officer stated that Ben receives very little supervision from his parents due to the cultural and language barriers in his family. The officer submits that Ben is "taking advantage" of his parents' position. This officer recommended that Ben receive a short term in custody followed by a period of probation.

Crown prosecutor: Similarly, the Crown stated that since Ben "takes advantage" of his parents' position and has no remorse for the victim, he should be placed in custody. If custody is not appropriate, then a term of probation would be implemented.

Defense Counsel: Recommended no custody, but a fine or a period of probation.

With respect to the Crown's submission that Ben lacked remorse, Ben states that he did not feel sorry for the other man since the other man insulted him and also beat him up.

Final Disposition

The judge ordered fifty hours of community service to be completed within one year. Ben is on probation for one year with the usual terms,¹⁴ and must reside in an approved place. He has a curfew Sunday to Thursday between the hours of 10:00 p.m. and 7:00 a.m. and Friday, Saturday between 11:30 p.m. and 7:00 a.m., and will undergo assessment and counselling. The curfew may be varied in writing by his parents.

The probation officer's and the Crown prosecutor's perception that Ben was "taking advantage" of his parents needs to be examined; this may be a biased view which does not take into consideration the process of integration where, through no purposeful intention of the youth, the parents have been placed in a position of dependency on their children.

C. "Johnny"¹⁵

(i) Charges and Plea

In May 1993, Johnny was charged with two counts of shoplifting (theft under \$1000.00). He pleaded guilty to both counts.

(ii) Circumstances of the Offense

On one count, Johnny entered a Shopper's Drug Mart and attempted to steal various items totalling approximately \$28.00. A few days later he attempted to leave a record store with cassettes worth about \$13.00.

(iii) Family Situation

A sixteen-year-old male from East Asia, Johnny arrived in Canada in 1990 at the age of thirteen with his parents. They were sponsored by one of his brothers. He lives in a house with his grandmother, father, mother, two brothers, two sisters, two cousins and an aunt. Except for his grandmother and his father, all

¹⁴ See footnote 11.

¹⁵ Information about Johnny came from discussions with him, his parents, a youth worker, his defense lawyer and observations in youth court.

the members of his family are employed and contribute to the mortgage payments on the house and living expenses. Johnny's father was employed until he suffered an injury at work; he is now having difficulty finding employment.

His brothers were able to learn some conversational English through their work, but it is assumed that their reading and writing capacity is minimal. The remaining members of his family, including Johnny, have little or no understanding of English.

(iv) Relationship with Family Members

Although they do not spend a lot of time together, Johnny feels that he has a good relationship with his family. He understands that his brothers and sisters are very busy with their families and jobs.

Johnny's father was very concerned about his son's initial involvement with crime and did not understand the Canadian legal process. He thought that sending Johnny to England to be with other relatives would benefit Johnny by getting him away from the "bad" kids that have befriended him. It was explained to the father that Johnny must go through the court process and complete any disposition imposed on him, or he would encounter other problems.

(v) Education/Employment

When Johnny first arrived, he was placed in grade eight although he had no English skills. While attending ESL classes, he was also enrolled into math, science, computing, social science and physical education. His grades in all of these classes were not very good, fluctuating around 50%.

Johnny has stated that he is not interested in school because his grades are so low. As a result, his attendance became increasingly sporadic and he eventually dropped out of grade ten in May 1993. He has expressed an interest in going back to school this fall, but he may not be allowed to attend due to his low attendance record. Johnny was taking ESL in school but his English is still severely limited and an interpreter was required in order to interview him.

In August, his parents were able to find Johnny a full-time job in the kitchen of a restaurant. It is uncertain at this point whether he will return to school or remain at the restaurant.

(vi) Friends and Activities

Johnny was very active in Scouts and outdoor activities when he lived in Asia, but has not participated in these activities in Canada. He has a mix of friends

including East Asians and mainstream Canadians of various ethnicities, but mentioned that he feels less comfortable with the mainstream teens.

(vii) Youth Court Proceedings

Previous Findings of Guilt

Johnny has one charge of Petty Trespass for which he was to serve some community service hours. He has not had the opportunity to complete his sentence since the social services department is having some trouble placing him due to his limited language skills.

Final Disposition

Johnny was given one year of probation for each charge of theft under \$1000.00. The judge had considered imposing a community service term but due to the language differences, settled for a probation term.

It should also be noted that Johnny encountered translation problems in court; his interpreter was very inaccurate. Johnny stated that he found the whole process to be unfair, but he had no way of communicating this to his judge or lawyer. He said that this left him feeling angry and frustrated.

III. THE ARREST PROCESS

This section examines some of the factors that affect which youths will be charged with criminal offenses and brought to youth court. The prevailing attitudes of the host community as well as individual police officers play a very important role in this selection process. In some cases, society's biases may result in certain groups of youths being charged more often and treated more harshly than others.

A. Influence of the Community

The importance of the general public in the judicial process was demonstrated in one study which showed that out of 281 police encounters with juveniles, 78% of them were initiated by calls from citizens.¹⁶ The decision of an officer to place a young

¹⁶ D.J. Black and A.J. Reiss, "Police Control of Juveniles," American Journal of Sociological Review, 1970, p. 63-77; R.J. Lundman, R.E. Sykes, J.P. Clark, "Police Control of Juveniles: A Replication," Police Behaviour: A Sociological Perspective, ed. R.

offender in custody or to release him was strongly influenced by the preference of the complainant.

Other studies have concluded that:¹⁷

- 1) reporting incidents to the police increases if the victim is an individual as opposed to a corporation;
- 2) the likelihood of calling the police increases if criminal behaviour is exhibited by a stranger rather than a familiar person;
- 3) reporting increases if the offense is committed by a black youth or a youth with long hair;
- 4) people have different tolerance levels and different definitions of deviant behaviour; some people will report everything while some will only report serious incidents;
- 5) citizens influence arrest rates by their willingness to remain at the scene of the offense until the police arrive;
- 6) the complainant or victim is very influential in the police decision of whether or not to take a youth into custody.

The community, therefore, has a large impact on the first step of the process whereby the behaviour of a youth is escalated to the status of deviant, delinquent or even criminal.¹⁸

Given that the community appears to be so influential in the juvenile justice process, it is important to examine the kinds of information to which members of the host community are exposed.

The National Media Archive has information relating to television coverage of immigrant issues in Canada. They have shown that television stations such as CTV and CBC highlight the negative experiences of immigrants or focus on bizarre or dramatic events, without providing balanced coverage on the positive effects of immigration. CTV's reports focusing on crime and immigrants represented a significant portion of its

¹⁷ Arnold Binder, G. Geis and D. Bruce, 1988, p. 264-68.

¹⁸ Binder, 1988, p. 267.

overall coverage of the social impact of immigration. The stories usually highlighted dramatic events such as East Asian gang violence in Vancouver.

While researchers at the Fraser Institute¹⁹ state that immigration has an enormously positive impact on Canada, especially on the economy of Canada, the economic effects of immigration accounted for only three percent of CBC's and a mere two percent of CTV's total coverage of immigration issues.²⁰ Negative television comments on CBC in the areas of race relations, ethnic demographics, adaptation, education and official languages far outweighed the positive comments on these topics. Similarly, negative comments made on CTV about race relations and ethnic demographics far outnumbered positive ones.

Most people rely on television, radio or the newspapers to keep them updated on relevant issues. Since the media coverage and reporting of immigrant issues by stations such as CTV and CBC appear largely negative and may be misleading, the public is left with the false impression that immigration has a negative impact on Canada.

This reporting of immigrant issues affects how the mainstream community perceives immigrants and immigrant youths; accordingly, the perception it creates may play a significant role in the differential selection of immigrant youths into the juvenile justice system.

B. The Role of the Police

The Charter of Rights applies when a young person is arrested or about to be arrested. It provides the following:

- s.8 Everyone has the right to be secure against unreasonable search or seizure.
- s.9 Everyone has the right not to be arbitrarily detained or imprisoned.
- s.10 Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reason therefor;
 - (b) to retain and instruct counsel without delay and to be informed of that right; and
 - (c) to have the validity of the detention determined and to be released if it is not lawful.

During one study in which thirty police officers were observed over a nine month period, researchers found that in 90% of the cases the nature and seriousness of the

¹⁹ See footnote 1.

²⁰ On Balance, 1993, p. 7.

youth's suspected offense had little to do with the actions taken by the police.²¹ Instead, the actions taken by the police depended upon cues such as age, race, grooming, dress and the youth's demeanour. The study points out that these cues are primarily indicators of social class, not necessarily likelihood of guilt. Another study supports the contention that police discretion is more likely to result in the arrest of minority group members, lower class persons and the young; the wealthy, the politically well-associated and majority group members are less likely to suffer from unfavourable police disposition.²² Other studies have shown similar results.²³

The personal characteristics of individual police officers also play a role in the actions taken. A police officer's socio-economic background, his or her own personal experiences with the law as a youth and the degree of racial discrimination were all found to affect the rate of referral by a police officer.²⁴

Another study has shown that the probability of arrest increases when the police have an image of a youth as a delinquent because of an association with a potentially "suspicious" group.²⁵ As mentioned earlier, in Danny's case, the police alleged that he was a gang member, and this allegation was treated as if it were a fact by the youth court judge during Danny's disposition hearing. The stigma of "gang association" was carried all the way through to his disposition and may have affected the severity of his disposition.

Another immigrant youth interviewed during the course of researching this paper commented on the interaction between some police officers and East Asian youths. He contends that the police discriminate against visible minorities and has described various incidents of police harassment. In one instance, he and about seven other young persons were in a pool hall. Half of this group were mainstream Canadian youths and the other

²¹ Baker, "Police Encounters with Juveniles", American Journal of Sociology, September 1964, p. 206-214, in Saving Our Kids From Delinquency, Drugs, and Despair. Solutions Through Prevention, Baker, 1991, p. 26.

²² Flowers, 1988.

²³ See Binder. Also see Flowers, p. 150, footnote 23.

²⁴ Piliavin Irving and Scott Briar, "Police Encounters with Juveniles," American Journal of Sociology, 1964, p. 206-214, in Binder.

²⁵ Merry Morash, "Establishment of a Juvenile Police Record: The Influence of Individual and Peer Group Characteristics," Criminology, 1984, p. 97-111, in Binder.

half consisted of East Asian youths. The police entered and harassed the East Asians, threatening to charge them with loitering.²⁶ The East Asian youths were forced to leave but the non-East Asian teens were not. According to the youth, when there is a fight involving East Asian and mainstream Canadian youths, the East Asian youths will inevitably be blamed for the uprising and subsequently charged. Moreover, he maintains that if the police see an East Asian youth with known gang members, they automatically treat that youth as if he were a gang member and harass him. This youth states that the "white guys" who hang around with Asian gang members do not get labelled as gang members by association.

Police officers have the difficult task of protecting members of society from the criminal element as well as respecting the legal rights of accused persons. While this immigrant youth's experiences of being discriminated against are by no means conclusive, it is important to examine some of the factors that affect police officers before they make an arrest. Once an arrest is made, the police officer must respect the legal rights of the accused and, accordingly, the officer's discretion is limited. Before an arrest, however, police officers have wide discretionary powers to determine who will be brought within the juvenile justice system.

Studies have shown that far more juveniles commit delinquent acts than are officially known to the courts. Ninety-five percent or more commit one or more acts for which they could have been arrested and processed through the juvenile courts. Many of these offenses are minor and in the past were dealt with by parents rather than the courts. Youth from all socio-economic backgrounds and racial groupings are included in this figure, yet the majority of youths awaiting trial are poor, disadvantaged or from racial-minority families.²⁷

There is a selection process at the community and police level to which youths are subject. If the mainstream community is subjected to negative information relating to immigrants and the police are responding to the community, the stage is set for increased potential of discrimination and differential selection of immigrant youths into the juvenile justice system.

²⁶ At the time of the threat, this was no longer a Criminal Code offense.

²⁷ See Baker. Also see Flowers p. 136-137.

IV. THE ROLE OF CROWN PROSECUTORS

After the police have laid charges and compiled a file on a young person, that information is referred to the Crown prosecutor's office.²⁸ These files then go through a screening process to determine:

- (1) whether the circumstances of the case bring it within the jurisdiction of the youth court;
- (2) whether the evidence is sufficient to warrant a court hearing;
- (3) whether the case is serious enough to require an actual hearing;
- (4) whether a process of informal supervision should be arranged if that alternative seems desirable.

Crown prosecutors, like the police department, are in a position to be influenced by what the community at large feels is important. The community may dictate what is "high profile" or in other words, what the community is most concerned with at any given time. The high profile crimes at the present time are offenses such as break and entering, car theft and "possession of scissors."²⁹ Thus, there is a concern that discrimination by the mainstream community may influence how Crown prosecutors screen and prosecute cases.

In many youth cases, parents can contact the Crown Prosecutor's office and discuss their child's case. However, as the cases of the three immigrant youths profiled above have shown, this may be difficult for a parent who has no English skills.

V. THE ROLE OF DEFENSE COUNSEL

When youths are arrested or detained, they have the right to retain and instruct counsel. If a youth has the resources, he or she may retain a private lawyer by paying that lawyer's fees. If a youth is not financially capable of retaining a private lawyer, he or she may apply to Legal Aid for assistance.

²⁸ Also see the Alternative Measures section of this report on page 38.

²⁹ This is not in itself a criminal offence, but scissors are often the tool of choice used to steal cars.

Legal Aid acts as a liaison between the youth and various defense counsel. Through Legal Aid, youths have access to legal representation at a reduced billing rate.³⁰ The lawyer is paid by Legal Aid and the youth pays Legal Aid when he or she is financially capable of doing so. Through this system, the young person has a choice of counsel.

If youths do not have a Legal Aid lawyer or a private retainer lawyer, they may speak with "duty counsel." These are lawyers who are assigned to a particular courtroom and a youth may discuss his or her case with duty just prior to court commencing. There is no charge to the youth for this service. Regardless of how the lawyers are retained, there are often a number of problems which arise between defense counsel and their young clients.

One of the biggest problems encountered is the lack of communication between counsel and their clients. As was the case with Danny and Johnny, many immigrant youths are not fluent in English and many cannot read. Without the use of an interpreter, it is literally impossible to properly understand and obtain instructions from these clients. If a court appearance is scheduled, many defense counsel will meet the court-appointed interpreter and the youth just prior to commencement of court. This often does not allow enough time to properly interview the youth about the case. For example, throughout the study, we found that the way in which many immigrant youths answer questions is very indirect. We had to continuously re-word each question to make sure that they understood. This process was very time-consuming, partly because of the complicated legal terms which had to be explained. Also, although many of the immigrant youths we talked to were able to speak English, they were sometimes unable to read it well. If the defense counsel gives them some documents to review, many will pretend to be able to read them just to avoid embarrassment.

Several immigrant youths say that interpreters were not available at their lawyers' offices. These youths agreed that they had difficulty communicating with their lawyers. It appears that prior to the youth's court appearance defense counsel may be relying on information provided by witnesses, Crown prosecutors, the police, PDRs and school officials, instead of from the youth. If any of the information is inaccurate, it may not be discovered until the court date when the interpreter is available.³¹ If the lawyer is unable to communicate with the immigrant client or the parents, the opportunity for the youth to tell his or her side of the story may be lost, defeating the purpose of a hearing.

³⁰ Legal Aid fees are a set rate according to a tariff schedule.

³¹ Also see the Judges and Youth Court Procedure section of this report on page 30 for a discussion on court interpreters.

With respect to the lawyers retained through Legal Aid, it is highly unlikely that funding for assistants such as interpreters will be made available in every instance since the Legal Aid system in Alberta has been experiencing funding problems.

Another major problem is the lack of communication between the lawyers and the youth's parents. There is nothing in the YOA that obligates defense counsel to communicate with parents of their clients. Lawyers are often the first people contacted by parents to find out the details of their child's charges. Some lawyers are willing to discuss the matter with the parents, but many are instructed by their young clients not to communicate with their parents. The youths who are familiar with the legal system are often adamant about their lawyers not communicating with their parents and threaten not to retain them if they do.³² In many instances, lawyers will also instruct their clients not to discuss anything about the case with their parents or siblings, as these family members may be called as witnesses by Crown prosecutors to testify against the youth. In such cases, the authority of the parents over their own children is undermined by the legal system, further dividing the family and alienating a youth from his or her own family and support system.

One defense counsel with clients whose parents do not understand English says that he has tried to call the parents but that they always hang up the phone. He advises his clients that the judges usually request the presence of the parents. Many of the parents do not show up and he suspects that the parents are not being properly informed by their children.

In the fall of 1993, a three-year pilot project will commence where a public defender system will be utilized in youth court. There will be approximately six lawyers in the Calgary office (one senior, five junior lawyers) who have the primary duty of representing young offenders. The following are some of the concerns expressed by defense counsel and youth workers about the affect of this on youths:

1. There may be a conflict of interest problem since the Attorney General's office administers both the Crown prosecutor's office and the Public Defender's office;
2. Generally, the pay scale for the public defenders may be lower than other defense counsel, primarily due to the junior level of public defenders. The quality of law services may, therefore, decrease along with the reduced pay scale;
3. The workload of each public defender will be quite high and therefore, less time will be spent preparing for each case. This is an especially difficult situation for the immigrant youths without English skills;

³² Defense counsel are often retained through Legal Aid but the accused have the right to choose their lawyer.

4. There may be more plea bargaining, guilty pleas, and less trials due to the time constraints;
5. There may be inequality in the choice of counsel. If there is a group of youths accused of committing a crime together, the first one charged will be assigned a public defender. The rest will have the privilege of choosing counsel since the public defenders' office cannot represent two persons involved in the same crime due to conflict of interest.
6. There is a general problem of inequality. Some accused youths will have the resources (such as parents willing to pay legal fees) to retain experienced counsel. Those young persons without resources will be assigned to public defenders who may not be very experienced in criminal law. Under the present Legal Aid system, youths with or without resources may be represented by experienced counsel.

VI. JUDGES AND THE YOUTH COURT PROCEDURE

After a young person is formally charged with an offense, an appearance before a judge in the youth court is the next step.³³ All proceedings under the YOA are in "youth court," a court specifically designated for youths separate from adult proceedings.³⁴ The YOA sets out that the proceedings in youth court are to be similar to those governing "summary conviction offenses"³⁵ in an adult criminal court. In this respect, there are no preliminary inquiries and no jury trials. All trials are conducted by a judge alone. Since what happens to a youth depends solely on the judge's decision, the level of cultural awareness each judge brings to a case may considerably influence the immigrant youth's disposition.

If a plea of "not guilty" is entered by a youth, a trial will be conducted. In most cases, a youth will plead "guilty" and the matter will be for disposition or sentencing only. In some cases a PDR will be ordered before disposition. The Crown Prosecutor will read the particulars or summarize the evidence of the offense and then make a recommendation as to what sort of punishment is appropriate. The youth and his counsel have the opportunity to dispute any of the evidence and will submit their opinion

³³ Also see the Alternative Measures section of this report on page 38.

³⁴ There is a provision that allows youths to be transferred to adult court for serious offenses.

³⁵ YOA, section 52.

as to an appropriate punishment. If a PDR is included, it usually contains a recommendation by the social worker assigned to do the PDR as to what disposition he or she feels is appropriate. The judge is under no obligation to follow any of the recommendations by the Crown, the defense counsel, the PDR or the parents. The submissions, however, are considered, and the judge may impose a disposition based on any combination of law, submissions by counsel, PDR, submissions by the youth or the parents.

A. Decisions Influenced by the Community

Judges are required to make their decisions based on what has been submitted in youth court either during a trial or prior to disposition. However, they too may be susceptible to the same public information that the mainstream community is subject to. As we discussed in the Arrest Process section above, the community plays a large part in the juvenile justice process and may, accordingly, influence the decisions judges make.

In Danny's case, during defense counsel submissions, the judge interrupted and said, "but the young person has a close association with gang members, doesn't he?" Despite the youth's denial of gang involvement, the judge on disposition commented that Danny was involved in a planned, deliberate act and had a "close association with a gang." As was previously pointed out, the fact that the judge placed so much emphasis on this allegation is of serious concern since the premise of our criminal justice system is that an accused person is innocent until proven guilty. Although it was not proven, the judge assumed that Danny was guilty of being in a gang. Guilt by association should not operate to prejudice a youth's disposition.

Another judge giving his disposition scolded a young person for his acts and stated, "you're losing face in your community." This young person appeared to be East Asian and he seemed to take offense at the comment. A youth worker explained that statements like this are seen as discriminatory since a mainstream Canadian youth would never be told that same thing. East Asians encompass a wide variety of peoples from different countries and it is often not readily apparent where they are from. Therefore, the comment about "your community" is not appropriate. As one on-looker put it, "what does that mean? You Asians?"

Yet another judge commented that Alberta's juvenile justice system is too rigid and not flexible enough to deal with many of the issues in youth crime. He suggested more "preventive" social work. Specifically, he said that when an immigrant youth finds it difficult to fit in with the mainstream kids in school, problems will inevitably result. In his opinion, "education and family support are key elements to deter immigrant youth from committing crimes and to help rehabilitate them."

B. Language Barriers

Another significant problem that was encountered in youth court was the quality of court-appointed interpreters. Many immigrant youths who cannot understand English make their submissions to the judge through interpreters. Recall that in Johnny's case, the interpreter appointed by the court was very inaccurate. After court, Johnny was furious and he felt that the whole process was unfair. Johnny was not able to tell the judge what he felt, nor was he able to tell his lawyer how terrible the interpreter was.

It was not determined where the court obtains its interpreter services but many of these people are also unfamiliar with the court process. They may not be aware of the importance of certain information. In Johnny's case, the court was probably informed that Johnny spoke "Chinese." There are many dialects of Chinese but the two main dialects are Cantonese and Mandarin. Johnny understands Mandarin and the court-appointed interpreter spoke Cantonese. The interpreter was so inadequate, it was the equivalent of not having one at all.

In Johnny's case, an interpreter was not available at his lawyer's office to discuss his case and the interpreter assigned for the court appearance was totally inadequate. Given this situation, it is highly likely that Johnny's right to a fair hearing was prejudiced.

VII. DISPOSITION, DETENTION, PRE-TRIAL DETENTION AND ALTERNATIVE MEASURES**A. Disposition and Detention**

After a young person is found guilty, the Crown Prosecutor and defense counsel make their submissions to the court as to what disposition or "sentence" is appropriate. The following are the available dispositions or "sentences" that a convicted young person may receive according to section 20 of the YOA:

- 1) an absolute discharge;
- 2) a fine of up to \$1,000.00;
- 3) an order for restitution or compensation;
- 4) an order for up to two years probation;
- 5) an order for treatment for up to three years;
- 6) an order for custody for up to three years.

An order for custody will not be imposed unless the court considers it "necessary for the protection of society having regard to the seriousness of the offense and the circumstances in which it was committed and having regard to the needs and circumstances of the young person."³⁶

In Ben's case, the PDR recommended custody because of the allegation that Ben's parents did not provide him with enough supervision. This was attributed to cultural and language barriers. Similarly, the Crown prosecutor submitted that custody may be appropriate because Ben seemed to "take advantage of his parents' position."

However, the intent of imposing a custody term should be first of all to protect society when necessary and also to punish serious offenses. Neither one of these factors was mentioned in submissions made in Ben's case to justify a custody term. Rather, focus was placed on the communication barriers between the youth and his parents. Although this may not have been the intent, placing Ben in custody for this reason would have, in effect, punished him for his family's situation.

When a custody term is imposed, many youths are sent to institutions such as the Calgary Young Offender Centre (CYOC), which is a government-operated secure facility. There are different units for males, for females and for youths with special behavioral or psychological problems. Otherwise, each youth is placed in a unit with other youths regardless of what offense he has committed.

Custody terms are usually only imposed if the crime was serious or if the young offender has a lengthy record. There is evidence to suggest that young offenders are not deterred by the imposition of stiffer sentences. In fact, one study found that harsh punishments can make teens worse.³⁷ More than 74% of the youths placed in custody continue to commit crimes when they get out. After each sentence, there is a shorter interval before they commit another crime. Between a young offender's first and second crimes, the average interval is four months but that average falls to one and one half months between his or her fourth and fifth offenses. Given the negative effect of harsh punishments, putting a young immigrant offender, such as Ben, in custody may do more harm than good by increasing his feelings of alienation.

There are a variety of programs available to the youths while they are in the CYOC, such as life skills, anger management and addictions, and school is mandatory for those fifteen years and younger. English as a Second Language (ESL) is available to immigrant youths in regular schools but not in the CYOC. There are volunteers who sometimes teach ESL but they are not always available.

³⁶ YOA, section 24.

³⁷ Marron, 1992, p. 183.

One of the most difficult aspects in dealing with immigrant youths is the language barrier. Interpreters are not provided to assist the CYOC staff, and so communication is next to impossible for some immigrant youths.

Many of the programs at the CYOC are designed to rehabilitate the youths and to assist them when they are released. Many of the immigrant youths are unable to participate in these activities and may miss out on virtually the last chance for any kind of assistance.

B. Pre-trial Detention

The above discussion has focused on detention after the youth has been found guilty and sentenced. In many instances, a youth can also be held in detention while awaiting trial or disposition. A youth can sometimes spend months in custody while awaiting trial. Pre-trial detention is usually in facilities separate from adults, but in the same facilities (ie. CYOC) as convicted young offenders. In some remote areas where there are no special facilities for young persons, pre-trial detention is carried out in an adult facility.

Pre-trial detention can be very disruptive to youths. They are removed from familiar surroundings; this interferes with their schooling or employment. To minimize this sort of disruption, section 7.1 of the YOA allows a youth court judge or a justice to place the young person in the care of a responsible person. This person would undertake to take care of and to be responsible for the attendance of the young person in court when required.

An immigrant parent who has difficulty understanding the pre-trial detention proceedings due to a cultural or language barrier may be viewed by the court as not being sufficiently responsible to care for such a youth and, as a result, the likelihood of pre-trial detention for an immigrant youth may be higher than for a mainstream youth.

A study conducted by Robert Coates at the Harvard Law School Centre for Criminal Justice revealed that, irrespective of the severity of the offense, the most significant single predictor of whether or not a juvenile who had been arrested would later turn out to be a serious criminal was if the youth had been held in a locked detention centre or jail upon his first arrest.³⁸ If immigrant youths such as Ben have a higher likelihood of being detained than mainstream teens, then it perhaps follows that there is an increase in the possibility of him becoming a serious criminal.

³⁸ Baker, 1991, p. 304.

C. Alternative Measures³⁹

The goal of the Alternative Measures Program in Alberta is to provide an alternative to traditional criminal sanctions and is typically used for first time offenders charged with relatively minor offenses. It is intended to allow a youth to be dealt with quickly and in an informal fashion as well as to enable the youth to avoid a formal record of conviction. Referrals to the program are usually on a pre-charge basis but may be done at any time in the legal proceedings. In most instances, referral comes from the police.

Youths are required to accept responsibility for their actions and must consent to participate in the program. If the youth denies responsibility, the matter will be referred to court.

There are a variety of factors that will affect whether or not a youth will be referred to Alternative Measures. The most important factor is the severity of the offense. Several offenses such as robbery, major assault and alcohol related driving offenses are not eligible. Apart from the severity of the charge, it is usually a discretionary decision on the part of the arresting police officer.

The demeanour of the youth seems to be the most significant factor in the police officer's decision whether or not to recommend Alternative Measures. If a youth does not appear remorseful or is nonchalant about the matter, he or she may be rejected for Alternative Measures.⁴⁰ A youth who feels unfairly discriminated against may appear to be lacking in remorse to a police officer, but it is not known if police officers take this into consideration.

The same concerns that were discussed in the Arrest section are applicable to the likelihood of referral to the Alternative Measures Program. It is highly discretionary and the same factors which influenced the police in deciding whether or not to lay a charge may also influence whether an immigrant youth will have equal access to the Alternative Measures Program.

Unfortunately, for many immigrant youths, the Alternative Measures Program may not even be a consideration due to the language barrier. In Alternative Measures, the youth may be required to do community work and this normally requires English communication skills.

³⁹ YOA, section 4.

⁴⁰ Representing the Young Offender, Legal Education Society of Alberta, 1992.

VIII. PARENTS AND FAMILY

Whenever a youth becomes involved in the criminal justice system, the other members of his or her family are consequently also affected. Mainstream parents as well as immigrant parents encounter problems in understanding the complex nature of the Canadian judicial system. In addition to this difficulty, however, immigrant parents have language and cultural barriers to overcome.

There are a number of opportunities for parents to either participate in or to monitor their children's legal proceedings. Section 9 of the YOA provides that if a young person is arrested and detained in custody pending his appearance, a parent must be notified orally or in writing "as soon as possible." A parent must also be notified in writing of any youth court hearings. If a parent is not available, notice may be given to an adult relative or another appropriate adult. Section 10 provides that the court may order the attendance of a parent to the proceedings if in its opinion it is necessary or in the best interests of the young person. Section 56 gives young persons the right to consult with their parents or a relative before making any formal statements to a peace officer or any other person in authority.

Parental participation may play a significant factor in the youth's legal process. As section 3(1)(h) of the Declaration of Principle in the YOA states:

parents have responsibility for the care and supervision of their children, and, for that reason, young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision are inappropriate.

Clearly, the intent of including the above sections in the YOA is to recognize the importance of parents in the lives of their children and to give them the opportunity to participate in any judicial proceedings. If it is not in the best interests of the youth to have this parental involvement, the Act is flexible enough to disallow the involvement of parents.⁴¹ Observations in youth court revealed that many judges take note of the presence of a parent in court. Although they are not party to the youth court proceedings, the Act gives parents the right to address the court prior to disposition.

With respect to the inclusion of immigrant parents in the legal proceedings, many difficulties were identified. Communication with members of the legal community was a major obstacle. The parents are often unable to contact the Crown prosecutors office to obtain details, defense lawyers are not in a position to fully divulge information about their client's cases (for fear of the Crown prosecutor calling the parent as a witness

⁴¹ For example, if a child was giving testimony regarding sexual abuse by his/her parents.

against their children) and the children themselves are often unwilling or unable to explain to their parents. In many cases, immigrant parents may not even be aware of their children's situation until it is too late.

The attendance of parents in court proceedings is viewed by the court as a very important aspect of the youth's case. However, without full access to a reliable and competent interpreter for the parents as well as the youth, their attendance is almost useless since many understand neither English nor the judicial proceedings.

Problems also arise due to the number of times a parent may have to attend court. Many immigrant parents are working jobs that are unsecured and paid on an hourly basis. Having to continuously attend court causes parents to lose a lot of time at work and to lose the income that is needed to support the family. A young offender usually has to make at least three court appearances, even to plead guilty to a minor offense. In serious charges, it is not uncommon for youths to appear in court ten to fifteen times before trial and it is rare for a trial to take place within three months of an offense.⁴²

The lengthiness of the judicial process is very frustrating to immigrant parents, as well as to the general population. Some parents have expressed concerns about the long periods of waiting between hearings, during which time the young offender may forget about his or her offense; they contend that the judicial system needs to place less emphasis on bureaucracy and more emphasis on effective action. In fact, studies have shown that while increasing the harshness of the punishment may not decrease the likelihood of the youth committing another offense, ensuring that punishment is certain, consistent and swift can be effective in deterring criminal behaviour. If there is less delay between the date of the offense and the actual disposition, the youth may be less likely to commit another offense.⁴³

With respect to the lengthiness of the judicial process, there is at least one situation where an immigrant mother lost her job due to the time lost from repetitive appearances in court.⁴⁴ These appearances were in respect to one charge. It is not unusual for the defense counsel or Crown prosecutors to require an adjournment for some reason, which does not require the attendance of the parent, but often no one contacts the parents to inform them that their attendance is not required.

⁴² Marron, 1992, p. 221.

⁴³ See Baker.

⁴⁴ This information was provided by an Outreach Worker for the Calgary Association for Young Immigrants.

Undoubtedly, one of the most obvious problems for parents and other family members is the language barrier. The parents of youths such as Johnny, Danny and Ben have little or no English skills. Moreover, the other adult relatives present in the household often do not have the English skills necessary to understand the details of any legal matters. Simply contacting these parents may be difficult, as many of the parents are frustrated by English-speaking phone callers whom they do not understand, and so eventually hang up. Similarly, where notice is given in writing, it may take the parent some time to find someone who is able to interpret the document for them.

Language and communication problems such as the ones encountered in Ben's family are not uncommon. Ben grew up in Canada and is fluent in English but not in the language of his parents. His parents, on the other hand, cannot communicate very well in English, and as such, communication between Ben and his parents is limited to basic and rudimentary phrases.

In addition to the language problem, many immigrant youths and their families are struggling with the process of integration into a new culture. Immigrant youths generally adapt to their new environment more readily than their parents. Through school and friends, most immigrant children have the opportunity to learn English, to participate in the host community's activities, and to become familiar with new attitudes, values and behavioral norms. The process of integration, therefore, is generally much faster for immigrant youths than it is for their parents.

These differing rates of integration give rise to many problems within the home. Immigrant children often take on many responsibilities for their parents, such as answering phone calls, greeting callers and interpreting mail. Some children may also act as mediators between their parents and institutions such as the school or the court. In many immigrants' cases, parents are relegated to positions of dependency upon their children.

As with other Canadians, in many immigrant households the onus of raising the children usually falls on the mother or the other female members of the family. When the children get involved in delinquent activity, it may be seen as an inadequacy on the part of the women of the household. In a recessionary economy, especially one that has gone on for many years, immigrant women often become the primary income earners in the household by holding down several minimum wage jobs. This may effectively remove the mother from the active parenting role. The men in these families often do not adapt to fill the role of the primary care giver to the children. When problems arise with the children, it is not uncommon for the men to leave the households, move to another province or move back to their country of origin.⁴⁵ The youth worker thought that recognition of the pressures and burdens an immigrant mother may be under needs

⁴⁵ General observations by the youth outreach worker of the Calgary Association of Young Immigrants.

to be incorporated into the justice system so that a woman can attend her child's hearing and contribute her viewpoint without being economically penalized.

In summary, parents of immigrant youths like Danny, Johnny and Ben are, despite being caring and concerned, effectively shut out of the judicial proceedings that will dictate why and how their children will be punished. Factors such as unfamiliarity with English, cultural background, unfamiliarity with the Canadian court process and dissociation from their children make it very difficult for immigrant parents to participate in the judicial proceedings. These problems, now recognized, need to be addressed to ensure that immigrant youths receive fair treatment prior to and during their hearings.

IX. COMMUNITY WORKERS

When a youth becomes involved in delinquent activity, his or her family can be one of the main support systems available to the youth for help and guidance. Approximately 60% of the cases appearing in youth court are first offenders. A stable home environment and supportive parents can often help to prevent these young people from becoming repeat offenders. Many youths (delinquent or not) unfortunately do not have stable home environments and many leave home. Some youths become dissociated from their families and, in the case of immigrant youths, many become dissociated from their parents due to language and cultural barriers.

There are many organizations in Calgary set up to help youths in need of assistance, including agencies which deal with such matters as runaways, prostitution, alcohol and drug abuse, medical and legal problems. For street youths who have become disenfranchised from mainstream society, there are community outreach facilities. These organizations are often the first contact for a young person interested in going back to school, finding a job or in need of legal assistance.

Many of these agencies, unfortunately, do not have the staff or the background needed to deal with immigrant youths. For agencies that provide legal assistance, problems such as language interpretation and lack of cultural sensitivity make it very difficult for an immigrant youth to get the assistance and support he or she needs. Showing a rather disturbing lack of cultural awareness, one staff member at a Calgary agency which provides legal assistance for youths stated that "the only immigrants we have are the Natives, you know, the Indians."

The director of EXIT⁴⁶ has explained that not many immigrant youths use their facilities. He felt that this could be attributed to a problem of access. He suggested that

⁴⁶ EXIT Community Outreach is a non-profit organization in Calgary which sets out to assist street youths.

EXIT's staff could try to make their facility more accessible to immigrant youths by setting up certain days of the week to bring in interpreters. As most youths find this facility through word of mouth, he feels that if immigrant youths knew that someone who could speak their language was available, they may be more likely to use EXIT's services.

One organization in Calgary called the Calgary Association for Young Immigrants (CAYI) has a program set up specifically to assist delinquent immigrant youths and their families. CAYI receives referrals from schools and other community agencies on "high risk kids"⁴⁷ and works to liaise between the court, the school, probation, social services, and the parents.

In 1992-1993, CAYI received referrals for 65 high risk youths. In each of these cases, a youth worker was able to contact the parents and to involve them in the legal proceedings as well as to assist them in motivating their children to stay in school. CAYI reported a 95% success rate in this respect.

CAYI is a non-profit organization and has enough funding for one part-time youth worker. The success of their program is based largely on the fact that this youth worker is proficient in different languages and can often effectively communicate with parents as well as the youth.

The Calgary police department has established some of its own programs to deal with the alleged problems of police harrassment and discrimination. For example, the youth liaison police unit runs a preventive, school-based program for elementary school level children who are experiencing problems. The program originally began as a drug education program and expanded to encompass issues such as self-esteem and promoting positive relations with police officers. The police department also has a Multicultural Liaison Unit that offers a multicultural education program for police officers. The objectives of this unit include the following: improving relations in Calgary with the various ethnic, cultural, racial and religious communities, increasing the acceptance and understanding of the police service by Calgary's multicultural communities, and assisting the Recruiting Unit with minority recruitment. These programs need to be continued, and encouraged to have input from immigrant parents and youths when possible.

⁴⁷ Teens with problems in school and a high absentee record. This also includes some youth who are involved in legal proceedings.

X. CONCLUSION

This report was a preliminary investigation to identify the problems that immigrant youths and their families encounter in gaining access to fair representation within the juvenile justice system. In summary, the difficulties that youths face include the following:

- 1) Allegations of police harassment and discrimination towards immigrant youths;
- 2) Prevailing attitudes of the host community may be affected by negative media coverage of immigrant issues and these attitudes may influence the arrest rates of immigrant youths;
- 3) Concern that the right to a fair hearing and proper representation is prejudiced by the lack of qualified and accessible interpreters to communicate with the youths' lawyers, social workers and probation officers beforehand as well as in court;
- 4) The likelihood that immigrant youths do not have equal access to alternative measures programs;
- 5) After a guilty verdict, immigrant youths may be sentenced differently due to the lack of English skills. Danny, for example, was given a long probation term rather than community service due to the language barrier;
- 6) As for detention and pre-trial detention, immigrant youths may be more likely to be detained in a secure custody facility due to the inability of the parents to make oral submissions in court and the perception in many cases that the parents do not have control over their children. It should be remembered that the purpose of a custody term is to protect society or to punish serious offenses, not to effectively penalize a youth for communication difficulties in his or her family.

To summarize, some possible courses of action which should be explored in response to the above problems include the following:

- 1) Ensure that both immigrant youths and their parents have access to a reliable and qualified interpreter when they need to deal with the justice system. Also examine the possibility of having either the courts or other agencies provide interpretation services to the parents;
- 2) Make adjustments to alternative measures programs so that immigrant youths can be included;
- 3) Ensure that organizations which assist street youths become capable of dealing with immigrant youths as well as mainstream youths;

- 4) Establish a support system for parents dealing with the justice system which is accessible to immigrant parents so that they are informed of their rights and possible courses of action;
- 5) Investigate whether language and cultural barriers result in different sentences or dispositions for immigrant youths as opposed to mainstream youths;
- 6) Examine the detention and pre-trial detention process to determine whether immigrant youths are subjected to lengthier terms than mainstream youths for the comparatively same offense. Also, provisions should be made to ensure that immigrant youths have access to equal education and other rehabilitative activities while in detention in the CYOC and that ESL, for example, is taught there when needed;
- 7) Raise awareness of media's biases in portraying immigrants and educate, not only ourselves, but also members of the legal and enforcement professions, about these issues. In general, sensitivity to cultural differences needs to be increased;
- 8) In accordance with the above suggestion, research the causes of juvenile delinquency in immigrant youths. Understanding their behaviour is the first step in helping them integrate into society and become productive citizens.

The parents of immigrant youths face unique obstacles in their attempts to participate in or understand the legal proceedings. The different rates of integration between immigrant youths and their parents into mainstream society often culturally divide the family and place immigrant parents into uncomfortable positions of dependency. These problems, combined with low level English skills, make it very difficult for immigrant parents to participate in any legal proceedings without the assistance of an interpreter or a liaison. However, the YOA was drafted with the intention that parents play a very important role in any judicial proceedings involving their children.

When a youth first becomes involved in criminal activity, a supportive family may be instrumental in preventing any further problems. As a judge in the youth court stated, "education and family support are key elements to deter immigrant youth from committing crimes and to help rehabilitate them."

The legal system is rigid and there are specific rules that one must follow once a youth is charged with a criminal offense. The YOA was drafted with the intention to punish youths for wrongdoing and is not intended to be of any assistance in the socialization of youths. For immigrant youths, the integration process is a difficult one and many may fail to become fully integrated into Canadian society. During the integration process, if an immigrant youth becomes dissociated from his family and there is a gap in the availability of community-based programs, what is the result for this

young person? To date, there have not been any studies conducted to determine what the causes of immigrant youth delinquency are. Many people working closely with these youths and families are convinced that it is primarily due to the difficulties the youths encounter integrating into the host community. As one author stated, "the institutionalization of immigrants for criminality is perhaps the clearest indicator of alienation and failure in the integration process."⁴⁸ A greater awareness of immigrant youths' needs and circumstances may be instrumental in reducing their alienation and assisting them to become socialized and productive in this country.

⁴⁸ Thomas, "The Social Integration of Immigrants," in Gloverman, 1992, p. 242.

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This report has been prepared for the Alberta Northwest Territories Network of Immigrant Women (ANNIW). Founded in 1986, the ANNIW is an inclusive umbrella organization which supports efforts and initiatives amongst member groups which foster equality, justice and learning for immigrant women through full participation in the social, economic and political life in Alberta and Canada. ANNIW's objectives are to represent the full diversity of immigrant women in Alberta and the Northwest Territories and to be a strong recognized voice advocating on issues affecting immigrant women. The Network is comprised of representatives from immigrant women serving agencies or immigrant women's groups within immigrant serving agencies. The Network's Board of Directors consists of the following:

Worlds of Women Together (Medicine Hat)

The Multicultural Women's Association of Lethbridge

The Central Alberta Immigrant Women's Association (Red Deer)

The Black Women's Association of Alberta (Edmonton)

The Indo-Canadian Women's Association (Edmonton)

The Latino-American Women's Association of Alberta (Edmonton)

Changing Together, A Centre for Immigrant Women (Edmonton)

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