An Ideal Offender? Exploring How Discourses Surrounding Neurodivergent Justice-Involved Young People Affect Restorative Justice Conferences

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Abstract

Restorative justice conferences are approaches to justice that take place outside of formal court processes and bring together many parties (e.g., justice-involved young person, victim(s), family members, community members, facilitators, and others) to address the harm that was caused by the offence(s) and advise decisionmakers on next steps (Fugeman-Millar, 2003). In Canada, the use of these conferences varies greatly, highlighting an uneven and inconsistent application (Paquin-Marseille & Higgison, 2022). Furthermore, limited research exists in Ontario that engages with the facilitators of these conferences. This thesis explores the intersections of neurodiversity, youth justice, and restorative justice conferences to better understand the ways in which conference facilitators reinforce, reproduce, and resist certain discourses. Using a Foucauldian discourse analysis (FDA), I unpack the ways in which conference facilitators engage with the medicalized/deficit vs. neurodiversity affirming discourse and the 'ideal offender' vs. 'problematic offender' discourse when discussing their role, neurodiversity, youth justice, and restorative justice. The findings suggest that while restorative justice conferences are largely viewed as a valuable tool in youth justice, their implementation and facilitation are influenced by factors such as institutional discretion, facilitator knowledge, and structural factors such as education, training, and funding availability. Furthermore, discourses surrounding neurodivergent justice-involved young people highlight the importance of engaging with youth-centred and neurodiversity-affirming practices. A critical analysis of these dynamics can contribute to broader ongoing discussions related to neurodivergent young people involved within the youth justice system.

Dedication

This thesis and my overall academic journey are dedicated to my late grandmother, Linda (Kozak) Osbourne.

You were not only a teacher, but a guiding force in the lives of so many, especially the young people who needed someone to believe in them. Your compassion and dedication to equity shaped the way I see the world. You taught me to challenge dominant narratives, encouraged me to understand and celebrate difference, and showed me the importance of engaging with causes that truly matter. You helped me learn how to ask the hard questions, to stand up for what is right, and to never stop learning.

This thesis is a reflection of the values that you instilled in me – the belief that knowledge should be used to empower, that justice must be pursued with both intellect and heart, and that every young person, regardless of any factor, deserves to be valued within society. Though you are no longer here, your legacy lives on in the work that I continue to do and the many lives that you touched.

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List of Abbreviations

FDA …… Foucauldian Discourse Analysis

IFL …….. Identity-First Language

JDA ……. *Juvenile Delinquent's Act*

MCCSS ……..… Ministry of Children, Community and Social Services

PFL …….. Person-First Language

UNCRC …….. *United Nations Convention on the Rights of the Child*

UNCRPD ……..… *United Nations Convention on the Rights of Persons with Disabilities*

YJCA …… *Youth Criminal Justice Act*

YOA …….. *Young Offender's Act*

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Chapter One: Introduction

In Canada, there is a separate and distinct justice system designed by adults to deal with young people ages 12 to 17 (inclusive) who are alleged to have committed an offence (Reid & Bromwich, 2024). Justice-involved young people are subject to the *Youth Criminal Justice Act* (YCJA), which is the federal statute that governs the youth justice system. In comparison to the adult system, the youth justice system places a stronger emphasis on rehabilitation and restorative justice efforts for young people while upholding their rights that are outlined within the *Canadian Charter of Rights and Freedoms* and the *United Nations Convention on the Rights of the Child* (UNCRC) (Doob & Cesaroni, 2004; Reid & Bromwich, 2024; Winterdyk et al., 2020).

The two systems reflect the differences in youth understanding, maturity, and discourses surrounding young people and adults. As emphasized by Gur (2005), young people are engaged in an ongoing state of development and therefore cannot be held to the same standards of criminal culpability as adults. This also means that adults get to define what behaviours are considered acceptable and the ways in which to deal with young people who exhibit unacceptable behaviours (Eisler, 2006). Because of this, justice-involved young people are subject to the authority and power of the adults within the justice system.

The YCJA's Declaration of Principle highlights the policy frameworks that the Act is based upon. It reminds us that any measure taken against a young person must be "within the limits of fair and proportionate accountability" (YCJA, s. 3(c)), must "reinforce societal values, encourage the repair of harm done to victim(s) and the community, and be meaningful for the individual young person given [their] needs and level of development" (YCJA, s. 3(c)(iii)). The YCJA further mentions that measures should "respect gender, ethnic, cultural and linguistic

differences and respond to the needs of aboriginal young persons and of young persons with "special requirements" (YCJA, s. 3(c)(iv)). Together, these are clear examples of the principles that underpin the system's approach to young people by holding them accountable in proportionate and meaningful ways, recognizing their needs and strengths, and encouraging justice responses that address the harm caused to the victim(s) and community.

When a young person is alleged to be in conflict with the law, there are several avenues that can be taken by justice professionals. Diversion from the formal court process is a major thrust of the YCJA, as it is the least restrictive response by the justice system and does not lead to a finding of guilt on a young person's record. Extrajudicial measures (EJM) are outlined under Section 4 of the YCJA and refer to approaches that deal with young people outside of typical judicial proceedings, which can include extrajudicial sanctions (EJS). EJM are offered by police officers and refer to options such as doing nothing, warnings, cautions, and referrals to programs in the community (YCJA, s. 6 – s. 9). EJS typically come post-charge and are offered by Crown prosecutors if an EJM has been determined to not be appropriate. Examples of EJS include community service work, compensating the victim, participating in a conference, diversion to other specialized programs, or a combination (Bala, 2003; Hyde et al., 2016; YCJA, s. 10). Young people must admit responsibility for the alleged offence(s) and consent to participate in the EJS. Once the program has been completed, the charge(s) are withdrawn by the Crown prosecutor (Bala, 2003; Hyde et al., 2016; YCJA, s. 10(3)).

As highlighted by Fugeman-Millar (2003), the YCJA is open to interpretation. Open-ended terms such as "meaningful consequences" allow justice professionals to exercise their discretion on a case-by-case basis for young people (Hyde et al., 2016). Diversion can be seen as a crucial part of youth justice because it aligns with the broader principles of the YCJA as

outlined in Section 3 by encouraging community-based responses (Bala, 2003). While a young person must consent to an EJM offered by police and is not required to accept responsibility for the alleged offence, a young person must take responsibility for the alleged offence as part of the EJS offered by the Crown. Maglione (2018) recognized that justice-involved young people are still subject to the authority of the adults around them and might conform to certain implicit and explicit expectations. In addition, the alternative to not accepting an EJS is the case being brought forward to a trial, which may lead to a finding of guilt.

Nonetheless, diversion is viewed by young people themselves as an important part of the youth justice system for many reasons. In a study conducted by Hyde and colleagues (2016), semi-structured interviews were conducted with 20 young people pre- and post-EJS. It was found that EJS were reported most meaningful to youth when they included family, such as with counselling, improved family relationships, or included an educative component to the program (Hyde et al., 2016). Therefore, when considering extrajudicial options for justice-involved young people, it should be important to consider the young person's perspective of their needs.

Restorative justice approaches are considered forms of diversion because they provide alternative avenues to deal with justice-involved young people outside of typical judicial proceedings. Restorative justice initiatives follow the restorative justice paradigm and are social responses to crime and crime control that value humanity, relationships, and social harmony (Green & Healy, 2003; Tauri, 2016; United Nations Economic and Social Council, 2002). These responses are heavily influenced by Indigenous ways thinking, knowing, and doing (McCaslin, 2005; Moore, 2018; Tauri, 2016; Umbreit & Zehr, 1996; Zehr, 2002). Unlike traditional justice proceedings that centralize power around justice professionals and the courts, restorative justice initiatives, such as restorative justice conferences, aim to reconfigure power dynamics by

allowing those involved in an alleged offence to take an active role in the decision-making processes (Fugeman-Millar, 2003). However, research by Lohmeyer (2017) highlights the tension between empowerment and control, where restorative justice practices can still reproduce power dynamics between adults and young people.

Under the YCJA, conferences are detailed in Section 19 and can be facilitated by a Youth Justice Committee, as outlined under Section 18. Conferences under Section 19 of the YCJA are aimed "to give advice on appropriate measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans" (YCJA, s. 19(2)). In other words, conferences are a process of justice that are intended to give advice about a decision under the Act regarding the young person (Government of Ontario, 2024). As outlined by the Government of Ontario (2024), conferences are supposed to be restorative in nature with an emphasis on the harm that was caused, the impacts of the harm that was caused, and the ways in which to repair said harm. While justice-involved young people can be referred to the program both pre-charge by police and post-charge by the Crown, there are certain criteria related to which offences are eligible for restorative justice conferences. According to 211 Ontario (n.d.), eligible offences include: theft, fraud, false pretenses, false statements, and mischief all under $5000, causing a disturbance, giving a false name when arrested, credit card offences, minor assaults, and property offences over $5000.

Overall, restorative justice conferences refer to a group meeting that bring together the justice-involved young person, victim(s), family members, community members, and any other relevant parties to hold the justice-involved young person accountable in a non-punitive way, give the victim(s) a voice in the process, reduce risks of reoffending, and promote understanding and healing (Giberson et al., 2023; Government of Ontario, 2024; Zehr, 2002). Other

community-based organizations across Ontario facilitate restorative justice conferences for justice-involved young people, however, they are not directly mandated under the YCJA. The difference in these instances is that the restorative justice conference may or may not directly impact future court processes. Further, there might be variations in the delivery and facilitation of these programs. Although different than recognized Youth Justice Committees under the YCJA, these community-based organizations also obtain funding from the Ministry of Children, Community and Social Services, and are therefore still subject to the guidelines put forth by the Ministry of the Attorney General.

Conferences follow the restorative justice paradigm that asserts that crime is a violation of people, relationships, and the overall community (Tauri, 2016; Zehr, 1990; 2002). This process reflects the restorative justice paradigm through a non-adversarial approach aimed at helping the justice-involved young person develop a deeper understanding of the harm that was caused while addressing the needs of both the justice-involved young person, victim(s), and broader community (Tauri, 2016; Zehr, 2002). According to Zehr (2002), harm is more than just the act of violating the law, it refers to damaging interpersonal relationships within one's community. As noted by Laundra and colleagues (2013), one of the main goals of a restorative justice approach is restoration. This relates to the restoration of the justice-involved young person's self-respect, relationships, as well as helping to heal all affected parties within the community (Laundra et al., 2013).

Conferences can prove to have many notable benefits for the justice-involved young person, victim(s), and broader community. Outlined by Fugeman-Millar (2003), conferences can provide decision-makers with an informed picture of the justice-involved young person's life and any factors that would influence the decision-making process. Within a conference, for example,

mental health professionals, psychologists, or other workers may suggest various treatment options instead of other community-based sentences (Fugeman-Millar, 2003). Other notable benefits of convening a conference include helping to address the complex needs of young people, increasing the collaboration between justice professionals and social systems for enhanced case planning, and reduced recidivism rates (Giberson et al., 2023; Paquin-Marseille & Higgison, 2022). As Paquin-Marseille & Higgison (2022) noted, restorative justice conferences can help to "address the needs of the most complex and vulnerable cases, notably youth who have cognitive impairments, mental health and addictions issues, or recidivism challenges".

The YCJA reminds us that the following principles must be emphasized in the youth justice system: "rehabilitation and reintegration" (s. 3(b)(i)) and "fair and proportionate accountability" (s. 3(b)(ii)). Therefore, the YCJA calls us to view young people as capable of growth and change through meaningful opportunities afforded to them by adults. When we see young people as deserving of diversionary approaches, such as restorative justice conferences, we view them as redeemable or capable of change. In the context of restorative justice programs, those offered the chance to participate might be viewed as an 'ideal offender', a nuanced concept explored by Maglione (2018) that relates to the ways in which we unintentionally place expectations on justice-involved young people

Developmentally, most young people have engaged in relatively minor crimes (Doob et al., 1995). However, due to the intersection of various factors such as disability, race, gender, socioeconomic status, and others, some young people disproportionately experience the justice system (Abrams et al., 2021; Butcher, 2020; Cesaroni et al., 2018; Day et al., 2024; Jackson, 2015; Justice Canada, 2019; McMurtry & Curling, 2008). These factors can also influence the discourse around who is seen as an 'ideal offender' in restorative justice, as conceptualized by

Maglione (2018), and subsequently who is conceptualized as a ‘problematic offender’ in restorative justice.

Maglione (2018) utilized Michel Foucault’s theories to discuss the ways in which we construct who is viewed as an ‘ideal offender’ in restorative justice. The justice system and those who work within it often rely on categories or classifications to determine and justify various decisions. The ‘ideal offender’ is someone who recognizes their wrongdoings, is remorseful, has emotional immaturity, engages in communication with the victim(s), and seeks to earn redemption back into the community (Maglione, 2018). This nuanced concept helps to highlight who is seen as worthy of the aforementioned principles of the YCJA: rehabilitation, reintegration, and fair and proportionate accountability. If we have an understanding of what makes a justice-involved young person an ‘ideal offender’ in terms of restorative justice, we can then understand the flip side, being the ‘problematic offender’ in restorative justice.

While Maglione (2018) laid the foundation to understand the ways in which discourse can construct an ‘ideal offender’ in restorative justice, this conceptualization can be unpacked to further understand the ways in which some justice-involved young people are not viewed as the ideal candidate. For example, justice-involved young people who are viewed by professionals as not communicating or behaving in expected ways or who do not display accountability, remorse, or empathy in “typical” ways might be conceptualized as a “problematic offender” for restorative justice and therefore not seen as worthy of engaging in certain justice processes. The discourse of an ‘ideal offender’ or ‘problematic offender’ in restorative justice can be complicated further by intersecting factors (i.e., race, gender, disability, socioeconomic status, etc.) that might predispose some young people to being viewed as ‘problematic’.

Discourse is a complex phenomenon because it is often invisible and exists underneath our conscious awareness. Discourse can be defined as something that goes beyond the language that we use in our daily interactions to also encompass the intricate systems of knowledge that dictate who can say what and with what power (Foucault, 1972; Miller, 1990). Power and knowledge are intrinsically connected, as knowledge reinforces power and power produces knowledge (Foucault, 1972). Discourse is something that can be reinforced, reproduced, and resisted in everyday interactions and practices.

Within institutions, such as the youth justice system, discourse can create and recreate classifications such as normal vs. abnormal, acceptable vs. unacceptable (Eisler, 2006) or even dictate who is seen as an 'ideal offender' and deserving of a non-custodial sentence or a different approach to decision-making, such as restorative justice conference (Maglione, 2018). Discourse can influence the justice system and justice-involved young people by shaping the ways in which we understand, talk about, and address topics related to youth justice and restorative justice. It then becomes increasingly important to try to uncover the discourses that undergird the youth justice system to understand the interconnectedness between knowledge and power.

As Foucault (1972) emphasizes, discourse can play a powerful role in shaping how we understand people, as it produces what is considered "normal". Although dominant discourses can become popular, believable, or even favourable, they are not fixed truths (Foucault, 1972; Miller, 1990). While discourse surrounding restorative justice positions these approaches as inclusive alternatives to justice, research indicates that they vary across Canada (Paquin-Marseille & Higgison, 2022), with no research available on how they are facilitated for various groups of young people, including neurodivergent young people. This is a gap in research, as one in three justice-involved young people are neurodivergent (Day et al., 2024; Kirby, 2021).

An example of discourse that surrounds neurodivergent young people is the medicalized/deficit discourse, which comes from the medical model of disability. The medical model of disability fundamentally views any condition or disability as a problem, abnormality, impairment, or deficit that is located within the person (Guevara, 2021). This is evident within the justice system, where justice professionals typically rely on medical experts for expert knowledge.

The *Criminal Code of Canada* utilizes the term "mental disorder" to refer to "a disease of the mind" (RSC, 1985, c. C-46, s.2), often relying on medical and neurodevelopmental diagnoses for support in the courts. The term "mental disorder" is also found within the YCJA. Further, within the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed., text rev., DSM-5-TR; American Psychiatric Association, 2022), neurodevelopmental disorders are understood as conditions that begin in early childhood, persist throughout life, and cause disruptions or impairments in personal, social, academic, or occupational functioning. These definitions are used to classify and categorize people, which can ultimately shape they ways they are treated both legally and socially. Diagnoses act as deficit-based understandings that focus on factors seen as impairments or abnormalities, while undermining neurodiverse capabilities. As a result, people are often conceptualized as victims who are suffering from their condition or disability and are therefore in need of treatments or cures that would help them better conform to societal expectations and norms (Den Houting, 2018; Mander, 2022; Shah & Mountain, 2007). This message to "fit in" reinforces stigma and largely ignores other environmental contexts and barriers that can give rise to disability (Guevara, 2021; Law Commission of Ontario, 2012; Meekosha & Shuttleworth, 2009; Shah & Mountain, 2007).

The medicalized/deficit discourse can be especially damaging for neurodivergent young people, as it perpetuates ableist ideas that they exist outside what society has deemed "normal" (Mander, 2022; Resnick, 2021; Shah & Mountain, 2007), which in turn can impact their experiences and outcomes within the justice system (Law Commission of Ontario, 2012). Ableism, as defined by the Law Commission of Ontario (2012), refers to the common experience of marginalization and discrimination that is faced by disabled people within social institutions including the justice system. Ableism can manifest both through practice and policy, making it important to be cognizant of its impacts. For example, the medicalized/deficit discourse can reinforce the 'problematic offender' discourse, where neurodivergent justice-involved young people are viewed as existing outside of the neurotypical norms associated with what makes an 'ideal offender' in restorative justice; someone who can recognize their wrongdoings, engage in communication with the victim(s), demonstrate accountability and remorse in normative and recognizable ways, and seek to be reintegrated back into the community (Maglione, 2018).

Foucault (1972) emphasizes the need to consider the existence of multiple and legitimate interpretations and perspectives. In resisting the medicalized/deficit discourse that surrounds neurodivergent young people, neurodiversity-affirming discourse has emerged to empower neurodiverse realities (Kapp et al., 2013). The term 'neurodiversity' was coined by an autistic Australian sociologist, Judy Singer, and recognizes that everyone's brain works differently. These differences in mental functions and structures are natural variations in the human species that should be viewed as such, and not as deficits that need to be fixed (Brusie, 2021; Kapp et al., 2013; Kirby, 2021; Rosqvist et al., 2020).

The openness of the YCJA invites justice professionals to adopt neurodiversity-affirming discourse and practices. Neurodiversity-affirming discourse resists the medicalized/deficit

discourse by highlighting how neurodiversity is something to be understood and embraced, rather than pathologized. This makes it especially important for the justice system and those who work within it to understand and utilize neurodiversity-affirming approaches, recognize and reject disempowering discourse surrounding neurodivergent justice-involved young people, and work towards empowering all justice-involved young people to meaningfully participate in and engage with justice. There are various opportunities for professionals to engage in continued educational or training opportunities on a variety of topics, though it is oftentimes up to the professional to engage with the material on their own terms. An example of an organization that provides webinars on a vast selection of topics (including disabilities) is the Human Services and Justice Coordinating Committee (HSJCC).

Research indicates that certain groups of young people are overrepresented within the justice system, such as neurodivergent young people (Day et al., 2014; Kirby, 2021), Indigenous young people (Cesaroni et al., 2018; Jackson, 2015; Justice Canada, 2019; McMurtry & Curling, 2008), and Black young people (Abrams et al., 2021; Justice Canada, 2019; McMurtry & Curling, 2008). If we have implicit ideas related to what makes an 'ideal offender' as successful participants within restorative justice processes, those who do not fit that profile may not be given opportunities to engage in these "forgiving" and "rehabilitating" approaches. This can lead to exclusionary, discriminatory, or inequitable outcomes for some justice-involved young people, reproducing the challenges they face in daily interactions and other societal institutions. While I acknowledge that various groups of young people are overrepresented within the justice system, this study focuses specifically on neurodivergent justice-involved young people as an underexamined group. Future research can extend this work by further considering the intersecting factors of characteristics such as race, gender, socioeconomic status, and others.

My study engages with professionals who have experience facilitating restorative justice conferences across Ontario. Because not all participants facilitated conferences mandated under Section 19 of the YCJA, this study examines both Section 19 conferences and those run by community-based organizations that also hold contracts to do so. This means that some participants were members of Youth Justice Committees, meaning they had direct experience with the facilitation of conferences under Section 19 of the YCJA. Other participants were not members of Youth Justice Committees and instead worked or volunteered at community-based organizations that held contracts to facilitate restorative justice conferences for justice-involved young people. This means that, while they did have experience facilitating restorative justice conferences for justice-involved young people, the scope of their work was not centralized around justice-involved young people. Using Foucault's theory of discourse and critical neurodiversity theory (CNT) as frameworks for my analysis, the main goal of this research was to examine how discourse surrounding neurodivergent young people can influence restorative justice facilitators and the conferences they facilitate.

Engaging with qualitative methodology, I employed semi-structured interviews with participants who had experience facilitating restorative justice conferences for justice-involved young people. The goal was to explore conversations around the role of the professional, youth justice, neurodiversity, and restorative justice. A Foucauldian discourse analysis (FDA) was used as the methodological tool to analyze the data and help uncover broader impacts of the discourses. Specifically, discourses surrounding neurodiversity (i.e. medicalized/deficit model vs. neurodiversity-affirming model) and justice-involvement (i.e. 'ideal offender' vs. 'problematic offender') were examined to understand how they relate to the ways in which power and knowledge are circulated and dispersed within restorative justice conferences. The

following research questions guided this study: How do the medicalized/deficit and neurodiversity-affirming discourses that surround justice-involvement for neurodivergent young people shape restorative justice conferences? And what can the facilitators who engage with neurodivergent justice-involved young people tell us about how these discourses are both upheld and resisted?

This thesis sits at the intersection of several topics, including the youth justice system, restorative justice practices, the growing recognition of neurodiversity, and how these can all be impacted by discourse. The next chapter will discuss my theoretical framework in greater detail, highlighting how the two theories intersect to create an appropriate foundation for my research. It concludes with a note on language that demonstrates my commitment to respecting the recommendations put forth by disability advocates, scholars, and those with lived experiences.

Following the theoretical framework, chapter three explores relevant literature related to the key topics this thesis explores, as mentioned above. Chapter four expands on the methodology and methods used for this research and how it aligns with the broader theoretical framework. Chapter five provides an overview of the findings, with chapter six then discussing the findings in greater detail. The final chapter concludes this research by highlighting limitations of this study and areas for future research.

Chapter Two: Theoretical Framework

As discussed, this chapter will explain my theoretical framework, provide a background of each theory, and then discuss how they complement one another to serve as an appropriate foundation for this study. This research is poststructuralist in nature. Belsey (2002) provided an explanation of the relationship between poststructuralism and qualitative research. Poststructuralism emerged as a reaction against structuralism, where structuralism is a way of thinking that recognizes how patterns fit into large systems or structures. Poststructuralist research, on the other hand, challenges concepts that are said to have fixed meanings, emphasizes the instability of language and truth, and offers critical approaches for analyzing things that allow socially constructed knowledge to cohere as "truth," such as discourse and power (Belsey, 2002).

My research draws on two poststructuralist theories, namely Foucault's theory of discourse and critical neurodiversity theory (CNT). Both of these theories are poststructural because they challenge fixed meanings and dominant discourses while emphasizing how knowledge is constructed through social processes of repetition and defaulting to "commonsense thinking." Neurodiversity can be a poststructural concept, as it challenges the assumption that there is one singular, or "correct" way a human brain should function. The theories are complementary in their analysis of knowledge and power and are effective to help capture the impacts that discourses related to neurodiversity and justice-involvement have on the topics discussed with participants.

Foucault's Theory of Discourse

Michel Foucault was a French philosopher and historian whose ideas have been influential in modern debates surrounding topics of discourse, knowledge, and power (Miller,

1990). In particular, his theory of discourse highlights the influences of language, knowledge, and power in shaping social realities, identities, and social institutions (Miller, 1990). Discourse is understood as more than just the language that is used and encompasses the systems of embedded knowledge that exist to govern the social world. This theory recognizes that "truth" cannot be a fixed concept because it changes based on one's social, political, and economic position within society (Miller, 1990). This theory is fundamental for this study as it helps to challenge core ideas related to topics such as neurodiversity and justice-involvement and show the ways in which discourse can be both reinforced and resisted.

The relationship between discourse and power is central to Foucault's work. Foucault (1972; 1975; 1976; 1982) asserts that power relations exist within discourse and that knowledge is always linked to power. This interconnectedness means that knowledge produces power and power reinforces knowledge, which can create "truths" about reality (Foucault, 1972). Foucault (1975; 1976) recognizes various forms of power, including disciplinary power and biopower. Disciplinary power operates within societal institutions such as the justice system to monitor and regulate people through surveillance techniques (Foucault, 1975). Similarly, biopower, or power over life through the physical body, is a term that Foucault (1976) defines as a technology of power that can shape social realities working through laws, rules, and norms related to birth, death, physical safety, and bodily control. Through this, we can see the ways in which power is productive and always in circulation around the social world. Biopower can operate through discourse by classifying, categorizing, or managing people.

Eisler (2006) utilized Foucault's discussions surrounding power to critically analyze the Canadian youth justice system. Eisler (2006) recognized that justice-involved young people are subject to power from the justice system and justice professionals, which can relate to concepts

such as disciplinary power, biopower, and governmentality. As further discussed by Gordon (1991) is how Foucault's concepts relate to the notion of governmentality, which refers to the ways in which society is governed. Governmentality refers to the ways others are governed and the ways in which we govern ourselves (Eisler, 2006; Gordon, 1991). This concept is deeply related to power relations because it relies on expert knowledge to define and guide the way society is governed (Gordon, 1991). Accounting for the influences of governmentality is crucial for uncovering the circulating power dynamics that are oftentimes invisible.

Through Foucault's lens, power is diffused multi-directionally through discourse rather than emanating from the top down in a linear fashion, as it exists in everyday interactions and societal norms and expectations that constantly flow and circulate (Hall, 1997). Foucault (1976) reminds us that power is not held by people but is relational and circulated within everyday practices and interactions. With discourse being a central part of how power functions, these forms of power also operate through discourse by producing and organizing knowledge. This can, in turn, shape how certain people are understood, regulated, or governed. Power operates within discourse by defining what is considered to be true, normal, or acceptable within society, which ultimately influences social practices, societal institutions, and identities (Foucault, 1982; Miller, 1990). These power relationships work to favour some while disadvantaging others by perpetuating certain perspectives that influence the way topics are viewed, talked about, and interacted with. Yet, if power works through discourse, it can also be challenged through discourse.

Although dominant discourses gain traction and get perpetuated throughout society, Foucault's theory of discourse reminds us that that there are multiple and legitimate interpretations and perspectives that can also exist, even though they might be suppressed,

excluded, or overlooked (Foucault, 1982; Miller, 1990; Tremain, 2015). Dominant discourses can be so highly favourable and believable that it can be difficult to discern the power that underpins the knowledge or see other possibilities. With Foucault's theory of discourse as a guiding framework for my research, I discuss the ways in which discourse (i.e. around neurodiversity and justice-involvement) plays a role in shaping participant knowledge and the responses they shared.

Critical Neurodiversity Theory (CNT)

The other poststructural approach to guide my study, critical neurodiversity theory (CNT), similarly challenges embedded truths in the social world. It complements Foucault's theory of discourse because it also challenges dominant narratives, but it has a very specific focus. CNT finds support within the broader framework of critical disability studies (CDS). Meekosha and Shuttleworth (2009) highlighted that the International Year of Disabled People in 1981 helped to kickstart the global movement towards disability human rights. CDS challenges traditional perspectives of disability which are typically rooted in the medicalized/deficit model of disability. CDS emphasizes that disability is a socially facilitated system of discrimination that is constructed and reinforced by discourse, societal norms, and institutions that we reproduce or reject (Guevara, 2021; Meekosha & Shuttelworth, 2009; Shah & Mountain, 2007).

Both CDS and CNT are frameworks that largely reject the medical model of disability and discourses associated with a "normal" way of living and being (Guevara, 2021). The medical model of disability comes from the medical field, though it has widely been accepted within mainstream society as the dominant discourse associated with disability. At its core, the medical model views disability as an individualized problem that needs to be cured, fixed, or managed to

help the person better conform to societal expectations and standards (Den Houting, 2018; Guevara, 2021; Mander, 2022; Shah & Mountain, 2007).

As many disability advocates, scholars, and those with lived experiences highlight, this individualistic blame put on disabled people to "fit in" largely ignores other contexts and barriers (i.e., social, political, geographical, racial, socioeconomic, etc.) and reinforces the stigma they experience (Guevara, 2021; Meekosha & Shuttleworth, 2009; Shah & Mountain, 2007). The discourses associated with the medical model of disability reinforce and perpetuate ableist ideas that disabled people are the "other" because they exist outside of what society has deemed typical and "normal" (Mander, 2022; Resnick, 2021; Shah & Mountain, 2007). The medical model of disability is seen as disempowering, where it places disabled people as passive recipients of care rather than active agents in their own lives.

These critical frameworks highlight how it is society and the institutions within it that work to "dis-able" people, rather than celebrate any individual qualities (Guevara, 2021). These frameworks reject medical models of disability and instead align more with the social model of disability. The social model of disability recognizes that disabled people are not disabled because of anything deemed impaired, defective, or abnormal, but rather due to the way that society is organized and how it responds to disabilities (Guevara, 2021). The social model does not view disability through a negative lens but rather through a lens of natural human variation. By shifting discourse and views from a medicalized/deficit model to a more social and critical model, there would be less emphasis placed on attempting to change or fix a person and more emphasis placed on addressing the social conditions that give rise to social inequality based on disability (Den Houting, 2018; Guevara, 2021). This would help to further reconstruct society to

foster meaningful inclusion and full participation of all its members (Guevara, 2021; Rosqvist et al., 2020).

Critical neurodiversity theory is a fairly new paradigm that relates specifically to neurodiversity. As mentioned in chapter one, the term neurodiversity was coined in the late 1990s by Australian sociologist, Judy Singer. As highlighted by Rosqvist and colleagues (2020), this term often refers to "variations in cognitive, affectual, and sensory functioning that differs from the majority of the general population or 'predominant neurotype', most usually known as the 'neurotypical' population" (p. 1). In other words, neurodiversity is a part of human existence and therefore needs to be understood to ensure the best outcomes and to allow for a "greater recognition of how we can support our collective human flourishing" (Rosqvist et al., 2020, p. 3). The term is not a diagnostic category, but rather a broad umbrella term that recognizes human brain variability.

Though the neurodiversity movement has origins in autistic self-advocacy (e.g., Judy Singer) and has largely come to be associated with Autism Spectrum Disorder (ASD), this umbrella term also encompasses other diagnoses such as Attention-Deficit/Hyperactivity Disorder (ADHD), Fetal Alcohol Spectrum Disorders (FASDs), Dyslexia, Tourette Syndrome, and others (Baumer & Frueh, 2021; Kirby, 2021; Resnick, 2021; Williams, 2023). People with these diagnoses are considered neurodivergent, as their mental functions "diverge from the norm", differing from those who are neurotypical (Brusie, 2021; Rosqvist et al., 2020; Williams, 2023). Neurodivergent people may exhibit differences in areas such as sociability, communication, learning, attention, sensory processing, and others (Yergeau, 2016), but that does not mean they are inferior to neurotypical people (Cooks-Campbell, 2022). In fact,

neurodivergent people demonstrate a plethora of strengths such as creativity, recognizing patterns, a strong sense of justice, and many more (Moss, 2021).

Unfortunately, within the medical field and society at large, neurodivergent people are oftentimes viewed as incapable of fully participating in matters that directly involve them, due to perceived deficits in areas such as intelligence, cognition, information processing, social communication, and empathy (Kirby, 2021; Yergeau, 2016). When we subject neurodivergent young people to the medicalized/deficit discourse that views them through a disempowering lens, we participate in a powerful system that shapes their identities, experiences, and can justify their exclusion. Foucault (1982) recognizes that discourse is not just language, it is a technology of power that produces "subjects". This means that they are ultimately disempowered as they are subject to the control and power of others (Miller, 1990; Tremain, 2015). Dominant discourses, as Foucault (1972) reminds us, can become so believable that they are viewed as "truths", despite this concept being fluid. This makes it especially important to try to uncover impacts of discourse.

Within the youth justice system, differences in areas such as communication or behaviour can make a neurodivergent person more susceptible to false admissions of guilt or non-compliance (Kirby, 2021). It is therefore imperative to ensure the processes within the justice system are inclusive and can be adapted to support individual needs. For example, processes within the justice system typically rely on a particular set of oral, written, and organizational skills (Gormley & Watson, 2021; Kirby, 2021; Moss, 2021). If the justice system and those who work within it are not aware of a young person's needs, abilities, and understandings, it could result in certain young people not being afforded opportunities to meaningfully participate in certain processes (Law Commission of Ontario, 2012; Kirby, 2021).

The relationship between neurodiversity and disability is complex. CNT does not automatically equate neurodivergence to disability, as this perspective argues that disability is a social and political construct that is influenced by the way society is structured (Guevara, 2021; Meekosha & Shuttleworth, 2009). However, as outlined by the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD), disability is an evolving term that can refer to "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" (United Nations, 2006). This means that it should be left up to the neurodivergent person to determine whether they identify with the disabled community or not.

As highlighted by Williams (2023), disability can arise for neurodivergent people when neurological differences are not accounted for or accommodated that can significantly impact daily life. In the context of disability, some neurodivergent people may experience more difficulty than others when it comes to navigating and performing day-to-day tasks. This can be attributed to the fact that society is not organized in a way to benefit those who live outside the confines of "normal" – both physically and mentally (Mander, 2022). This can also be, in part, because societal systems and institutions continue to underestimate and exclude disabled people, creating further barriers and challenges within their lives (Baumer & Frueh, 2021). On the other hand, Andrews and colleagues (2019) highlighted that there can be negative consequences of avoiding the word disability. These authors advocate for using disability as a valid and empowered identity that aligns with the #SayTheWord movement. The authors actively encouraged people to not only acknowledge, but embrace disability identity (Andrews et al., 2019). Nonetheless, it is still up to each person to decide whether they identify with disability culture.

Similar to CDS, CNT largely rejects the binary discourse of “normal” vs. “abnormal”. Instead, it emphasizes that various forms of neurology exist within the human species on a continuum. It is a critical theory because it fundamentally questions and challenges power dynamics, societal norms, and dominant discourses while seeking to expose and dismantle systems of oppression. CNT as a framework allows us to recognize that differences in areas such as sociability, communication, and mental functions are differences that need to be understood and accepted, rather than conceptualizing a young person as fundamentally lacking certain “normal” biological, mental, emotional, and physical capacities (Yergeau, 2016).

It is oftentimes the case that neurodivergent people are underestimated or excluded within society (Baumer & Frueh, 2021). As discussed by Goulet (2022), neurodivergent people must typically jump through metaphorical hoops to succeed in society. For example, although there are many methods of communication, spoken language has come to be recognized as the superior form of communication. Therefore, those who communicate in ways other than spoken language are seen as “cognitively inferior” (NeuroClastic, 2021). There is a large assumption that neurotypical communication is the correct and “normal” way to communicate (Goulet, 2022). However, it is important to recognize that communication also exists in the ways of written, visual, or augmentative and alternative communication (AAC). While these ways of communication may be unfamiliar to some or less common, they are nonetheless valid and experienced.

To further this point, Hillary (2020) wrote about the ways in which society should shift to recognize the validity of all forms of communication. Because the human species has such vast diversity in terms of neurology, we should work towards supporting all forms of communication. According to Hillary (2020), in order to best support all communication, “we could explicitly

learn about difference and how to understand and communicate with people unlike ourselves – in both directions rather than only teaching marginalized people to fit in" (p. 93). Goulet (2022) related the idea of neurodivergent people conforming to neurotypical standards to the 1960s, where people faced physical punishment if they were caught writing with their left-hand. Rather than forcing everyone to conform to standards of "normality", society must be accepting of inherent differences, similar to what CNT promotes.

The justice system is built around neurotypical norms and can oftentimes marginalize neurodivergent people through rigid expectations related to behaviour and/or communication (Day, 2022; Day et al., 2024). The marginalization can manifest in various ways, including misinterpreting neurodivergent traits as defiant, dangerous, or lacking remorse (Kirby, 2021), which might contribute to them not being viewed as an 'ideal offender' for restorative justice approaches. For example, certain young people might be considered disruptive or disrespectful if not adhering to unspoken expectations within a societal institution that emphasizes normative ways of expressing things such as accountability, remorse, or self-regulation. These misunderstandings can lead to cycles of criminalization or what Butcher (2020) referred to as a "revolving door" within the justice system.

In order to make the youth justice system more inclusive, there should be a greater recognition of neurological differences and how these differences can inform responses, interventions, or general processes (Law Commission of Ontario, 2012). Moss (2021) utilized her own experiences as an autistic lawyer and advocates for inclusivity within the justice system. This can look like sensory-friendly courtrooms to avoid sensory overload, redesigning processes that solely rely on verbal and written forms of communication, challenging assumptions, and valuing the strengths that neurodivergent people can bring to justice processes. These strengths

can include creativity, attention to detail, innovative problem-solving, recognizing patterns, a strong sense of justice, and many others (Moss, 2021).

In summary, CNT is an effective theoretical framework to use alongside Foucault's theory of discourse. Both theories critique dominant discourses, challenge pathologizing frameworks, and advocate for alternative ways of understanding human difference. These theories can help to uncover the dominant discourses that are associated with neurodivergent justice-involved young people. In doing so, we can highlight that neurodiversity is a natural part of the human species, so it is therefore something that needs to be understood to achieve our "collective human flourishing" (Rosqvist et al., 2020, p. 3). This paves the way to resist dominant discourses (e.g., medicalized/deficit discourse), reshape societal understandings, and challenge "truths" associated with disability. It also helps to focus on how professionals who navigate restorative justice conferences must negotiate dominant discourse on neurodivergent justice involved youth and how they resist.

Note on Language

Given the central role of discourse within this study, it is important to be transparent about the discourse choices throughout. A main conversation within this study surrounds neurodiversity and disability. As defined by the *Accessible Canada Act (*ACA)*,* disability

> means any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person's full and equal participation in society.

This definition of disability is broad but does accompany the differences in mental functioning. As Rosqvist and colleagues (2020) note, neurodiversity is a natural variation found within the

human species. For many reasons, neurodivergent people may find allegiance with disability culture.

Within the contexts such as the justice system or medical field, language is often medicalized and categorized. In the YCJA, the term "mental disorder" is defined under Section 2 of the *Criminal Code of Canada* to refer to "a disease of the mind" (RSC, 1985, c. C-46, s.2), which can be temporary or permanent. Further, language such as Developmental Disability (DD) is commonly used to identify diagnostic conditions with or without an accompanying Intellectual Disability (ID) and may be used within the justice system. This further reflects the ways in which the justice system relies on expertise from medical professionals to label, classify, and categorize young people.

There is an ongoing debate surrounding language preference when it comes to disabilities and whether we should use person-first language (PFL) (i.e., people with disabilities, etc.) or identity-first language (IFL) (i.e., autistic people, neurodivergent people, disabled people, etc.) (Botha et al., 2020; Dwyer, 2022; Grech et al., 2023; Kuzminski et al., 2019; Vivanti, 2020). While both sides of the debate aim to maximize inclusivity and respect, there is a growing number of disability advocates, scholars, and those with lived experiences who highlight the need for IFL, as it is said to affirm pride in one's identity, is rooted within social models of disability, and oftentimes signifies allegiance to a disability culture (Andrews et al., 2019; Botha et al., 2020; Grech et al., 2023; Kuzminski et al., 2019; Mander, 2022). For these reasons, IFL will be used throughout this study.

Furthermore, this study utilizes terms such as 'neurodivergent' to discuss a wide range of people who are considered to have differences in neurological functioning. Neurodivergent people have mental functions that diverge from the norm of the 'neurotypical' (Rosqvist et al.,

2020; Williams, 2023). The language of neurodivergence is rooted within the neurodiversity paradigm, where differences in mental structures and functions are celebrated and embraced (Rosqvist et al., 2020). Although in tension with the commonly used discourse within the justice system, this study will utilize IFL and terms such like “neurodiversity” and “neurodivergent young person”. My goal is to adhere to the recommendations outlined by disability advocates, scholars and those with lived experiences.

Since one of the aims of this thesis is to explore discourse, it is important to recognize a limitation noted by Dwyer (2022) regarding language preference. Where there is a clear language preference outlined by the researcher, it can be difficult to determine which words, connotations, or meanings are inherently deficit-based and stigmatizing and which ones simply follow different language patterns and preferences (Dwyer, 2022). This makes it crucial to provide transparency around the analysis of discourse that takes place within this study. For example, I identified the two main discourses (e.g., medicalized/deficit vs. neurodiversity-affirming discourse and ‘ideal offender’ vs. ‘problematic offender’ discourse) to examine throughout this study. By clearly identifying the discourses throughout this study, it allows me to better contextualize the language choices rather than misinterpret them.

Chapter Three: Literature Review

Changes to Youth Justice Legislation

It is important to look at the changes to youth justice legislation in Canada to understand the ways in which young people have been conceptualized and governed over time. These changes also reflect and produce discourses related to justice-involved young people, crime, and responsibility. Foucault (1972; 1975) discusses the importance of considering historical factors that contribute to the production, reproduction, and resistance of dominant discourses. When looking at the youth justice system, it is clear to see the ways in which federal legislation has evolved alongside shifts in societal constructions around young people.

Since 1908, there have been three statutes related to youth justice in Canada. The federal government has been responsible for enacting the laws, whereas the provincial government has been responsible for administering the Act. Historically, discourse under the *Juvenile Delinquents Act* (JDA) (1908) surrounding young people positioned them as needing guidance and intervention but made little distinction between criminality and social justice issues (Smandych & Corrado, 2018). Then, a shift in the late 20th century aimed to balance the JDA's welfare-based model with the justice-model in the *Young Offenders Act* (YOA) (1984), but instead saw a rise in punitive approaches, surveillance, and an overuse of custody (Smandych & Corrado, 2018). More recently, shifts in youth justice legislation to the *Youth Criminal Justice Act* (YCJA) (2003) have emphasized the priority of rehabilitating justice-involved young people through meaningful consequences and accountability, such as through restorative justice approaches.

The current YCJA has been praised for its progressive efforts to move away from punitive punishment. Discourse surrounding justice-involved young people position them as

being in need of guidance, intervention, and rehabilitation. This reflects Foucault's (1975) notion of disciplinary power, where justice-involved young people can be subject to institutions that claim to know what is best to reform them. For example, restorative justice processes can subject justice-involved young people to certain standards and expectations by implicitly and explicitly guiding them towards conforming to societal expectations related to accountability, emotional expression, behaviour, and communication.

While there are benefits to having systems in place to deal with justice-involved young people, it is important to ensure that they are youth-centred, addressing underlying needs, and shifting traditional power dynamics away from the courts and towards the justice-involved young people themselves, victim(s) and broader community. This can be empowering and transformative for young people who find themselves in contact with the justice system. The following section provides an overview of the three youth justice statutes in Canada and a discussion on the discourses surrounding young people during each time.

Juvenile Delinquents Act

The *Juvenile Delinquents Act* (JDA) was in place from 1908 to 1984 and was the first statute in Canada that aimed to address youth justice, separate from the adult system (Trèpanier, 1999; Winterdyk et al., 2020). The JDA was rooted in the Latin philosophy known as *parens patriae,* which assumed that when the primary institutions in a young person's life failed them (e.g., family or school), the government had a responsibility to step in as a surrogate parent to manage the young person's behaviour (Caputo, 1987; Reid & Bromwich, 2024). The JDA intended to recognize young people as being in need of guidance and rehabilitation, rather than criminals who deserved to be punished punitively (Reid & Bromwich, 2024; Trépanier, 1999).

While the JDA was intended for young people between the ages of seven and 16, provinces had the ability to set the maximum age limit upwards to 18.

Under the JDA, delinquency was seen as any behaviour, both criminal and non-criminal, that was anti-social or deviant (Caputo, 1987). Both criminal offences and status offences, such as truancy or engaging in what was considered sexual immorality were handled under the JDA (Reid & Bromwich, 2024). Juvenile delinquency was treated as a social and moral problem where young people were viewed as needing treatment, guidance, and reform (Reid & Bromwich, 2024; Winterdyk et al., 2020). However, with justice professionals allowed to exercise flexible discretion, the implementation of the JDA varied greatly across Canada. This highlighted the lack of a clear policy and set of principles under the JDA.

With a lack of procedural safeguards in place under the JDA, concerns arose surrounding the discretionary power that was given to authority figures (Reid & Bromwich, 2024; Smandych & Corrado, 2018; Winterdyk et al., 2020). As highlighted by Smandych and Corrado (2018), there was a broad range of behaviours that could be considered deviant, and judges had the ability to exercise discretion during sentencing. Some youth cases were transferred to the adult system, while other sentences included warnings, fines, probation, or “indeterminant sentences”. These “indeterminant sentences” resulted in often disproportionate interventions. It meant that young people could be placed in custody or a training school for an undefined amount of time, up until the age of 21, with the premise of reforming and rehabilitating them, regardless of the young person’s behaviour (Smandych & Corrado, 2018). Unfortunately, with inadequate protections for young people, there was an overreliance of incarceration (Caputo, 1987; Trèpanier, 1999).

As previously mentioned, the welfare model under the JDA was a paternalistic approach that framed young people as dependent on adults because they were not seen as mature (Caputo, 1987). Further, discourse associated with young people at this time painted them as misguided, troubled, or needy (Winterdyk et al., 2020). With the lines blurred between criminality and issues related to social welfare, such as neglect or truancy, many young people were subjected to interventions or incarceration (Smandych & Corrado, 2018; Trépanier, 1999).

There was a rise in crime between the 1950s and 1960s alongside increasing criticisms of the JDA (Caputo, 1987). This prompted the government to take further action regarding youth justice. Despite the JDA being the first of its kind, the criticism associated with its implementation and lack of procedural safeguards and due process rights for young people sparked the need for change (Caputo, 1987; Smandych & Corrado, 2018).

Young Offender's Act

The *Young Offender's Act* (YOA) replaced the JDA and was active from 1984 to 2003. It was influenced by and implemented after the enactment of the *Canadian Charter of Rights and Freedoms* (1982). The Charter (1982) recognizes and guarantees fundamental rights and freedoms for all Canadians, such as legal rights. As a result, societal institutions such as the justice system experienced reforms in legislation to reflect these changes. The impact of the Charter led to young people being viewed as rights-bearing citizens with all of the constitutional rights and legal protections afforded to adults; youth were still recognized as needing a justice system that was separate from adults.

Unlike the JDA, the YOA did not view children under the age of 12 as criminally responsible (Caputo, 1987). The age parameters were changed to deal with young people between the ages of 12 and 17 (inclusive) at the time of their offence (Caputo, 1987; Winterdyk

et al., 2020). One of the main goals of the YOA was to balance the welfare-based framework introduced under the JDA with a justice model that emphasized a greater recognition of young people's rights and need for accountability (Reid & Bromwich, 2024; Smandych & Corrado, 2018; Winterdyk et al., 2020). As noted by Reid and Bromwich (2024), the YOA moved away from the *parens patriae* philosophy towards a rights-based framework embedded with elements of crime control and public protection. While justice-involved young people were no longer viewed as simply 'delinquent' (see JDA), discourse at this time positioned them as rights-bearing citizens that required legal protection and also surveillance, guidance, and intervention, dependent on the situation and discretion of justice professionals.

The distinction between criminality and social welfare concerns became clearer under the YOA. Unlike the JDA, the YOA contained a clear policy framework and set of principles to help guide its interpretation and application. Although the YOA lacked a clear Declaration of Principle when it was created, it was amended in 1995 to include the Declaration of Principle. Most notably, the Declaration of Principle under Section 3 of the YOA outlined provisions that needed to be accounted for when dealing with justice-involved young people. This included the idea that young people are to be held accountable for their actions and be rehabilitated, while also recognizing that due to their "state of dependency and level of development and maturity, they also have special needs and require guidance and assistance" (YOA, s. 3(c)).

The rehabilitation of young people remained a top priority under the YOA, while still maintaining public safety (Smandych & Corrado, 2018; Winterdyk et al., 2020). With the recognition of young people as less mature than adults, the separate and distinct justice system for young people included specialized youth courts (Doob & Cesaroni, 2004). The YOA introduced "alternative measures", which allowed, at the discretion of police, young people to be

dealt with outside of the formal court processes (Smandych & Corrado, 2018; Winterdyk et al., 2020). This meant that young people could be subjected to a range of consequences, dependent on the nature and seriousness of their offence. Alternative measures were approaches that avoided formal judicial proceedings, such as restorative justice conferences or compensating the victim(s) in the form of financial payments or apology letters (YOA, S. 4).

One critique of the YOA was its inconsistent implementation across Canada (Caputo, 1987; Doob & Cesaroni, 2004). This meant that options such as alternative measures were left to provincial and territorial discretion. Despite being a legislative option, the use of alternative measures varied greatly, were underused overall, and were typically reserved for first-time and non-violent justice-involved young people (Doob & Cesaroni, 2004). Further, these measures were often favoured in urban areas that had more access to funding, resources, and services (Caputo, 1987). This meant that with such variability across jurisdictions, not all young people were afforded opportunities to engage in these non-judicial approaches.

Further critiques of the YOA related to things such as the overuse of custody and the overreliance on the objective of deterrence at sentencing (Caputo, 1987; Smandych & Corrado, 2018). Though some critique it for being too lenient in some cases, a key statistic to note is that under the YOA, average sentences for young people more than doubled (Caputo, 1987). Incarceration was overused, especially for minor and non-violent crimes that could have benefitted from the use of alternative measures (Smandych & Corrado, 1987).

Over 19 years, it became clear that the YOA was leaning towards a highly punitive approach to dealing with young people. According to Canadian Children's Rights Council (n.d.), under the YOA, Canada had one of the highest rates of incarceration for young people in the Western world, with over 25,000 custody sentences handed out for young people per year. As

mentioned by Green and Healy (2003), a punitive approach to crime can lead to “stigmatization, humiliation, and isolation”, which can reduce the young person’s ability to regain both self- and community respect (p.155). This appearance of a “tough on crime” model fails to acknowledge underlying factors that led the young person to the justice system in the first place and does not reduce recidivism rates. Caputo (1987) highlighted that the YOA failed to recognize and address “the structural reality that [young people] experience in this society” (p.2). For these fundamental criticisms, the YOA needed to be replaced.

Youth Criminal Justice Act

The *Youth Criminal Justice Act* (YCJA) was introduced in 2003 and is the current legislation in Canada that applies to young people between the ages of 12 and 17. One of its main goals was to reduce the high rate of custody (Paquin-Marseille & Higgison, 2022). The YCJA brought about significant reforms, including a consistent youth justice policy with clear objectives that are detailed within its Preamble and Declaration of Principle. The Preamble includes statements made by Canadian Parliament about the values ingrained within the Act. It begins by highlighting the shared responsibility that society has in guiding and supporting young people into adulthood. The statements also recognize that, through a multi-disciplinary approach, justice-involved young people should have their needs responded to while still maintaining the protection of the public (Doob & Cesaroni, 2004). There is also specific emphasis placed on diversionary options, restorative justice approaches, and meaningful consequences for young people (Bala, 2003; Reid & Bromwich, 2024; Winterdyk et al., 2020).

Section 3 of the YCJA establishes foundational values and outlines a clear policy framework that the legislation is based on. These principles mention that within the limits of fair and proportionate accountability, the consequence or approach must be “meaningful for the

individual young person given [their] needs and level of development and, where appropriate, involve the parents, the extended family, the community, and social or other agencies in the young person's rehabilitation and reintegration (YCJA, s. 3(iii)). It is also noted that in order to actively prevent crime, the underlying causes of a young person's offending behaviour need to be addressed. This is a clear recognition of the need to account for personal differences among justice-involved young people, including developmental differences and neurodiverse needs. It challenges the one-size-fits-all approach and highlights the need for professionals to account for various factors on a case-by-case basis.

The key principles within the Declaration of Principles also highlight that any measure taken against a young person should "respect gender, ethnic, cultural, and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements" (iv), though there is no set definition for what constitutes such requirements. The broad umbrella term of "special requirements" under the YCJA can refer to things such as mental health, developmental, or neurodiverse needs. This statement also reflects a clear acknowledgement of Indigenous young people and aligns with broader efforts to promote alternatives to incarceration such as restorative justice approaches. Overall, this section of the YCJA highlights the need to consider unique circumstances on a case-to-case basis to ensure individualized justice for young people.

Another key objective of the YCJA is to reduce the use of custody and promote the use of diversion, which can happen before or instead of court proceedings (Bala, 2003). As previously mentioned in chapter one, this can include responses such as police warnings, cautions, referrals to community-based programs, and extrajudicial sanctions (EJS) (Bala, 2003; Reid & Bromwich, 2024; YCJA, s. 6). The goal of keeping young people out of the justice system aligns with Article

37 of the *United Nations Convention on the Rights of the Child* (UNCRC), where custody is supposed to be reserved as a last resort. Despite this, there continues to be an overrepresentation of certain groups of young people in the justice system, such as Black young people (Abrams et al., 2021; McMurtry & Curling, 2008), Indigenous young people (Cesaroni et al., 2018; Jackson, 2015; Justice Canada, 2019), young people with mental health concerns (Underwood et al., 2014), and neurodivergent young people (Day et al., 2024; Kirby, 2021).

As highlighted by Goodwin-De Faria and Marinos (2012), young people today are largely recognized as rights-bearing citizens and active agents in their own lives. In their study, 50 semi-structured interviews were conducted with young people between the ages of 12 and 17. The findings indicated that while factors such as age can impact legal understanding, the power imbalance between young people and adults, such as justice professionals, can hinder their ability to exercise their rights effectively. As mentioned above, some young people continue to experience oppression, marginalization, and overrepresentation within societal institutions, meaning despite the shifts in youth justice legislation and discourses surrounding young people, there are gaps between the law and implementation. Legislation alone is unable to fully address systemic barriers and structural limitations.

Restorative Justice: The Paradigm

Recognizing these constraints in the youth justice system then allows for the consideration of alternative frameworks, with restorative justice being one. Restorative justice is a paradigm that offers a distinct framework for responding to crime, harm, and wrongdoing. Zehr (2002) understands harm to be not just the sole act of breaking the law, but the outward impacts it has on relationships and communities. It is important to acknowledge that restorative justice is inherently grounded in Indigenous ways of thinking, knowing, and doing (McCaslin, 2005;

Moore, 2018; Tauri, 2016; Umbreit & Zehr, 1996; Zehr, 2002). Ultimately, it is a social response to crime within the justice system that values humanity, relationships, and repairing social harmony (Green & Healy, 2003; Tauri, 2016; United Nations Economic and Social Council, 2002).

In the *Little Book of Restorative Justice*, Zehr (2002) wrote about the principles of restorative justice as well as the preconditions that must be present for genuine healing to occur. As previously mentioned, a core principle related to restorative justice is recognizing that crime is a violation of people and relationships, not just the act of breaking the law. Furthermore, Zehr (2002) highlighted that such violations create certain obligations, where those who have caused the harm are responsible for acknowledging their role, taking accountability, and working alongside the victim(s) and broader community to repair the harm as best as possible.

Although Zehr (2002) highlighted the ways in which crime can create ethical and moral obligations, it is still important to remember that justice-involved young people cannot be compelled or coerced to participate. According to the *Criminal Code of Canada*, anyone accused of a crime "may plead guilty or not guilty" (RSC 1985, c C-46, s 606(1)). However, pleas are only relevant if the matter gets escalated to the courts, which can happen when the informal, diversionary, or extrajudicial options are either not appropriate, not offered, not accepted, or not completed. However, if a restorative justice approach is offered to the young person, they must first acknowledge their role in the harm that was caused (Government of Ontario, 2024). According to the YCJA, the young person must also accept responsibility for the offences they are alleged to have committed before participating in an EJS (YCJA, s. 10(2)(e)).

Another precondition is that all parties, including the justice-involved young person must be willing to participate, free of any coercion (Government of Ontario, 2024; United Nations

Economic and Social Council, 2002; Zehr, 2002). As Latimer and colleagues (2005) discussed, voluntary participation in these matters can increase the motivation of all parties to fully participate in these processes. When there is a willingness to participate in these processes, it can be associated with reduced recidivism in comparison to those who do not participate in these processes. Young people who choose to participate in these processes are more likely to demonstrate active listening, reflect on the harm that was caused, and work towards repairing relationships with the victim(s) and broader community (Latimer et al., 2005). Justice-involved young people who conform to these expectations might be conceptualized as what Maglione (2018) referred to as the 'ideal offender' in restorative justice. In contrast, those who do not actively acknowledge their role in the harm caused or who do not work in collaboration with the victim(s) and broader community to repair the harm might be conceptualized as a 'problematic offender' in restorative justice.

Another key principle of restorative justice processes is the importance of the victim(s), making it important to ensure these processes are conducted in a victim-sensitive manner (Strang et al., 2006; Umbreit & Zehr, 1996; Zehr, 2002). The victim(s) plays a fundamental role because the central premise of restorative justice is to address the harm caused and repair relationships (Green & Healy, 2003; Strang et al., 2006; Tauri, 2016; Umbreit & Zehr, 1996). As discussed by Strang and colleagues (2006), face-to-face conferences can result in higher levels of victim satisfaction and reduced levels of fear and anger. Furthermore, in restorative justice processes, the victim(s) has the right to legal counsel and can also request the involvement of their parents, guardians, or any supportive adults (United Nations Economic and Social Council, 2002).

It is highly important to ensure that restorative justice processes be conducted in a victim-sensitive manner with the needs of the victim(s) also being accounted for and respected (Strang

et al., 2006; Umbreit & Zehr, 1996; Zehr, 2002). An example provided by Umbreit and Zehr (1996) would be ensuring the victim(s) has the ability to choose where they feel safest in the room to sit. By fostering a safe environment for restorative justice, victim(s) can play an active role in expressing the impacts that the crime has had on their life, ask any unanswered questions, and participate in holding the justice-involved young person accountable.

The paradigm of restorative justice is reflected throughout the YCJA, such as within the Preamble and Declaration of Principles (s. 3), Extrajudicial Measures (s. 4 – s. 12), and Sentencing (s. 38 – s. 40). Restorative justice is emphasized throughout the YCJA by emphasizing accountability for justice-involved young people through "meaningful consequences for the young person … that promote [their] rehabilitation and reintegration into society…" (YCJA, s. 38(1)) that also "encourage the repair of harm done to victims and the community" (YCJA, s. 3(c)(ii)). The restorative justice paradigm highlights the ways in which justice can be a community-driven process focused on healing, accountability, and repairing relationships.

Restorative Justice Conferences

An example of a restorative justice process, as outlined by the United Nations Economic and Social Council (2002) is a conference. Because conferences are rooted within the paradigm of restorative justice, it is important to acknowledge the ways in which Indigenous perspectives and approaches to justice have shaped restorative justice in Canada (McCaslin, 2005; Moore, 2018; Tauri, 2016; Umbreit & Zehr, 1996; Zehr, 2002). One example of the globalization of crime control and restorative justice efforts can be seen in the way that the Royal Canadian Mounted Police (RCMP) developed their own community justice forums (Tauri, 2016; Umbreit & Zehr, 1996). In 1996, the RCMP visited both New Zealand and Australia to better understand

and observe the Wagga Wagga model. The Wagga Wagga model was developed in Australia and is inspired by New Zealand's Family Group Conferencing model that is deeply rooted in Māori cultural practices and origins (Tauri, 2016; Umbreit & Zehr, 1996). The following year, in 1997, the RCMP contracted community-based restorative justice practitioners from Australia to assist with the training of its new members. This is just one notable example of the ways in which Indigenous ways of thinking, knowing, and doing have influenced our current restorative justice practices.

Within the context of Canada's youth justice system, restorative justice conferences can be mandated under Section 19 of the YCJA (2003) and run by a Youth Justice Committee (YCJA, s. 18) or can be facilitated by community-based organizations. Conferences are an alternative approach and process to justice that brings together relevant parties (e.g., justice-involved young person, victim(s), community members, and other professionals) to address the harm that was caused by a crime and provide advice to decisionmakers on next steps (Fugeman-Millar, 2003; Government of Ontario, 2024). Rooted in principles of restorative justice, these conferences seek to collaboratively work towards repairing relationships, rather than imposing traditional punitive measures (Zehr, 2002).

Under the YCJA, conferences can be facilitated by a Youth Justice Committee, which is detailed under Section 18. As the first part of Section 18 states, these committees are designated by "the Attorney General of Canada or a province or any other minister that the lieutenant governor in council of the province may designate" (YCJA, S. 18(1)). These committees operate under a community-based, restorative justice model where members are typically volunteers who want to support justice-involved young people within their community (Bala, 2003). One of the main functions of these committees is to assist in the administration of the YCJA and to deliver

programs and services to justice-involved young people (Government of Ontario, 2024). Other functions of these committees, as listed under Section 18 of the YCJA include assisting with recommendations on extrajudicial measures, encouraging the reconciliation of the victim(s) and the justice-involved young person, coordinating interactions of agencies or groups within the justice system, ensuring community supports are available to the young person, and acting as a conference. Although a Youth Justice Committee can facilitate conferences, not all conferences for justice-involved young people are run by a Youth Justice Committee.

During restorative justice conferences, justice-involved young people are encouraged to take responsibility for their actions and engage with the victim(s) and broader community to find a path forward. Participation within these conferences can lead to notable benefits, such as reduced recidivism (Latimer et al., 2005; Umbreit & Zehr, 1996), addressing underlying needs by collaborating with multiple parties (Fugeman-Millar, 2003; Paquin-Marseille & Higgison, 2022), and victim satisfaction (Strang et al., 2006). As Maglione (2018) emphasized, “whether the encounter has been meaningful, genuine, and/or reintegrative lies mainly with the victim…” (p. 50). However, victim satisfaction is just one way to measure the effectiveness of a restorative justice conference.

Conferences can prove to be beneficial for neurodivergent justice-involved young people because of their ability to provide space for a multidisciplinary gathering of professionals and community members to address the underlying needs of the young person (Fugerman-Millar, 2003; Paquin-Marseille & Higgison, 2022). This allows multiple stakeholders to work together in the approach to resolutions of conflicts and decision-making processes. For example, when mental health professionals are included in restorative justice conferences, they can help to

recommend treatment options, provide therapeutic support within the conference, create a supportive environment, and address any underlying concerns or needs (Fugeman-Millar, 2003).

In an Australian study, Kim and Gerber (2012) looked at justice-involved young people's perceptions of future reoffending, bettering the relationships between the victim(s) and broader society, and their feelings associated with repentance. The study utilized John Braithwaite's theory of reintegrative shaming, which suggests that shaming, when done in a constructive manner, can help to reinforce social norms and expectations that help the justice-involved young person to reintegrate back into society. Kim and Gerber (2012) discussed reintegrative shaming as an important aspect of restorative justice conferences, where the justice-involved young person is not excluded from the community but is instead supported in being reaccepted into the community.

Within their study, Kim and Gerber (2012) found that justice-involved young people who participated in restorative justice conferences expressed a stronger desire to make amends to the victim(s) and larger society compared to those who did not participate within a restorative justice conference. Further, they found that younger justice-involved young people were more likely to exhibit stronger feelings of repentance in relation to their actions. This study highlights the potential for restorative justice conferences to positively impact justice-involved young people's willingness to amend the harm that was caused.

The United Nations Economic and Social Council (2002) also highlighted that Member States (like Canada) should establish specific guidelines related to the conditions for referral, qualifications and training of the facilitators, and rules of conduct. Furthermore, there should be continued research on and evaluation of such processes, as well enhanced cooperation and collaboration between justice professionals and restorative justice administrators to ensure the

best outcomes. An effective restorative justice process can be measured through things such as reported satisfaction, a reduction in fear from the victim(s), and a reduced likelihood of recidivism (Strang et al., 2006; Umbreit & Zehr, 1996).

Neurodiversity in the Criminal Youth Justice System

The use, facilitation, and experience of restorative justice conferences can become even more complex when we consider influences of neurodivergence. This promotes an even closer examination of how neurodiversity intersects with youth justice and restorative justice. As previously mentioned, the term neurodiversity refers to the understanding that within the human species, there are differences in neurology and mental functions (Rosqvist et al., 2020). Those who have mental structures that "diverge from the norm" are considered neurodivergent. The term neurodivergent is not a diagnostic category, but a broad umbrella term that can include diagnoses such as, but are not limited to, ASD, ADHD, FASD, and Tourette Syndrome (Baumer & Frueh, 2021; Resnick, 2021; Williams, 2023).

Within the justice system, neurodivergent people are overrepresented (Butcher, 2020; Day, 2022; Kirby, 2021; Longstaffe et al., 2018; Pedruzzi et al., 2021). Certain neurodivergent behaviours (e.g., stimming, lack of eye contact) can often be misinterpreted as defiant, suspicious, non-compliant, threatening, lacking remorse, or dangerous (Kirby, 2021), which can ultimately reinforce both the medicalized/deficit discourse and the 'problematic offender' discourse. This can lead to a cycle of criminalization where neurodivergent people became entangled within the justice system (Butcher, 2020; Day, 2022). Butcher (2020) described this entanglement as a "revolving door" within the justice system.

Although one in three justice-involved young people are estimated to be neurodivergent (Day et al., 2022; Kirby, 2021), the numbers vary by study. It can be difficult to get accurate

estimates of neurodivergent young people within the youth justice system for several reasons. To begin, many young people who encounter the justice system have been formally assessed before entering the system. Research also suggests that there are sex and gender differences related to the presentation of neurodivergent conditions, like ASD (Hull et al., 2017). Specifically, this can be seen in the way that certain groups of young people, such as girls, are socialized to mask their autistic traits (Hull et al., 2017). If professionals are not aware of these nuances, this can mean some justice-involved young people might be overlooked when it comes to screening and assessments. In the context of the justice system, screening and assessments are useful to help identify risks or needs and can help to tailor a set of personalized supports, strategies, and services for each justice-involved young person (American Association on Intellectual and Developmental Disabilities, n.d.).

Further, there can be disparities in diagnoses, highlighting systemic barriers (Coker et al., 2016; Durkin et al., 2010; Kuhn, 2022; Zuckerman et al., 2014). In their research, Durkin and colleagues (2010) explained that children from higher socioeconomic statuses might be more likely to be diagnosed with ASD due to their families having a greater access to resources and greater awareness of these diagnoses. Similarly, research suggests that children from racialized or ethnic minorities are more likely to receive alternative diagnoses, such as disruptive behavioural disorders like conduct disorder, instead of identifying them as being neurodivergent (Coker et al., 2016; Kirby, 2021; Zuckerman et al., 2014). These systemic barriers make it difficult to truly understand the prevalence of neurodevelopmental diagnoses within the justice system.

There are many reasons that can help to explain why neurodivergent young people might be more likely to encounter the justice system. As suggested by Butcher (2020), these young

people might be especially vulnerable in certain situations where their increased suggestibility is taken advantage of. For example, if some young people are inclined to uncritically adopt other's ideas and actions, they could be a target of manipulation, or more susceptible to engage in criminal behaviour (Butcher, 2020). In some cases, neurodivergent people might not completely understand their legal rights in certain situations, which can lead to false admissions of guilt (Kirby, 2021; Marinos et al., 2020). This can become increasingly more complex when other intersecting identity characteristics (i.e., race, gender, socioeconomic status, etc.) further complicate systems of oppression or marginalized experiences.

Justice-involved young people, including those who are neurodivergent, can experience great difficulties within the justice system, highlighting the need for improved education and training for justice professionals to better assist these young people (Butcher, 2020; Day, 2022; Longstaffe et al., 2018; Marinos et al., 2017; Pedruzzi et al., 2021). The justice system typically relies on a particular set of oral, written, and organizational skills that can be difficult for young people to navigate (Gormley & Watson, 2021; Kirby 2021). Some neurodivergent conditions, such as ADHD or FASDs can also impact a young person's working memory, making it harder to recall certain timelines, details, or instructions. This makes it especially important to ensure the processes within the justice system are inclusive and can be adapted to particular needs.

An example of how neurodivergent conditions are overrepresented within the youth justice system comes from looking at young people diagnosed with FASDs. FASDs are a group of conditions that occur when there is prenatal exposure to alcohol and can have many impacts on the person, including structural and functional influences (Longstaffe et al., 2018). As noted by Butcher (2020), people with FASDs may have an increased level of suggestibility and

experience more difficulty linking a cause to an effect, which can lead to engaging in criminal activity and becoming entangled within a system that is not designed to meet their needs.

Research conducted by Longstaffe and colleagues (2018) specifically looked at how to empower and support justice-involved young people with FASDs. Their research focused on the development and the impact of a specialized program in Manitoba, Canada, aimed at assisting justice-involved young people with FASDs. As suggested by Longstaffe and colleagues (2018), diagnostic tools within the justice system can be fundamental for helping justice professionals better understand how to deal with each young person in a way that is meaningful for them and their level of development. Furthermore, they created a pilot project aimed at providing appropriate recommendations consistent with the values outlined in the YCJA, helping to build familial and community capacity, and implementing meaningful reintegration plans for the justice-involved young person (Longstaffe et al., 2018). Within the study, stakeholders were impressed with the increased access to diagnostic tools, case management services, and enhanced service delivery. This research underscores the importance of creating targeted and collaborative approaches within the justice system to improve the outcomes for justice-involved young people with FASDs (Longstaffe et al., 2018).

The overrepresentation of neurodivergent young people within the justice system points to the need for better solutions to support these young people and their outcomes. To begin, researchers recognize that justice professionals should be well-equipped with the knowledge and training needed to effectively work with justice-involved young people who are neurodivergent (Butcher, 2022; Pedruzzi et al., 2021; Longstaffe et al., 2018). It has also been suggested that that it is essential for diagnostic tools to be made available within the justice system (Kuhn, 2022; Longstaffe et al., 2018).

The discussion of neurodiversity in the criminal youth justice system highlights the need to address systemic barriers within the justice system related to disability to ensure justice is accessible for all. An example would be ensuring not all information is relayed orally and providing opportunities to engage with different modalities, such as visual presentations, workbooks, or others. Research by Gormley and Watson (2021) emphasize the need for reforms within the justice system to ensure fairness and inclusivity for all.

Human Rights Treaties

To help ensure fairness and inclusivity, it is important to draw on key human rights treaties. Whenever Canada signs and ratifies a treaty, it is a demonstration of the country's commitment to the well-being of all Canadians. Furthermore, Canada is subject to evaluation regarding these treaties and must submit a report every four or five years regarding its implementation (Government of Canada, 2017). The two main treaties that Canada has ratified and that relate to this current study are the *United Nations Convention on the Rights of the Child* (UNCRC) and the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD), both of which are expanded on below. Both treaties are key human rights frameworks that relate to this thesis in that they directly support the rights of neurodivergent young people, especially in the context of the justice system.

United Nations Convention on the Rights of the Child (UNCRC)

When Canada ratified the UNCRC in 1991, it made a commitment to uphold the rights of all young people, defined within the document as anyone under the age of 18. The UNCRC (1989) is an international treaty that provides a list of 54 Articles that pertain to the rights of young people, though it is not automatically legally binding. As pointed out by Wolfe (2021), despite the commitment demonstrated by ratification, any violations to the document cannot be

brought before the courts. However, there are often informal and formal mechanisms for filing complaints.

The UNCRC is of importance within this context because it is mentioned specifically within the Preamble of the YCJA. Specifically, it states that:

> Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and have special guarantees of their rights and freedoms (YCJA, 2003).

While explicitly stated within the YCJA's Preamble, this means that youth justice in Canada has made a commitment to also uphold the rights outlined in all 54 Articles of the UNCRC.

In relation to this study, there are three notable Articles within the UNCRC that relate to this study, being Article 2, Article 12, and Article 23. Under the UNCRC, Article 2 recognizes that all young people have the right to non-discrimination, irrespective of any personal factors. Next, Article 12 calls us to recognize that young people have the right to participate in any matter involving them, including in legal matters. Lastly, Article 23 highlights the government's responsibility to take a proactive role in providing support and removing barriers within society to facilitate the participation of all its members, including disabled young people. A recognition of these rights would mean that, in theory, neurodivergent justice-involved young people should be afforded opportunities to meaningfully engage in justice processes, such as restorative justice conferences in meaningful ways that support their needs.

Although there are clear rights that are outlined within the UNCRC, it remains a difficult document to enforce (Wolfe, 2021). The overrepresentation of certain groups of young people within societal institutions highlights the uneven application of this ratified document (Abrams et

al., 2021; Cesaroni et al., 2018; Jackson, 2015; Kirby, 2021; Malakieh, 2020; Underwood et al., 2014). This is because although the UNCRC strives to ensure rights for young people are universal, contexts such as race, identity, socioeconomic status, disability, or other factors can lead to disparities. The reviews and reports of the UNCRC also suggest that further steps need to be taken to effectively uphold these rights for young people, with a special emphasis on the right to participate in matters involving them (Bala & Houston, 2016).

As mentioned by Mitchell and Moore (2011), in a country such as Canada, it is astounding to see that the UNCRC continues to be misunderstood, both in policy and in practice. In the context of the criminal youth justice system, this can look like young people's rights being overlooked where there is a lack of education surrounding human rights or a lack of structures in place to ensure participation and protection for young people (Mitchell & Moore, 2011). Mitchell and Moore (2011) also emphasized the need to adopt rights-based frameworks to encourage equity and participation within processes, such as restorative justice.

United Nations Convention on the Rights of Persons with Disabilities **(UNCRPD)**

In Canada, the ratification of the UNCRPD came in 2010. By ratifying this human rights treaty, Canada agreed to "promote and ensure the full enjoyment of human rights of persons with disabilities including full equality under the law" (UNCRPD, 2006). The UNCRPD's definition of disability states that "persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" (UNCRPD, 2006). This aligns with the medical model of disability.

The two Articles in the UNCRPD that relate directly to justice and the law are Article 12 and Article 13. Article 12 asserts that disabled people have the right to equal recognition before

the law. This means that they have the right to enjoy legal capacity on an equal basis with others while being provided the necessary support needed to exercise this capacity. Article 13 further highlights that disabled people have the right to justice on an equal basis with others. It further notes that age-appropriate accommodations need to be provided to facilitate active and meaningful participation in legal matters. Furthermore, Article 13 of the UNCRPD recognizes the need to provide continued education and training to justice professionals related to disability.

It is important to highlight Articles from both the UNCRC and UNCRPD because they help to build the argument that neurodivergent young people should not experience discrimination within the context of the justice system. When combined, we can understand that neurodivergent young people have rights, not just as young people, but also as disabled people, and that it is up to societal institutions to remove barriers that might hinder full and meaningful participation within justice processes such as restorative justice conferences. When we look at the UNCRC and the UNCRPD, it helps to support the idea neurodivergent justice-involved young people must be provided with the necessary supports to be able to exercise their rights within restorative justice conferences and the justice system more broadly.

Current Research

While research exists on the various topics explored within the literature review, there is little research that specifically looks at neurodiversity and restorative justice conferences for young people in Canada. Further, there is no research that utilizes Foucault's theory of discourse with a Foucauldian discourse analysis as a means of uncovering broader themes of discourse, related to neurodiversity and restorative justice. This study seeks to fill gaps in research related to these areas, with a specific look at the medicalized/deficit vs. neurodiversity-affirming discourse and the 'ideal offender' vs. 'problematic offender' discourse.

Foucault's theories and Foucauldian discourse analysis has been used in previous studies as a method for analyzing how power dynamics influence practices within the justice system. Specifically, Maglione's (2013; 2018) work explored restorative justice through a poststructural lens that draws on Michel Foucault. Maglione (2013) critically analyzed the power dynamics that shape restorative justice practices and how the dynamics can influence the development and implementation of restorative justice initiatives within the justice system. In subsequent work, Maglione (2018) continued to utilize Foucault's theories as guiding frameworks to explore discourse surrounding concepts such as the 'ideal offender' in restorative justice. Maglione (2018) pointed our attention to the ways in which power and knowledge are reinforced and the importance of challenging dominant representations, especially in the context of the youth justice system.

Reports by the Department of Justice Canada related to restorative justice also highlight how this topic has been understood and studied in the Canadian context. In a 2019 report by the Department of Justice Canada, restorative justice conferences were discussed as being underutilized. The report also highlighted that some victims of crime continue to lack confidence in the justice system. To better understand the system, recommendations are made related to enhance the incorporation of restorative justice initiatives that are victim-focused and trauma-informed within the justice system. The report also recognized that governments need to consider intersecting factors related to education, healthcare, child welfare, and others in better understanding the underlying causes of crime to ensure there is not an overreliance on the justice system in addressing social issues. While there was no mention of topics related to disability or neurodiversity, these factors also constitute underlying factors that would need to be considered.

Similarly, Paquin-Marseille and Higgison (2022) published a report for the Department of Justice Canada that looked at Section 19 conferences across the country. Paquin-Marseille & Higgison (2022) researched the extent to which conferences were used, the purposes and processes, the benefits and challenges, and the data collection, evaluations, and impact assessments. All provinces and territories indicated that they would provide accommodations for diversity, including for "cognitive disabilities", as referenced in the document. In Ontario, data is collected at the local level but there is no province-wide database for the information. Information that Ontario indicated is collected "some of the time" includes: the number of conferences convened, who a conference was convened by, who attended the conference, the purpose of the conference, and the outcome. As indicated by Paquin-Marseille and Higgison (2022), the data that Ontario "never" collects related to Section 19 conferences include: characteristics of the young person and costs associated with the conference. However, local, community-based organizations that hold contracts to facilitate restorative justice conferences can collect this data, though it is not shared in a wider data system.

Although research exists on the various topics that this thesis hopes to explore, no research combines the topics to contribute to the broader discussion of neurodiversity in the criminal youth justice system. As previously mentioned, this research study seeks to fill gaps in both literature and knowledge. Through a critical lens, this thesis hopes to highlight the impacts that discourse can have in shaping our understanding and experiences with topics such as neurodiversity, youth justice, and restorative justice. The following chapter will expand on the methodology and methods used for this research.

Chapter Four: Methodology and Methods

Purpose of Study

There were several areas of interest that this research explored. Specifically, this research engaged with professionals who had experience facilitating restorative justice conferences for justice-involved young people. Understanding the discourses that surround neurodivergent justice-involved young people (e.g., medicalized/deficit model or neurodiversity-affirming model), I wanted to explore themes related to the role of the facilitator, the administration of youth justice, neurodiversity, and restorative justice to understand how the facilitators reinforced, reproduced, or rejected certain discourses. Grounded in the theoretical frameworks of both Foucault's discourse theory and critical neurodiversity theory, this thesis utilized a Foucauldian discourse analysis to unearth the operation of discourse within restorative justice conferences. The following research questions guided this study: How do the medicalized/deficit and neurodiversity-affirming discourses that surround justice-involvement for neurodivergent young people shape restorative justice conferences? And what can the facilitators who engage with neurodivergent justice-involved young people tell us about how these discourses are both upheld and resisted?

Methodology

Qualitative methodology is popular within the social sciences, as it goes beyond the quantitative generalizability of collecting and analyzing data to capture in-depth understandings of social phenomena by interpreting participant responses. Qualitative methodology uses non-numerical data, such as interviews, to uncover themes and underlying meanings in responses (Mason, 1996). Qualitative methodology can be especially important for centering participant voices, capturing lived experiences, and building foundations for future research. For this study,

qualitative methodology was appropriate and most effective as I was specifically interested in understanding what the participants had to say, and the discourses embedded within their voices.

This research found its theoretical grounding in Foucault's theory of discourse and critical neurodiversity theory (CNT), as discussed in chapter two. The two complement one another as a theoretical framework due to their stance on discourse, knowledge, and power. In maintaining methodological consistency, Foucauldian discourse analysis (FDA) was used as the method to analyze the data to understand the ways in which facilitators reinforce, reproduce, and resist discourses related to neurodivergent justice-involved young people (e.g., medicalized/deficit vs. neurodiversity-affirming discourse and 'ideal offender' vs. 'problematic offender' discourse).

FDA is an approach that derives from Michel Foucault, who reminds us that knowledge and power are interconnected and always exist within discourse. By critically analyzing discourse, we can better understand how neurodivergent justice-involved young people are understood and constructed by conference facilitators. For example, neurodivergent young people can be understood through a medicalized/deficit model or a neurodiversity-affirming model. The discourses reproduced, reinforced, and/or resisted by conference facilitators can have real implications on the way neurodivergent justice-involved young people are conceptualized and understood.

While Foucault did not explicitly outline the steps of FDA, scholars have drawn on his theories to develop guidelines on how to conduct this form of analysis. As Arribas-Ayllon and Walkerdine (2017) emphasized, there are no set rules or procedures when it comes to FDA. The flexibility of this approach allows researchers to adapt to specific research questions and social contexts, fitting in with qualitative methodology. It is important to note that FDA serves as an

analytical framework and means different things for different researchers, as it refuses formalization (Arribas-Ayllon & Walkerdine, 2017).

FDA is an approach with no set procedures because it is highly dependent on the researcher, topic, and context. Although there are no step-by-step instructions on how to conduct FDA, there are guiding principles that are commonly followed by the researcher. Key elements of FDA include understanding how particular discourses construct subjects, the historical and cultural contexts that enable certain discourses, and exploring how power operates within these discourses (Arribas-Ayllon & Walkerdine, 2017; Jørgensen & Phillips, 2002). Using FDA as an analytical framework allows me to engage in the use of a critical lens to better understand participant responses.

This critical lens shaped the project, as I was interested in going beyond the obvious themes that emerged in this study to understand the ways in which the facilitators both reproduced and resisted discourses related to neurodivergent justice-involved young people (e.g., medicalized/deficit vs. neurodiversity-affirming discourse and 'ideal offender' vs. 'problematic offender' discourse). While talking to participants about their role, youth justice, neurodiversity, and restorative justice, I was able to gain a deeper understanding into the operation and decisions relating to restorative justice conferences across Ontario from a practitioner's perspective.

Furthermore, as discussed within both the findings and discussion chapter, this thesis helps to relate to broader topics of neurodiversity in the youth justice system. For example, the medicalized/deficit discourse can highlight the ways in which some neurodivergent justice-involved young people might be conceptualized as a 'problematic offender' in restorative justice. This is because if some young people are viewed through a pathologizing lens, their behaviour might be interpreted as inherently problematic, while failing to account for other contexts. In

contrast, an emphasis on neurodiversity-affirming discourse in youth justice can help to position more justice-involved young people as 'ideal' candidates for restorative justice, recognizing their unique abilities that can be accommodated within the process. This is because neurodiversity-affirming discourse can reduce stigma and increase inclusion.

Ethics Approval

Prior to commencing any research, it was important and compulsory to obtain ethical approval from my post-secondary institution. In early December of 2023, I sent an ethics application to Brock University's Social Research Ethics Board (SREB). The application included the general application form as well as four documents associated with the project. Those documents were the Email Script (Appendix A) that was to be followed, Letter of Invitation (Appendix B) for the study, the Research Consent Form (Appendix C), and an Interview Script (Appendix D) with the list of proposed questions.

Two weeks later, the SREB requested several clarifications and revisions of the application. These requests related to general information, refinements to the methods section, discussion of confidentiality and anonymity, and the informed consent process. I completed the highlighted requests and sent the application back to the SREB. I was asked to complete one more point of further clarification related to feedback to the participants.

After completing the requested modifications, a Certificate of Ethics Clearance for Human Participant Research was obtained by the SREB (Appendix E). The file number for the project was 23-162-MARINOS. After being cleared to commence the research project, the first step was to begin recruiting participants.

Methods and Data Collection

I obtained a list of agencies across Ontario that are funded by the Youth Justice Division of the Ministry of Children, Community and Social Services (MCCSS) that hold contracts for restorative justice conferencing. After finding email addresses for each organization, I communicated using an Email Script (Appendix A) and Letter of Invitation (Appendix B). Upon receiving interest in the study, I attached the Research Consent Form (Appendix C), which included relevant information related to the study, participant rights, and consent. The bottom of the form asked for boxes to be checked related to consent and for the participant to sign and date the document. Once received, I signed and resent the document back to the participant for their records. All participants were also given a pseudonym, ranging from Participant 1 to Participant 5.

Once informed consent was obtained, I scheduled a Zoom call with each participant where a semi-structured interview was conducted. Since this project was interested in connecting with professionals across the province, an online mode of communication was the most appropriate. Semi-structured interviews were also the most appropriate form of data collection due to the combination of structure and flexibility.

Semi-structured interviews are a widely used data collection tool in qualitative research (Kallio et al., 2016; Mason, 1996; Walliman, 2006). Their popular open-format design allows participants to share their perspectives while also allowing the researcher to remain aware of visual cues or when to probe further (Kallio et al., 2016; Walliman, 2006). As highlighted by Kallio and colleagues (2016), semi-structured interview should be informed by previous literature and theories that prevent broad or vague questions. Further, semi-structured interviews should have a logical structure and can be organized by grouping questions into themes (Kallio et al., 2016). Although semi-structured interviews are guided by a predetermined list of questions, it

is important as a researcher to remain responsive and adapt specific questions to each participant to further evolve the conversation (Kallio et al., 2016; Mason, 1996).

Within the semi-structured interviews, I utilized an Interview Script (Appendix D) that was grouped into themes of the role of the professional, youth justice, neurodiversity, and restorative justice. My goal was to understand how facilitators engage in these conversations while also reproducing, reinforcing, or rejecting discourse surrounding neurodivergent justice-involved young people (e.g., medicalized/deficit model vs. neurodiversity-affirming model, 'ideal offender' vs. 'problematic offender'). Prior to starting the interview, I confirmed that the participant had read, understood, and consented to the project outlined in the Research Consent Form (Appendix C). I also reminded the participant that their participation in the study was voluntary, confidential, and that they could choose to skip any question or stop the interview at any point without consequence. The participant was also reminded of who to contact if there were any questions or concerns. After receiving verbal confirmation from the participant, I began the Zoom recording.

The interview script had a list of 28 pre-developed, semi-structured questions that were grouped into themes of the role of the professional, youth justice, neurodiversity, and restorative justice. Initially, I was interested in speaking exclusively with members of Youth Justice Committee members across Ontario who had experience facilitating Section 19 conferences. Upon learning that restorative justice conferences for justice-involved young people can operate outside of Youth Justice Committees, I changed the parameters of my thesis to include any professional who had experience facilitating restorative justice conferences for justice-involved young people. Despite not all participants being members of Youth Justice Committees, they were still able to provide insight into understanding the YCJA.

The first set of questions were related to the role of the professional. I was interested in understanding the current role of the professional and whether they were a member of a Youth Justice Committee. This allowed the participant to talk about their role within the organization any other relevant roles they wished to note, and the number of years spent in each. I was also interested in hearing about the participant's training in their current position related to vulnerable groups of young people. Vulnerable young people are those that might be exposed to more risks than their peers. I was specifically interested in hearing about participants' training because a lack of training can oftentimes lead to implicit exclusion or biases. Furthermore, by talking about participant training, I could better understand their exposure to complex topics, key takeaways from trainings, and the justice system's broader commitment to inclusive and accessible justice. The vulnerable populations of young people that the participants talked about included BIPOC, disabled young people, neurodivergent young people (specifically FASDs), 2SLGBTQIA+ young people, those who are under-housed, those who have experienced trauma, and others. This question also allowed participants to highlight where they received the training, if it was compulsory, optional, or self-initiated learning.

The question on vulnerable populations of young people served as the segue for the next theme: neurodiversity. I was interested in understanding the participants' personal knowledge on what the term neurodiversity meant, challenges or barriers that they see for neurodivergent young people in contact with the justice system, and how they would go about accommodating neurodivergent young people coming through their organization. This section allowed me to also inquire about the characteristics of young people that the participant's encounter, what would make an appropriate or inappropriate candidate for the program, and the degree to which they are able to connect young people to other services, either for programs, assessments, or support. This

section also allowed me to see the ways participants were engaged in the 'ideal offender' vs. 'problematic offender' discourse.

Following this, there were three questions about youth justice that specifically related to the YCJA. Some participants had experience referring to the YCJA in their work, while others did not. Specifically, I was interested to hear the opinions of what constitutes "special requirements" under the YCJA (S. 3(c)(iv)). This open-ended question allowed participants to discuss what they deem to be "special requirements" under the YCJA and its relationship to the needs of neurodivergent young people.

Lastly, I was interested in learning about the restorative justice conferences that the participants had experience facilitating. This section was the longest section and allowed me to understand how conferences operated within each organization. The questions related to the structure of the program, factors considered when taking on clients, as it is discretionary about whether the young person is an appropriate candidate, benefits and challenges associated with conferences, and recommendations for reforms. The discretion when taking on clients for restorative justice conferences related to the nature of the offence(s) and whether or not other professionals recommended the restorative justice program as an option.

I accessed all interview transcripts by downloading a copy from Zoom. Each transcript was then manually reviewed by me to remove any personal speaker tags. Each transcript was saved to my password protected laptop with the file name as the pseudonym given to the participant. Each participant was provided with a copy of their transcript for their records and were given 14 days to notify me of any responses they wanted edited or omitted. None of the participants responded to suggest any changes to their transcripts.

Recruitment of Participants

As mentioned above, I was provided with a list of agencies funded by the Youth Justice Division of the MCCSS that hold contracts for restorative justice conferencing. Using the internet, I was able to find contact information for each organization. This included email addresses for each organization's Executive Director, as well as the general email address.

I created an Email Script (Appendix A) that was followed when establishing communication with organizations. The email also included an attached document titled "Letter of Invitation" (Appendix B) that I requested be forwarded to those responsible for restorative justice conferences within the organization. All 12 of the organizations on the list were contacted regarding participation in this study.

The initial goal of the study was to engage with 12 to 15 members of Youth Justice Committees across Ontario. During the initial recruitment phase, a potential participant responded to the invitation email and highlighted that their organization holds a contract for restorative justice conferencing for justice involved young people, but that it varied somewhat from a registered Youth Justice Committee. After conversations with my supervisor and committee, the parameters of the project changed to allow for the possibility of more participants. This modification replaced the requirement that participants had to be Youth Justice Committee members to participate. This adjusted the focus to include any professional who had experience facilitating restorative justice conferences for justice-involved young people, Youth Justice Committee member or not. Further follow-up emails were sent approximately one month after the first round of emails to reinvite professionals to participate in the study.

In some cases, the email invitation was directly received by an organization's Executive Director who agreed to participate in the study. In other cases, I was given a list of contacts within specific organizations who might have some interest. This meant that I also reached out

directly to specific people if their name was recommended. In most cases, attempts at establishing communication remained difficult, as there was a lack of replies.

The lack of interest in the study encouraged me to also employ snowball sampling. Snowball sampling is a method discussed by Atkinson and Flint (2001) that helps to recruit future participants in a cost-effective way. Snowball sampling was used in this study following the completion of each semi-structured interview. I asked each participant to recommend any other potential participants who would be interested. As Atkinson and Flint (2001) highlight, this method can raise concerns about confidentiality, which is why I made sure not to discuss who recommended them to me.

Participants

Participants consisted of five professionals across Ontario who had experience facilitating restorative justice conferences for justice-involved young people. Participants volunteered or worked at one of the 12 listed agencies that was given to me. To clarify, two of the participants were in Central Ontario, two participants were in Northern Ontario, and one participant was in Western Ontario. Each participant was given a pseudonym for confidentiality purposes, which ranged from Participant 1 to Participant 5. Although I initially hoped to engage with 12 to 15 professionals, the five recruited participants were able to provide in-depth insight for this study.

Two of the participants were Executive Directors at their organizations and were not members of a Youth Justice Committee. One participant was the Director of Programs within their organization and was responsible for overseeing the restorative justice programs, which was also separate from a Youth Justice Committee. One participant held both a Community Youth Worker and Restorative Justice Coordinator position within their organization, which was not a Youth Justice Committee but had a specific youth justice section within the organization that was

a Committee. One participant was a member of a Youth Justice Committee and also worked as a licensed paralegal. Participants also highlighted other relevant current or previous roles, such as working in the education system, non-residential attendance centres, group homes, or in other roles within their organization.

As further discussed in chapter seven, a limitation of this research is that it did not engage with the initial goal of 12-15 professionals. In research by Guest and colleagues (2020), saturation in qualitative research refers to the point where no new themes or additional insights are revealed. In other words, it can be a signal to the researcher that they have collected enough data. Guest and colleagues (2020) indicate that saturation varies based on the complexity of the research topic, diversity of participants, and other factors, but can occur early. In terms of my research study, I can acknowledge that, while the five participants provided insightful responses, I do not know whether my data analysis and findings would be different had there been more participants.

Data Analysis

In line with the theoretical framework for this study, a Foucauldian discourse analysis (FDA) was used as the primary method for analyzing the data. This relates to my theoretical framework rooted in Foucault's discourse theory and critical neurodiversity theory, as both theories emphasize how knowledge is constructed and embedded in the social world as unquestionable truth. The use of FDA helped me to unpack the discourses that surround neurodivergent justice-involved young people (e.g., medicalized/deficit discourse vs. neurodiversity-affirming discourse and 'ideal offender' vs. 'problematic offender').

The transcripts were reviewed multiple times. First, prior to conducting FDA, I organized my data through a systematic approach that helped me gain familiarity with participant

responses. I created one colour-coded document that contained the list of each research question, an overview of each participant's response, and any revelatory quotes. Revelatory quotes were picked if they exemplified or revealed certain themes or discourses. This allowed me to systematically group participant responses together. This was done prior to employing FDA to better familiarize myself with the data.

After systemically organizing the data, I reviewed the transcripts again, employing FDA. Raby (2002) noted "…as discourses work as truth statements, it is difficult to 'see through' them to identify how our reality is shaped" (p. 430). Because discourse is often invisible and operates beneath our conscious awareness, Miller (1990) discussed how this can lead to certain ideas and assumptions being normalized within society. The role of FDA then serves to make the invisible, visible.

Through a Foucauldian-inspired discourse analysis, Raby (2002) examined how the construction of adolescence is shaped by multiple and sometimes contradictory discourses. Raby's (2002) research highlighted the ways in which discourses are understood, negotiated, resisted, and reproduced. Drawing on participant interviews with girls and their grandmothers, Raby (2002) analyzed discourse in relation to power and knowledge structures and how participants are positioned by discourse. This is an example of research that utilizes Foucault's concepts to make the oftentimes invisible power and knowledge structures visible, as they are embedded within society and everyday interactions.

Maglione (2013; 2018; 2019) utilized Foucault's theories to critically examine how the justice system and processes within it can construct knowledge and reproduce social hierarchies. Maglione (2018) investigated the ways legal discourse produces categories such as the 'immature' or 'ideal offender', bringing to our attention how legal and political systems can

influence social constructions, such as immaturity in young people. Maglione (2019) further utilized Foucault's theories to critically analyze the discourse within policy documents and academic literature related to restorative justice. The use of FDA allowed Maglione (2019) to unpack the underlying power and knowledge dynamics that turn some ideas into "truths", the ways in which discourse can produce certain "subjects", and how restorative justice can be a site of reconfiguring those power dynamics.

The pre-defined topics that I created stemmed from my research questions and allowed me to not only understand these themes but also remain open to other emergent themes. FDA allowed me to go beyond the surface-level of analyzing the transcripts to understand the ways in which power and knowledge operate throughout discourse. Although I had a specific emphasis on the medicalized/deficit vs. neurodiversity-affirming discourse and the 'ideal offender' vs. 'problematic offender' discourse, I remained open to the voices of the participants and additional discourses. By identifying the discourses at play, I was able to link participant responses together to build a narrative that discusses the ways in which restorative justice facilitators operate within those identified discourses.

Chapter Five: Findings

As the findings highlight, restorative justice conference facilitators exist within a societal institution and framework in which dominant discourses continue to be reproduced, reinforced, and resisted. It is important to remember and recognize that the study participants work within a broader societal institution that they did not create with its own set of constraints and limitations. Participant responses must therefore be understood in the broader frameworks and discourses that exist within the justice system. While the findings suggest that the facilitation and operation of restorative justice conferences vary across Ontario and that neurodiversity is not evenly understood, it is not the responsibility of the restorative justice conference facilitators to fix this gap. The onus to better the justice system for neurodivergent justice-involved young people should fall primarily on the government and systems that design and uphold these institutions.

The Role of the Professional

The first theme that was explored within the semi-structured interviews was the role of the professional. The five participants had varying roles within their organizations, but all had experience with the facilitation of restorative justice conferences for justice-involved young people. This theme allowed me to understand participant roles and backgrounds with respect to working with justice-involved young people. The use of FDA as an analytical framework further allowed me to understand discourses that underpin restorative justice conference facilitators.

Part of the facilitators' role was to collect available information about the young person prior to facilitating the restorative justice conference. Information that was sometimes available to facilitators included school files, police reports, court files, files from youth workers, and others. Young people were referred to the organizations for both pre- and post- charges. As one participant noted: "… they present the prepared assessment documents that capture everything

that has to do with learning disability, cognitive disorder … so when we know that the young person is vulnerable, we already have the information…" (Participant 1). Another participant noted: "…lately we've had a couple where it's been identified that youth have autism right in the police report" (Participant 2). In most cases, these documents exist within the medicalized/deficit framework that highlights "risks" or "problematic" behaviours.

It is evident that in some cases, professionals rely on the medicalized/deficit-based understandings of the justice-involved young people they encounter. This aligns with broader discourse within the justice system that draws support from the knowledge of medical professionals. Within the *Criminal Code of Canada*, "mental disorder" is a term defined as "a disease of the mind" (RSC, 1985, c. C-46, s.2) that is also found within the current youth justice legislation (Government of Canada, 2022).

As previously discussed in chapter two, medicalized/deficit discourse within the justice system often serves as a tool to categorize and regulate people. In this instance, the categorization of young people can reinforce power and knowledge relations, where those with more power can exercise control over categorizing others. When professionals have access to institutionalized information about a young person, it can construct what Foucault (1972) calls "truths". These "truths" can then influence a young person and allow others to place further labels on them such as "at risk", "in need" and/or "dangerous", which can further contribute to the 'problematic offender' conceptualization.

Maglione's (2018) analysis of the 'ideal offender' in restorative justice is an example of the ways in which discourse can construct who is viewed as worthy of restorative justice and who is not. For example, justice professionals may construct an 'ideal offender' in restorative justice as someone who expresses remorse, engages in open communication with the victim(s) to

work towards repairing the harm, and actively seeks reintegration back into the community (Maglione, 2018). In contrast, a 'problematic offender' in restorative justice might be conceptualized as someone who does not express remorse in an expected way or does not engage with the victim(s) in an expected way. Throughout the semi-structured interviews, there was some indication that the facilitators were engaged with discourse related to the 'ideal offender' or 'problematic offender' in restorative justice, such as when some participants were discussing who would make a good candidate, as expanded on further below.

However, the participants highlighted that sometimes pre-existing information on the justice-involved young person was unavailable or inaccurate, underscoring the importance of creating their own understandings. As Participant 5 highlighted: "There is also another part of us that really likes to meet people where they're at without forming lots of, an assumption of how someone might come." When facilitators operate outside the formalities associated with the justice system, they might rely less on legal expertise and more on lived experience, community values, and principles of restorative justice. When justice professionals do not engage with pre-existing knowledge frameworks that are common within the justice system (such as the medicalized/deficit model), they can resist certain reproductions of knowledge and allow space for the justice-involved young person to exercise agency in constructing their own identity and experiences.

Typically, the justice-involved young people were referred to the participants' organization by the police or Crown Attorneys, though referrals could also come from others. When discussing the nature of the crime allowed within restorative justice conferences, one participant noted: "There's a threshold. And that threshold is usually decided by the police and by the courts. They're the ones who make the decisions" (Participant 3). For more serious

crimes, another participant noted: “I need to have a higher-up that decides on the program itself” (Participant 4). These quotes highlight the power dynamic where access to alternative justice processes such as restorative justice conferences are up to the discretion of the referring party and dependent on conditions such as severity of the crime.

This means when a young person encounters the justice system, they are subject to power dynamics from authorities and those who work within the system, such as Crown prosecutors. In this instance, we can see how factors such as the seriousness of the crime can relate to who is considered an ‘ideal offender’ for restorative justice. For example, restorative justice is typically reserved for non-violent offences. Although the Ministry of the Attorney General sets out guidelines related to eligibility for the nature of the offence, the flexibility of the YCJA allows police officers or the Crown to apply for the process (211 Ontario, n.d.; Government of Ontario, 2024). This also relates to Foucault’s (1975) notion of disciplinary power, where justice-involved young people are subject to authority and regulation from the justice system and those who work within it.

Another role that participants highlighted was engaging in preparation work prior to the restorative justice conference. All five participants were involved in the intake process for the justice-involved young person where they got to meet the young person and any supportive adults that they brought with them. These intake sessions occurred either over the phone or in-person, either at the participant’s organization or in a location that worked best for the young person. This allowed them to discuss the various steps included in their program and to answer any questions from the young person. This is in line with the service features that are outlined by the Government of Ontario (2024) for the delivery of Youth Justice Committees.

Organizations received referrals for justice-involved young people both pre- and post-charge. One participant highlighted that after the intake appointment, the justice-involved young person and their accompanying adult were invited to sign a contract that outlined a list of assignments, or "sanctions" that had to be completed by a certain deadline, or the case would be sent back to court. This can be seen as relating to the flow of power, as Foucault (1976) understands power to be relational and in constant circulation. While justice-involved young people are empowered to participate in alternatives to justice such are restorative justice conferences, non-compliance or an inability to finish the program on time can result in their matter being sent back to court. When a matter is sent back to court, it might result in harsher or more punitive sentences. Through a Foucauldian lens, the imposition of sanctions can be viewed as an exercise of disciplinary power, reinforcing the justice system's power in governing young people as subjects. Nonetheless, the imposition of sanctions can be important for allowing the young person to take responsibility.

Before a conference could take place, participants engaged in more preparation work. In some cases, the justice-involved young person was expected to work through various sessions before making it to the conference stage. The preparation work included education components related to themes of harm, repairing harm, understanding underlying needs, and victim awareness. The facilitators also engaged in separate meetings with the victim(s) to prepare them for the conference. Participants noted that not all justice-involved young people who were referred to their organizations made it all the way to the conference stage.

Participant 3 specifically highlighted the various sessions that were involved within their organization. Session one was referred to as the intake appointment, where basic information was gathered, and the outline of the program was discussed. Session two explored the question:

"What happened?" where basic facts surrounding the case were discussed. Session three included a trauma-informed approach where the question: "What were you thinking at the time?" served as the discussion guide. Session four explored the question "Who was harmed?", where the facilitator worked with the justice-involved young person to build empathy surrounding the case and show how actions can be hurtful. Session five explored the question: "What are you going to do about it?" where justice-involved young people had the opportunity to write an apology letter to the victim(s). Session six was the restorative justice conference where all relevant parties were invited to have the facilitated conversation. This is just one example of the preparation work that went into a restorative justice conference at one of the organizations.

After completing the preparation work involved, the main role of the participants was to act as a facilitator within the restorative justice conferences. Depending on the organization, conferences were run by one to three facilitators. Participants highlighted that while the victim(s) were always invited to participate, sometimes their participation came in the form of victim impact statements. This is further expanded on by the Government of Ontario (2024) that highlights that conferences can occur with or without the victim. In the case where there is no identifiable victim(s) or the victim(s) does not wish to participate, a conference can still be convened to help the justice-involved young person understand the impacts that the crime has had (Government of Ontario, 2024).

As the responses reveal, restorative justice initiatives can be seen as shifting power away from the courts towards community-based organizations and professionals. The flow of power is no longer a top-down punitive approach but is dispersed and reconfigured in subtle ways. For example, justice-involved young people become empowered to take an active role within the process of addressing the harm they caused. Despite this, power dynamics can still exist, as these

conferences are managed and facilitated by adults (Lohmeyer, 2017). As Foucault (1975; 1976) theorizes, power is always present in everyday interactions because it circulates and flows rather than being the possession of a person or one group. As one participant noted: "…we're like another adult in their life telling them what to do" (Participant 5). Through a Foucauldian lens, we can see that power is dispersed throughout restorative justice conferences, where it becomes important for conference facilitators to be cognizant of power dynamics.

Although power dynamics can and do occur for these professionals and within these spaces, justice-involved young people are still positioned as empowered, and power still flows among all participants in various ways (Lohmeyer, 2017). After the previous statement, the participant followed up with: "We don't tell anybody what to do, by the way. Our process is very strict in saying that we don't know what's best. The people in the room know what's best for themselves" (Participant 5). Through an FDA lens, this quote does not suggest that there is an absence of power. The flow of power still exists within the restorative justice processes but might circulate and operate in more subtle ways. For example, while facilitators might not directly tell young people what to do, they can still be influential in shaping behaviour and reinforcing societal expectations. This relates to when one participant mentioned, "…also, you know, be[ing] that mentor to teach them how to fit into society's boundaries" (Participant 3).

Another key role discussed by participants was ensuring that the justice-involved young people were connected to appropriate services and supports. Participants 3 and 4 specifically highlighted the importance of connecting Indigenous young people to culturally relevant services, such as Friendship Centres. Participants also highlighted that while it would not typically be their jurisdiction to refer justice-involved young people for psychological assessments, in some cases, they could talk to the parents about how to access funding for certain

clinical assessments or advocate to the Crown Attorney to get court-ordered assessments, which are paid for by the justice system.

Collaboration among institutions and agencies (e.g., families, schools, mental health services, etc.) was also discussed in relation to best supporting the young person. As one participant noted, "…building the relationship with the school, because the school knows that if this youth is receiving some supports, then they're becoming a better student for them as well" (Participant 3). When a young person's school, family, and other social support services are in collaboration with one another, participants highlighted the increased effectiveness in addressing underlying needs across various sectors. This relates to the research conducted by Fugeman-Millar (2003) that discussed the importance of collaborating with all relevant stakeholders in the decision-making process for justice-involved young people.

Participants highlighted that restorative justice conferences could be improved by engaging in ongoing conversations related to how to best address the underlying needs of young people. As one participant noted: "…so the referrals that they bring forward, you know, within our confidential group, we discuss the situation, and which service would best serve the youth" (Participant 3). As this participant later mentioned: "I think it's very important for restorative justice service providers to build relationships with the communities, right? It's just that, you know, it takes a community to raise children" (Participant 3). This increased collaboration can ensure that various stakeholders are involved in supporting the rehabilitation of the young person. FDA helps highlight the ways different service providers and institutions bring various specialized knowledge when it comes to working with justice-involved young people. However, if decisions are made without meaningful input from young people, it can demonstrate a top-down approach to power where young people are subject to the expertise and decisions of others.

As another participant noted: "…I don't want youth offenders to be cut loose with no support" (Participant 3). Participant 5 specifically recommended creating a comprehensive database of all available services within each jurisdiction which could serve as a tool for connecting young people with various services that might not be readily known or available, eliminating the hassle of people finding services on their own terms. This is an example of a network of power that operates to support young people. While collaborating with multiple systems and organizations can be beneficial in supporting young people, a Foucauldian lens would question some things. For example, what level of agency is given to young people and who gets to decide what "the best" approaches are? These questions can be difficult to answer, as supporting justice-involved young people does not come in a one-size-fits-all approach.

Participants also noted that within their role, they engaged with continued education and training opportunities, either mandated ongoing training from their organization or self-directed learning initiatives. Education and training initiatives varied among participants, highlighting the lack of universal training available to these professionals. When asked specifically about training on vulnerable populations of young people, participants highlighted learning about a wide range of young people. Examples of topics included 2SLGBTQIA+, BIPOC, disabilities, mental health, trauma, neurodiversity, and others. However, participants also pointed to the need for increased education and training. This highlights how knowledge is not evenly distributed across the facilitators of restorative justice conferences.

During the semi-structured interviews, it became clear that some participants had knowledge in specific areas that others did not. Some participants highlighted their previous work experience within the education system or group home settings that helped them better understand the various young people they encountered. As one participant noted, "I think it is

important for volunteers to have an understanding of neurodivergent youth needs … our conference volunteers just happened to be former teachers … they have a really good understanding of neurodivergent youth" (Participant 3). Whether or not this is a fact, it demonstrates the idea that the skills and knowledge learned from the education system by teachers can be useful in restorative justice practices.

Foucault's framework of analyzing power and knowledge would help to highlight the continuity of power in restorative justice conferences. Young people are subject to power dynamics between their families, schools, and institutions such as the justice system. When professionals have backgrounds in educational or residential care, they might bring institutional ways of thinking about behaviour and discipline to their restorative justice practices. For example, the social, emotional, and self-regulation strategies that are discussed by participants can highlight institutional expectations of what makes certain behaviour acceptable. This relates to Eisler's (2006) research that recognizes how adults define acceptable behaviour.

A recommendation highlighted throughout the interviews was the need for increased education and training efforts to increase the knowledge surrounding young people, particularly neurodivergent young people. When discussing neurodiversity, one participant noted, "But I wouldn't call myself an expert" (Participant 4). Even if these professionals do not view themselves as experts in these areas, they still operate within a broader system that governs young people because their decisions, interpretations, assumptions, and practices can shape the outcomes for neurodivergent justice-involved young people. Again, this shows an example of how power is not just a top-down approach but diffused in various contexts. Even if these professionals defer to psychologists, psychiatrists, social workers, or other professionals for "expertise", they are still participating in a system that constructs knowledge about young

people. While participants might position themselves as "non-experts," it does not mean they do not play a role in shaping knowledge and power. Nonetheless, restorative justice facilitators still work within a system with competing discourses surrounding neurodivergent justice-involved young people (e.g., medicalized/deficit vs. neurodiversity-affirming discourse), making it important to recognize the ways in which they both reproduce and resist said discourse.

The recommendation for further education and training related to neurodiversity was echoed by another participant who highlighted, "…providing the supports to be able to give the training to frontline service providers to not trigger people into criminalization is the way to solve this" (Participant 3). While this statement is reflective of the need for increased education and training, it provides an assumption that neurodivergent young people's criminality is triggered by authority figures. For example, Kirby (2021) recognized that neurodivergent behaviours can be misinterpreted by authority figures as non-compliant, dangerous, suspicious, or lacking remorse. Furthermore, high-stress situations can provoke dysregulated responses from young people that might then be further interpreted and labeled as emotionally unstable or reactive. However, it is important to recognize that criminality does not always come from authority figures exacerbating personal triggers.

For some participants, their role also included advertising their services, which aligns with the program features outlined by the Government of Ontario (2024). As one participant highlighted, there should be built-in mechanisms to help consider the restorative justice program at various stages of the process, so it does not rely on "[if] you just have a Crown Attorney or Defense Lawyer who really likes this program" (Participant 5). While restorative justice facilitators have specialized knowledge related to restorative justice, it is the courts and justice professionals with formal, institutionalized power.

Some participants discussed physically going to courthouses to meet with Crown attorneys or defense lawyers' professional associations to better highlight their services as an available option to consider. This shows the hierarchal nature of power, where it is oftentimes left to authority figures to refer young people to these programs. However, in certain cases, participants mentioned that they accept self-referrals, though it is not common. This also underscores the idea that knowledge is not evenly distributed across justice professionals, parents of justice-involved young people, and the justice-involved young people themselves. This is because conference facilitators are often tasked with ensuring others are familiar with the available restorative justice options for young people.. Since not all justice professionals are familiar with restorative justice options for young people, this can mean there is a lack of consistency across Ontario. This is echoed by research conducted by Paquin-Marseille and Higgison (2022).

The participants provided me with a snapshot overview of the roles and tasks associated with their position in their organization. Through these discussions, I was able to utilize theory to better understand discourses associated with the role of the professional. The findings highlight that the participants have various roles within their organization related to restorative justice conferences and the preparation that comes beforehand. The analysis of this theme through a Foucauldian lens helped discuss the impacts of knowledge and power within the role of the professional. Although the justice-involved young people are empowered during the restorative justice conferences, they are still subject to adults who are tasked with guiding them on a better path.

Youth Justice

The second theme that I explored in the interviews was youth justice. A few questions were directly related to the YJCA, which allowed participants to highlight their varied understandings of what specific sections or definitions meant. The use of Foucauldian discourse analysis allowed me to gain insight into how discourses (e.g., medicalized/deficit model vs. neurodiversity-affirming and 'ideal offender' vs. 'problematic offender') contribute to shaping conversations around youth justice.

The first question, "Do you refer to the Youth Criminal Justice Act in your work and to what extent?" was created following the completion of the first interview. This meant that Participant 1 was not explicitly asked this question. Being a member of a Youth Justice Committee, it can be assumed that Participant 1 also had experience with referencing the YCJA in their work. When a Foucauldian analysis is applied, the YCJA can be understood as more than just a legal framework but also a tool that structures power, constructs young people, and governs behaviour. However, those who advocate for restorative justice initiatives can be seen as challenging the dominant "tough on crime" discourse related to risk management and rehabilitation.

In this section, I was specifically interested in understanding how participants interpreted one of the sections of the YCJA. The question was as follows:

> Section 3(c)(iv) states: within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should… respect gender, ethnic, cultural, and linguistic differences and respond to the needs of aboriginal young persons and of persons with special requirements.
>
> What do you think constitutes "special requirements"?

The undefined concept of "special requirements" within the YCJA can be interpreted in many ways. Although I was interested in better understanding the concept, it is important to consider its functions in broader systems of knowledge and power, as FDA would highlight how this term relates to biopower. As previously defined in chapter two, Foucault (1976) understands biopower to be a form of power that shapes social realities through laws, rules, and norms related to birth, death, physical safety, and bodily control. When a young person is labeled as having "special requirements" under the YCJA, justice professionals engage in categorizing young people, which can further shape their social realities. The term "special requirements" placed on a justice-involved young person can ultimately shape their experiences within the justice system, as the label can justify certain decisions. For example, labeling young people as having "special requirements" under the YCJA can impact the processes, assessments, and programs that they undergo. Furthermore, FDA would call into question *who* can define justice-involved young people under this term.

When answering the question, Participant 1 referred to the legal terminology "Thin Skull Rule", which highlighted the importance of taking a young person as you see them while not absolving them from liability based on any pre-existing conditions. Other participants discussed "special requirements" in relation to ethnic and cultural differences, underscoring the importance of providing justice-involved young people with culturally relevant services. Other participant interpretations of the term "special requirements" related to several personal factors or needs that must be considered to ensure the justice-involved young person can participate in processes in a way that is successful and meaningful to them.

All participants agreed that the term is open for interpretation but that it could also relate to the needs of neurodivergent young people. However, one participant specifically noted that

when the YCJA was created in 2003, the term neurodiversity was not in popular language/discourse. The participant explained that at the time the YCJA was created, the term "special requirements" likely referred to mental, social, and physical disabilities, but agreed that the umbrella term could encompass neurodivergent young people in today's justice system.

As discussed in the literature review, the youth justice system is designed to be separate from the adult system (Doob & Cesaroni, 2004). The discourse surrounding young people positions them as malleable and in a state of development. The YCJA and the youth justice system therefore prioritize non-punitive approaches to justice, such as restorative justice conferences. As outlined in the YCJA, these approaches should be meaningful to each young person and encourage the reparation of harm. As mentioned earlier, there are restrictions on eligibility, as further outlined by the Ministry of the Attorney General (211 Ontario, n.d.). Participants highlighted how theft, vandalism, and assault were the typical charges that they encountered within the restorative justice conferences. However, one participant highlighted that they were able to facilitate a conference with a justice-involved young person where the offence was driving causing death, though it was not specified whether or not it was dangerous driving.

The selective use of restorative justice conferences highlights the ways in which professionals can decide how justice for young people is processed. This reflects institutional authority where restorative justice initiatives are not guaranteed for justice-involved young people, but conditional on certain grounds such as the nature of the offence and other factors. Although non-punitive approaches are emphasized for justice-involved young people, authority figures ultimately get to decide which cases will be dealt with extrajudicially. This means that some young people are seen as deserving of alternatives to justice while other are not. This relates to Maglione's (2018) understanding of the 'ideal offender' in restorative justice, where

justice professionals might unintentionally construct ideas related to who is 'worthy' of being able to fully engage with non-traditional forms of justice.

When discussing youth justice, accountability is an important factor in deciding whether a justice-involved young person is an appropriate candidate, or 'ideal offender' for restorative justice approaches. As one participant noted: "It's voluntary, so it's up to them. And it's not up to the parents; it's up to the youth" (Participant 4). In terms of accountability and restorative justice, the young person must demonstrate some level of accountability before participating in the restorative justice conference. Demonstrating accountability means being able to acknowledge the impact that one's actions has caused. Taking accountability is not the same as demonstrating remorse, where remorse is a complex and subjective emotion to discern (Zhong, 2013). However, a Foucauldian lens can help to highlight *who* gets to decide what accountability looks like and how it must be expressed.

It is important for young people to demonstrate some level of accountability prior to participating in a restorative justice conference because it ensures that the process is meaningful for all parties involved. However, as one participant highlights:

> What the criminal legal system wants us to do is build [air quotes] "accountability". And so, that's a very nuanced idea and, you know, we're very well aware that we ask youth to apologize for their actions and usually nobody's apologized to them for the shit that they've gone through. And so, that doesn't feel so good. (Participant 5)

As another participant notes:

> You know, there's lots of youth who say, "yeah I did it", but like we know they don't care. Is that taking accountability? Not a ton. However, we can't force them to feel bad about it. We're still gonna provide services to them. (Participant 2)

However, the concept of accountability is important both prior to being offered a conference and within the restorative justice conference itself. Accountability can ensure that the justice-involved young person is willing to acknowledge the role they played in the harm that was caused and prepared to work towards addressing that harm.

Another important aspect of the youth justice system is recognizing that young people have a reduced level of maturity than that of adults and are therefore in need of tailored approaches that can help to reintegrate them back into society (American Association on Intellectual and Developmental Disabilities, n.d.; Gur, 2005). As one participant noted: “I do believe in first, second, third, chances. I think that some youth don’t have the luxury of having that support” (Participant 4). Similarly, another participant discussed: “I mean, life change and understanding is a continuous growth process” (Participant 5). These comments recognize that young people are still in a process of learning and therefore should be given appropriate opportunities to meaningfully engage in justice processes to better their outcomes.

Another participant noted: “We have very rarely had youth who actually just hear about our program and decide “I’m gonna take the charge. It doesn’t happen very often” (Participant 2). While accountability is a precursor for participating in a restorative justice conference, this quote calls into question legitimate participation. If the alternatives to not taking accountability require the young person to go to court or traditional forms of justice, a restorative justice conference might be framed as an ideal response for young people.

FDA can help to highlight how, although justice-involved young people are empowered to make their own decisions related to whether or not they wish to take accountability, the appeal to engage with restorative justice might shape their perceptions related to choice. An analysis of power can help show that although these alternatives are positioned as voluntary, some young

people might comply and demonstrate accountability to engage with "lesser" forms of punishment. Therefore, offering a justice-involved young person a restorative justice conference when the alternative is a traditional court process does not appear to be much of a "choice". Without appropriate supports, a neurodivergent youth may be at a disadvantage in exercising their choice and making an effective decision.

During the interviews, the participants highlighted the importance of a youth-centred approach in youth justice, which relates to neurodiversity-affirming discourse. A youth-centred approach is important because it prioritizes the needs of young people, respects their unique viewpoints, and helps encourage meaningful participation, which can ultimately lead to better outcomes. Through a Foucauldian analysis, a youth-centred approach can be seen as shifting power dynamics towards the justice-involved young people themselves. This helps to show the ways in which power is dispersed within the justice system, encouraging young people to take active roles in the processes. As one participant states:

> Our process is very strict in saying that we don't know what's best. The people in that room know what's best for themselves. And so, obviously we will help guide that conversation so that it's more productive than it might be if we weren't there. But our job is not to tell people what to do. (Participant 5)

The interviews helped to highlight the ways in which power is dispersed within the restorative justice conference itself. In this case, participants resist hierarchal power by demonstrating that they "don't know what's best", allowing justice-involved young people to act as active agents within this process. This would align with Foucault's concept of governmentality, where the young people are encouraged to regulate themselves within the process. However, a critical Foucauldian lens would also ask *who* gets to determine what conversations are productive. While

facilitators may claim a stance of neutrality, they still participate in producing and legitimizing certain forms of knowledge.

In relation to youth justice, there were some systemic limitations that were highlighted by participants. Systemic limitations refer to barriers or problems that affect the entire justice system or community-based organization. These limitations can be a result of policies, practices, or specific values that act as barriers. Systemic barriers can be described as an expression of power that operates within societal institutions. While systemic limitations can be difficult to address by professionals because they are oftentimes deeply embedded within the institution or organization, they were highlighted by some participants.

A systemic issue within the youth justice system that was discussed by participants was the overrepresentation of young people who are BIPOC. While this point was only highlighted a few times throughout the semi-structured interviews, it is nonetheless an important systemic limitation that participants stated needs to be addressed. As one participant mentioned: “In the bigger cities, it’s unfortunate but it’s Blacks that are usually over-represented … which is my demographic”. This recognition relates to broader discussions of power and the intersections of race and justice. Due to factors such as historical injustices, systemic racism, socioeconomic disparities, and others, marginalized young people continue to be overrepresented in institutions, such as the justice system (Abrams et al., 2021; Cesaroni et al., 2018; Jackson, 2015; McMurtry & Curling, 2008).

These systemic realities are not accidental or coincidental but are key examples of how power and knowledge can intersect to sustain these disparities. Within the justice system, there is an acknowledgement that young people should be empowered to engage with culturally relevant resources and programs. As one participant mentioned: “…in terms of cultural programming, we

have a duty to provide those kinds of accommodations" (Participant 2). Participants discussed culturally relevant supports and services as meaningful ways for some justice-involved young people to engage in legal processes that respect and promote their cultural identity. Some participants mentioned that, for example, if an Indigenous young person was coming through their program, they would automatically offer the option of being referred to Indigenous organizations. As one participant noted: "So immediately, it's like being able to provide choice, right? It's your journey and you have power, you're empowered to make those choices, right" (Participant 3). This statement reflects the multidirectional flow of power, where Indigenous young people are positioned as active agents in their own lives. Further, referencing the restorative justice process as "your journey" suggests a personalized path in dealing with justice instead of institutional power.

Another systemic barrier discussed by participants in the youth justice system was trauma. As Mouhiddin and Adams (2023) discuss, trauma-informed practices integrated within restorative justice is crucial for reducing recidivism. Many participants in my study highlighted the role of trauma in the young people they encounter, pointing to the need for continued trauma-informed care and practices. Mouhiddin and Adams (2023) emphasize that trauma-informed practices must be built into restorative justice processes to ensure the justice-involved young person and the victim(s) are not retraumatized during the process. As one participant highlighted: "Trauma is the biggest barrier, right" (Participant 3). This participant further noted: "…when you layer in neurodivergence, you layer in depression, you layer in anxiety, you layer in trauma… you've got dysregulation at a level that now people are trying to solve with the police and courts" (Participant 3). It can be difficult to navigate these factors within restorative justice conferences, as one participant noted:

> So, sometimes this process is not going to be helpful to someone because it's going to put them at such a disadvantage that we're actually asking something of them that they're not prepared to do and it's not even a thing that is going to meet their needs. (Participant 5)

This participant further noted:

> …our process does require you to think a little bit with your frontal lobe. And so, if you're really engaged in stress and sort of like, fight, flight, freeze, or fawn … if you're at a point where that's really going to be not a great space for you, then this may not be the right time to do that. (Participant 5)

These conversations underscored the importance of trauma-informed approaches within the justice system. FDA can help to highlight the ways in which these approaches are viewed as valuable knowledge within the justice system. The use of trauma-informed approaches can possibly help to empower more young people to engage with various justice processes, such as restorative justice.

Lastly, a very fundamental part of youth justice is the funding and resources. Funding directly impacts access, quality, and equity of justice processes within the justice system. In some way or another, all participants made mention of the funding and resources related to youth justice and restorative justice programs. As one participant highlighted: "The youth justice sector hasn't seen an increase in funding for over 17 years…" (Participant 2). Another participant highlighted: "…we are funded by the Ministry of Child and Community Social Services to run our restorative justice programming, but I'm also writing other grants" (Participant 3). The consensus among participants was that there is a need for increased funding and resources to be able to run conferences and provide the necessary supports.

For some participants, their role within their organization was a volunteer role. This meant that they did not receive compensation for the work that they did. As Participant 1, a member of a Youth Justice Committee noted: “If the government realize[d] how much critically these kids need to be supported, then part of our roles would be paid positions.” This participant further noted: “There’s no incentive for us as the adults to be there. We are there because we have this consciousness that we want a better community. But it also takes our time” (Participant 1). Ultimately for some, it was the passion associated with guiding justice-involved young people on the right path that fueled their desire to continue in their roles.

Although the organizations that participants volunteered/worked at were funded on some level, participants emphasized the need for more funding. When discussing specific numbers, one participant said: “Do the math. How’s that work, right? So, three people, you know, in terms of living wages, that’s the biggest challenge” (Participant 3). As another participant pointed out: “Honestly, our main concern is funding. And it does feel discriminatory in terms of our youth that this sector deserves to be able to pay people who are qualified to work with youth. Because they are our most marginalized youth” (Participant 2). The participants mentioned that more funding to the youth justice sector and specifically restorative justice programs could ensure that these professionals are being paid livable wages.

Restorative justice initiatives are important because unlike the adult system of justice, there is a strong emphasis placed on rehabilitation and reintegration back into the community (YCJA, s. 3(a)(ii)). But community-based programs can only continue to flourish if provided with the adequate funding and resources to do so. Cuts to provincial funding for youth justice services can have detrimental impacts. As one participant highlighted: “… The cuts … that

trickle-down effect is that communities are losing essential services" (Participant 3). This participant further mentioned:

> And so, that's my challenge there is that social services need to be supported. Especially coming out of a pandemic where we were on the front lines. And we're exhausted… and so, you know, I wish for some more grace from our provincial government to be able to see that and see that people need supports." (Participant 3)

Adequate funding and resources within the youth justice system can ensure that community-based programs are supported in their efforts to help justice-involved young people. As another participant highlighted: "… it takes a community to raise children" (Participant 3), though the community needs to be supported in their efforts to do so.

There are several discourses related to knowledge and power in terms of increasing the funding for the youth justice sector, but more specifically for restorative justice. Ultimately, funding can be seen as a site of power struggles. Ongoing discussions can help to highlight key questions such as who gets to decide what youth justice should look like and what types of justice should receive funding. FDA can help to highlight discourse around funding and youth justice, for example, if young people are our future, increases to funding can reflect economic investments in preventing crime for young people. However, funding decisions are ultimately left up to the governments and decision-makers in Canada.

Neurodiversity

Another theme that I explored was neurodiversity in relation to knowledge, training, barriers, and accommodations. The findings suggest that there is a variation in the level of understanding and experience related to neurodiversity by restorative justice facilitators. Most

participants highlighted the need for further training in this area to ensure they are best serving the young people they encounter.

When asked to discuss their personal knowledge on neurodiversity, it became clear that some participants relied on their past work experiences (e.g., group homes, education system, etc.) and the education/training components they received there to better understand neurodiversity and neurodivergent young people. Specifically, some participants mentioned "learning disabilities", "intellectual disabilities", or specific diagnoses (e.g., Autism Spectrum Disorder, Fetal Alcohol Spectrum Disorders, etc.) when discussing their knowledge of neurodiversity. As one participant highlighted: "…I'm not the medical profession, I can't go into definitive details but … they may be low-functioning at some certain level and you know, high-functioning in some instances" (Participant 1). As another participant noted:

> And again, it all depends on, I don't know if you would call that neurodiverse, but yes, it is somewhat with the brain, right. Sometimes it's all those learning disabilities and those undiagnoses that we're not aware of, but you know that there's something going on. Either neurons are not firing or there's something going on that you think, just once they didn't learn yet. (Participant 4)

All participants indicated that they would distinguish neurodivergent conditions from mental illness, though some participants highlighted that there can be an overlap between those categories, also referred to as 'dual diagnosis'. Although I was interested in understanding constructions related to neurodiversity, a Foucauldian lens can help to highlight how these labels are another way in which young people become subjects. The visibility of neurodiversity within the justice system can be supportive or disciplinary, depending on the discourse associated with it. If it is framed through an inclusive, neurodiversity-affirming discourse, outcomes might

reflect an increase in accommodations or advocacy. However, if neurodiversity is framed through medicalized/deficit discourses that centralize around risk, some young people might encounter things such as exclusion or increased surveillance.

The semi-structured interviews with the professionals highlighted how knowledge is not evenly distributed. Aligning with FDA, discourse can be understood as a means of constructing neurodiversity. If the medicalized/deficit model is relied on for understanding neurodiversity, young people might be more likely to be viewed as lacking certain attributes and needing correction to conform to societal boundaries (Guevara, 2021). However, critical, social, and identity-based discourse associated with neurodiversity might lead professionals to accommodate different ways of thinking and communicating to empower neurodivergent justice-involved young people within justice processes. Some participants also highlighted the importance of relying on their own personal knowledge and experience with neurodiversity, which can potentially be viewed as resistance against dominant, medicalized understandings. After engaging with the five professionals, it became clear that there was a combination of knowledge from personal experiences, the medical model, and social and critical models in understanding neurodiversity.

Responses varied when participants were asked to estimate how many neurodivergent young people were coming through their programs. Both Participant 2 and Participant 5 estimated that more than 50% of justice-involved young people coming through their programs were neurodivergent, where Participant 4 estimated upwards of 100%. To expand, one participant explained: “I think this is borne out by research about, and I think there’s, I think it’s the inequity of our systems where our neural inclusivity is not understood, and it is an unjust system for those folks…” (Participant 5).

As further discussed within the literature review, neurodivergent young people are overrepresented within the justice system (Day et al., 2024; Kirby, 2021). One participant highlighted: “Open custody are receiving a larger amount of neurodivergent youth” (Participant 3). This participant further noted:

> If a neurodivergent youth comes to your door and they can’t go through your system in a way that is equitable, then something has to change. And it’s the people that are running the system that have to change. And typically, the judicial system is like, “Well I don’t get it, I don’t understand it” so they divert, or refer out, or they don’t. They just proceed with forcing a fish to climb a tree. (Participant 3)

Another participant highlighted:

> And so, as we know, the folks who normally get caught up in these systems are not saying the right things at the right time, are not reacting in those ways that are expected of them. And then that’s actually criminalized, which is not right.” (Participant 5)

These quotes help to demonstrate the ways in which the justice system is geared towards neurotypical experience and the expectation that people must conform to institutional norms. The discourse recognizes that there are socially acceptable ways in which young people should behave and that if they fall outside of these expectations, professionals might conceptualize some young people as not deserving of alternative forms of justice. Foucault’s theory of discourse can help to argue that institutions define what constitutes “normal” and “abnormal” speech, responses, and emotional reactions. Those who fail to conform to the expectations can find themselves entangled within the justice system for many reasons.

Participants noted that they would not typically be made aware of whether a young person coming through their program was neurodivergent. In some cases, this information was

highlighted in school files or police reports, but oftentimes it was not until the intake meeting where they would discover personal information about the young person, either from the young person directly or from their parents/guardians. As one participant noted: "…we've had a kid who was almost, almost non-verbal, they said in the report. And that would have been one where we were like, woah, how are we gonna do this" (Participant 2). The discourse reflects power and knowledge in the justice system that often rely on oral testimonies and structured dialogues. FDA as an analytical tool can help to highlight that there are underlying neurotypical norms that relate to who can participate within these justice processes. In this instance, an 'ideal offender' in restorative justice can be conceptualized as someone who demonstrates the ability to express themselves through neurotypical expectations.

Participants highlighted that neurodivergent young people might not be appropriate candidates for the program if they are unable to consent to or understand the program. Some participants highlighted that it is up to the referring party to decide whether the young person would be a good fit for the program, again highlighting dynamics of power in decision-making. One participant noted: "…the only reason I would not deal with them is if they refuse the program" (Participant 4). As another participant mentioned:

> In terms of being offered a conference, there are definitely youth who have like disabilities that we have said we wouldn't do a full-blown conference. We would just do a small case-conference with them because it would be sort of be overwhelming for them to have that full conference with a victim and community member and that sort of stuff." (Participant 2).

Another participant noted: "Now, if I have a youth that can't sit still for more than ten minutes, I'm not going to be running a conference" (Participant 4).

This relates to the discourse of the 'ideal offender' vs. 'problematic offender' in restorative justice, where facilitators might unintentionally reproduce expectations related to which young people can participate in the process. Further, one could argue that all justice processes are overwhelming for justice-involved young people, so who gets to decide what is "too overwhelming"? In these cases, the participants engaged in counter-discourse discussing the ways in which the restorative justice conference can be adapted for the young person "to learn, not as a punishment, but more as a learning experience to not reoffend…" (Participant 4). Some examples of accommodating these differences included engaging in shorter sessions, offering tools for self-regulation such as fidget toys, including supportive adults, and others.

One interview question looked directly at the challenges and barriers that exist for neurodivergent justice-involved young people, both in restorative justice conferences and in the justice system more broadly, from the perspective of the facilitators. One barrier or challenge that all participants highlighted in some aspect was that of understanding. Understanding related to things such as understanding rights, the extent of criminality, personal needs, the questions being asked, or general legal procedures and processes. As some participants highlight, the legal system and the processes within it are largely talk-based, which can be difficult to follow or understand in some cases. During this conversation, one participant noted: "I am somebody that, personally, if there's a barrier, I'm gonna figure out a way over it, under it, around it, or knock it down. That's just who I am as a human being" (Participant 3).

The idea that neurodivergent young people might lack the understanding to participate in such processes reveals the tensions between the medicalized/deficit discourse and the neurodiversity-affirming discourse. If young people demonstrate "understanding" in a typical fashion, they might be more likely to be positioned as an 'ideal offender' in restorative justice,

whereas those who struggle with understanding, or those who are perceived to struggle with understanding like most neurotypical youth, might be conceptualized as a 'problematic offender' for restorative justice. This makes it important to expose and critique how understanding and comprehension might be linked to dominant, neurotypical norms associated with factors such information processing, communication, and social interactions. Although subtle, neurotypical norms related to understanding can unintentionally position neurodivergent justice-involved young people as less capable of participating because of their differences, or perceived differences, in areas such as communication and emotional responses.

There are normative expectations in the justice system that are implicitly and explicitly placed on justice-involved young people. When justice-involved young people conform to these expectations (e.g., emotional regulation, expressions of remorse, etc.), they might be viewed as an 'ideal offender' for restorative justice in comparison to someone who does not meet the expectations (Maglione, 2018). This can create barriers and limitations for justice-involved young people who may express emotions, accountability, and remorse differently than what is typically expected. Those who do not meet the implicit and explicit expectations might be conceptualized as a 'problematic offender' for restorative justice and therefore not given the opportunity to participate.

In the context of the youth justice system, remorse is an important concept because it can help to assess a young person's accountability and readiness to repair the harm that was caused. According to Zhong (2013), remorse can be difficult to measure but nonetheless plays a role in how a justice-involved person is perceived or judged. For example, if a crime was pre-planned and calculated, the justice-involved person may be viewed as less remorseful in comparison to someone who appears sincere, honest, or outwardly sorry about their actions (Zhong, 2013).

There are many ways in which a justice-involved young person might be viewed as not remorseful. For example, if information in a conference is not processed in an immediate fashion, the young person may not display or express emotion immediately. This may be interpreted as the young person not being remorseful. In fact, expectations about remorse in the justice system reproduce the neurotypical, 'ideal offender', where neurodivergent young people do not fit within the neurotypical standards of the justice system itself. As a result, these young people might be limited in their ability to play an active role in shaping their own justice experiences.

After discussing challenges and barriers, the participants were asked about accommodations, and how best to accommodate young people coming through their program. Some participants highlighted the importance of building rapport with the young person and understanding how to set up the space in a way that is comfortable for them. Participants highlighted the various ways that their program could be adapted, such as shorter sessions, including different modalities of information (e.g., videos, booklets to be completed), and utilizing components of art therapy. Some participants mentioned helping the young person regulate their emotions through things such as fidget toys, art, or GROK cards. Other accommodations related to assisting the justice-involved young person and their family navigate the justice system and connecting them with other social services. As one participant noted: "Just so that we can create a space where you have more of a chance of feeling some success" (Participant 5).

These accommodations highlighted the multidirectional circulation of power where facilitators assisted the neurodivergent young people to engage in the restorative justice processes in accessible ways that were meaningful for them. FDA can help to describe how

facilitators engage with power dynamics through knowledge, specifically related to their ability (or inability) to modify the process for neurodivergent justice-involved young people. As one participant noted: “Like, we’re not setting you up to fail” (Participant 2).

During the semi-structured interviews, recommendations were discussed in relation to best supporting neurodivergent justice-involved young people. All participants highlighted the need for specific education and training opportunities related to neurodiversity. To ensure consistency, a recommendation outlined would be to have similar training and educational initiatives available to all organizations that run restorative justice conferences. This relates to systems of knowledge, where knowledge is produced, distributed, and maintained within societal institutions like the justice system. The call for increased education and training recognizes the gaps in knowledge among professionals who facilitate restorative justice conferences. The lack of consistent knowledge about neurodiversity in the justice system highlights that this knowledge has not fully been incorporated into the youth justice system and the processes within it. FDA would argue that increasing education and training on topics such as neurodiversity can be viewed as a form of resistance to the traditional, exclusionary frameworks of neurodiversity that are dominant within society, such as the medicalized/deficit model.

Participants also emphasized the need for ongoing training and education in other areas, including how best to support all marginalized young people. As one participant highlighted: “… providing the supports to be able to give the training to frontline service providers to not trigger people into criminalization is the way to solve this” (Participant 3). This quote is insightful, as it recognizes that the justice system can influence further justice involvement for young people if they are not given the appropriate supports. While this statement recognizes the need to promote education and training for those who encounter justice-involved young people, it does not fully

account for other reasons that underlie crime. In fact, many other contexts can also increase the likelihood of engaging with criminality, such as racism, socioeconomic status, trauma, and others (McMurtry & Curling, 2008). This again underscores the importance of including trauma-informed approaches when it comes to working with justice-involved young people, as trauma-informed approaches can help to reduce recidivism (Mouhiddin & Adams, 2023). The next section will expand on the theme of restorative justice, as it is an approach that also aims to reduce recidivism.

Restorative Justice

With this research specifically interested in restorative justice conferences for justice-involved young people, the theme of restorative justice was important to explore. Participants provided critical insight into restorative justice conferences at their respective organizations. This allowed me to better understand participant experiences, the role of the victim(s) in restorative justice, and associated values, benefits, and challenges of these conferences. These conversations also helped to uncover points related to systems of power and knowledge and the ways in which discourses surrounding neurodiversity and justice-involvement shape these processes.

As discussed by participants, restorative justice programs can serve as meaningful alternatives from the adversarial court system, allowing the process to be led and created by those in the room. This is echoed in research that discusses how conferences bring together multiple parties to work together in repairing harm that was caused (Fugeman-Millar, 2003; Government of Ontario, 2024). FDA can highlight how power is shifted away from the courts and the legal professionals within it towards community-based programs that run conferences. However, one participant recognized that the community then becomes responsible for taking on the role of the Crown in decision-making, but “Obviously it’s not punitive like that” (Participant

2). Participants also recognized the importance of including a diverse set of community members within the restorative justice conferences to best represent the wider community. Ultimately, "Mistakes happen, and mistakes are learning opportunities", as noted by Participant 3, underscoring the importance of providing non-punitive learning opportunities for justice-involved young people.

Discussions of power and knowledge help showcase how restorative justice aims to shift power dynamics within the youth justice system, particularly in contrast to the traditional adversarial and punitive approaches to justice. These approaches, such as conferences, decentralize institutional power and disrupt the hierarchy within the justice system, empowering other parties, such as the justice-involved young person and the victim(s) in decision-making processes. Using Foucault's concepts of power and knowledge, restorative justice can be understood as a mechanism that redistributes power, challenges dominant discourses surrounding crime, and creates new forms of knowledge related to justice, harm, and accountability.

These community-based approaches can assist in keeping young people out of the justice system. As Participant 5 discussed: "One value is that [conferences] can help keep them out of this system that's incredibly harmful. So, once you get involved in the criminal legal system, it can hook you in." They further mentioned: "… It's a system that kind of perpetuates itself. And so, we can at least get people out of the system" (Participant 5). These comments relate to knowledge frameworks that position certain young people as vulnerable or at-risk of criminalization. Through a Foucauldian lens, these responses can be understood as ultimately critiquing the justice system in an implicit way, reinforcing the idea that legal institutions do not serve all young people fairly.

This was also reflected by other participants, with Participant 1 mentioning, “Essentially, we are trying to ensure that the whole don’t end up with the criminal record since they are the youth of tomorrow”. This participant further mentioned: “The feedback we keep getting from the youth worker is that, you know, the program is working, the kids are turning a new leaf and all that” (Participant 1). This was a common theme discussed amongst participants, highlighting the importance of keeping young people out of the formal court process and providing them with meaningful, alternative ways to engage in taking accountability and responsibility, which is often cited in the YCJA as needing to occur before participation in an extrajudicial sanction such as conference (s. 10(2)(e)). These participants’ comments also relate to dynamics of power and knowledge where the professionals highlighted the importance of keeping young people out of harmful institutions.

The victims are important within restorative justice because they are the ones who have been directly impacted by the justice-involved young person. When asked what the victims might get out of conferences, one participant stated: “To be able to speak their mind. To be able to let that, you know, that tension, that hurt out” (Participant 4). Although the victims are always invited to participate, sometimes they decline, meaning a full restorative justice conference cannot take place. In these cases, participants mentioned that they can still engage with the justice-involved young person in smaller case conferences without the victim(s) to potentially hold the young person accountable.

Conferences can be facilitated with or without the victim(s) (Government of Ontario, 2024). The victim’s(s) participation in a restorative justice conference can come in the form of victim impact statements or attending the conference. This can ensure that they are actively taking part in the reparation of harm, sharing how they were impacted, and discussing steps to

move forward in ways that are not controlled by legal processes. As another participant highlighted: “I think there’s a lot of good healing that comes out of that process as well, for victims and for youth” (Participant 2).

The participation of the victim(s) in restorative justice conferences is deeply connected to discussions of power and knowledge because it calls into question how justice is defined, who gets to shape the processes, and how people are positioned within the processes. FDA can help to understand how victim participation in restorative justice conferences help to shift and reconfigure power dynamics, though Lohmeyer (2017) emphasizes the ways in which facilitators are still positioned with power. Nonetheless, traditional justice processes typically provide the victim(s) with little to no power in shaping the outcomes, so restorative justice provides the opportunity for the victim(s) to be empowered within the process.

However, a systemic limitation discussed by participants was challenges to victim participation. Participants highlighted that restorative justice conferences could be utilized more if the victim(s) was aware of the available programs or if they wanted to participate. As Participant 5 specifically emphasized, there should be built-in mechanisms within the justice system to help find the victim(s) of crimes and connect them to these community-based organizations. However, if the victim(s) is not interested in participating, then it is not possible to conduct a full restorative justice process. As one participant noted: “Like, it’s mostly the victim who sort of stops that process. Most of us, honestly, who have done something wrong, are willing to be offered a chance to sort of make things right again. Most of us take it. And that’s most of us in life, honestly” (Participant 5). In the instances where there is no identifiable victim(s) or the victim(s) do not wish to participate, conferences can still be facilitated, but the

focus is shifted solely to the justice-involved young person and helping them understand the impacts of their crime (Government of Ontario, 2024).

Another key benefit discussed by participants was the low recidivism rate associated with those who engaged with a restorative justice conference. Participant 2 also highlighted, “if their contact with police led to a restorative justice process, they’re less likely to have further contact with police after that”, emphasizing the effectiveness of these responses. Restorative justice conferences can result in lower rates of reoffending because they actively engage the justice-involved young person in taking responsibility for the crime they are alleged to have committed, guides conversations with the victim(s), and creates way to make amends to the harm that was caused (Giberson et al., 2023; Mouhiddin & Adams, 2023; Paquin-Marseille & Higgison, 2022). As mentioned by another participant: “But the youth that actually come and that we work with through our six sessions, we have a 2.9% recidivism rate, that’s how successful we are” (Participant 3).

Recidivism rates can be an effective way in evaluating restorative justice conferences. However, FDA can help to discuss how these measures of success focus on restorative justice’s efforts to create law-abiding subjects. Recidivism rates do not necessarily account for broader systemic issues and underlying needs that the justice-involved young people experience, such as poverty, family violence, trauma and racism (McMurtry and Curling, 2008). FDA would also call into question *who* gets to define success in relation to restorative justice conferences. Alternative measures of success could expand on recidivism rates and look at aspects of emotional healing, social reintegration, and the ability to address underlying needs. However, these would be more difficult to quantify.

Ultimately, restorative justice approaches place an emphasis on humanity and repairing harm through meaningful dialogues. As one participant noted: "… to be able to face that person that you actually hurt, I think that's deep. And then not just face, [but] basically tell them why" (Participant 4). When asked about the values of restorative justice conferences, Participant 3 initially responded with the word, "Soul." This theme was highlighted throughout the interviews, with another participant emphasizing: "We love the work that we do and that's why we do it" (Participant 2). In some way or another, all study participants highlighted their passion for working in their role, as there were many positive points associated with restorative justice conferences. As one participant emphasized: "It's called passion, right? And I can't just turn it off…" (Participant 3).

The passion demonstrated by these professionals can be analyzed through Foucault's concepts of discourse, power, and knowledge. The role of the facilitator is not just to facilitate the dialogue; it is deeply connected to the production of knowledge, the exercise of power, and can impact young people's subjectivities. The power dynamics within the restorative justice conference are dispersed throughout the conference participants, with facilitators still situated in a position of power within these spaces (Lohmeyer, 2017). Although traditional power dynamics are disrupted, restorative justice conferences can still act as regulatory forces within the young person's life.

While some participants did not feel as though their organization's use of restorative justice conferences were underutilized, some participants highlighted that they were. One participant mentioned: "I think they're underutilized. And the reason is … you know, colonial justice, right? We are rooted in that, and to be able to think outside of the box…" (Participant 3). Other participants highlighted that there is a lack of consistency across Ontario in terms of

restorative justice conferences, highlighting discrepancies in its use. As one participant noted: "…I do think we're kind of underutilized because of a lot of kind of just policing issues" (Participant 2). Another participant noted:

> …there's a lot of like Crown Attorneys, they'll kind of be a part time Crown in a different courthouse … so, when they pop in, they don't necessarily know that we exist because their previous courthouses didn't have like a conferencing or restorative justice program. (Participant 5)

Participants recommended ensuring restorative justice programs are available for all justice-involved young people at various stages of the justice system. One participant mentioned that "Nova Scotia requires that restorative justice is considered in every situation first. So, that would be something to try. So, we would be like a first option, some sort of restorative process" (Participant 5).

Although many positives were highlighted, there were some barriers and challenges discussed in relation to restorative justice conferences. One factor that was mentioned a few times was the impacts of the COVID-19 pandemic. Participants highlighted that during this time, everyone, including young people, became dysregulated. One participant noted: "…since COVID, the number of sexually based offenses has skyrocketed, as has the number of assaults with a weapon" (Participant 3). This led to some organizations seeing an increase in referrals. This meant that an already over-burdened system such as the justice system became even more over-burdened. One participant highlighted that this led to youth officers having less time to deal with youth cases. As another participant noted: "So, [our area] has one youth officer for our whole geographical area and if you have looked on a map, it's fairly large. That's nine different high schools and stretched pretty thin" (Participant 2). This reveals the ways in which the justice

system as a whole was largely unprepared to deal with the disruptions associated with the COVID-19 pandemic.

Another difficult factor that was discussed was ensuring that there was consensus among all parties in wanting to move forward with a restorative justice conference. This highlights how agreement of all parties in the process are important for restorative justice conferences to function effectively. However, some participants also discussed the difficulties associated with dealing with unsupportive or uncooperative parents, though parents are not always beneficial for the process. One participant noted that sometimes parents viewed these conferences as a "… chance to totally shit on a youth" (Participant 5), which is not the intended purpose of a restorative justice conference. This highlights power dynamics that might exist, where parents can positively or negatively impact the approach if they are included.

Summary of Key Findings

The findings of this study highlight the ways in which the circulation of power and knowledge shape restorative justice conferences. By first discussing binary discourses surrounding neurodivergent justice-involved young people as part of a medicalized/deficit or neurodiversity-affirming discourse, and as an 'ideal offender' or a 'problematic offender', I was able to engage in conversations with professionals who facilitate restorative justice conferences about their role, youth justice, neurodiversity, and restorative justice. More specifically, this thesis drew its support from Foucault's theory of discourse and critical neurodiversity theory to understand the ways in which discourse is reproduced and resisted.

The five participants highlighted how, although restorative justice conferences aim to empower young people and provide alternatives to punitive justice, the effectiveness is influenced by discretion, structural barriers, and systemic limitations. As previously mentioned,

it is important to consider that these professionals exist and work within a system with its own limitations and constraints that they did not create. The conversations with participants helped to highlight the ways in which they are situated within broader institutional frameworks and discourses within the justice system. Although this thesis explores limitations and challenges associated with the facilitation of restorative justice conferences, the shortcomings are not reflective of any individual participant. Ultimately, the onus to better the societal institutions, such as the justice system, is the responsibility of the institution itself, governments, policymakers, and justice professionals themselves.

Another key finding relates to the discourse surrounding neurodivergent justice-involved young people. Variations in facilitator knowledge reveal structural disparities in the justice system in how it does (or does not) provide information and training related to neurodiversity. For example, while some participants utilized neurodiversity-affirming discourse, some participants reinforced and reproduced ideas related to the medicalized/deficit discourse and expressed uncertainty about how to best accommodate neurodivergent justice-involved young, relating to who is seen as an 'ideal offender' and who is subsequently viewed as a 'problematic offender' in restorative justice. For example, participants co-constructed an 'ideal offender' in restorative justice as someone who is capable of sitting through the conference, able to verbally express their needs and viewpoints, and willing to complete the preparation work needed to participate in the conference. To ensure equitable experiences in the justice system, the justice system should prioritize education and training for all professionals who work with justice-involved young people.

Chapter Six: Discussion

This chapter will build upon the previous chapter to examine the implications of the findings in relation to research. The key findings discuss variations in knowledge, the redistribution of power in restorative justice, as well as institutional discretion and barriers to equity. Following the discussion, a conclusion will be provided along with the limitations associated with this study.

Variations in Knowledge

During the semi-structured interviews, neurodivergent justice-involved young people were constructed in many ways. Research indicates that dominant discourses associated with neurodiversity rely on medicalized/deficit-based understandings that pathologize neurodivergent conditions and ultimately view them as impairments that need to be fixed (Den Houting, 2018; Guevara, 2021; Mander, 2022; Resnick, 2021; Shah & Mountain, 2007). Counter-discourse rooted in both the critical and social model of disability emphasize the need for neurodiversity-affirming language, such as identity-first language (IFL) (Botha et al., 2020; Grech et al., 2023; Kuzminski et al., 2019; Mander, 2022). The ways in which neurodivergent justice-involved young people are constructed and understood can have impacts on the ways in which they are dealt with in the justice system, such as whether or not they are viewed as an ‘ideal offender’ for restorative justice conferences.

The findings reveal significant variations in the participants’ knowledge of neurodiversity. Some participants subscribed to medicalized/deficit understandings of neurodiversity, discussed functioning labels such as “high-functioning” or “low-functioning” and utilized person-first language (PFL). This discourse is widely criticized as it can be misleading, perpetuate stigma and ableism, invalidate support needs, and reinforce power dynamics where

neurodivergent young people are not able to define their own experiences. As Botha and colleagues (2020) explain: “While historically PFL was intended to humanise and acknowledge the individuality of each person, there remain concerns about the impact of such semantic separations of people from their disabilities” (p.872). This leads many disability advocates, scholars, and those with lived experiences to highlight the need to use identity-first language (IFL), as it is rooted within social models of disability, signifies allegiance to a disability culture, and affirms pride in one’s own identity (Andrews et al., 2019; Botha et al., 2020; Grech et al., 2023; Mander, 2022).

Other facilitators demonstrated a deeper understanding of neurodiversity, highlighting their personal experiences or previous positions, such as in the education system or group home setting, where they gained this insight. While some participants utilized both PFL and IFL in the discussions around neurodiversity, they were able to engage in counter-discourse related to how best to support these young people. Participants highlighted accommodating neurodivergent justice-involved young people with shorter sessions, sensory supports, and alternative information and communication methods. This relates to the discussions by Hillary (2020) who points to the importance of recognizing all forms of communication as valid and experienced. As noted by Hillary (2020), supporting neurodiversity-affirming communication can look like not forcing eye-contact, being comfortable with silence, and “adjusting the level and type of attention paid to nonverbal communications on an individual level to both include nonspeaking people and avoid misinterpreting people whose neurodivergent body languages we may struggle to interpret” (p.97). Some practitioners were able to challenge the neurotypical standards embedded within the law, despite alternative processes like restorative justice conferences and the “special requirements” of young people in the YCJA that are ill-defined and ambiguous.

Hillary's (2020) discussion relates to the production and reproduction of knowledge, where the onus should not fall only on neurodivergent people to learn how to communicate and exist in neurotypical worlds, but how knowledge can flow in both directions to allow everyone the opportunity to learn about communication differences and variations. The discussions outlined by Hillary (2020) and participant responses underscore the disparities in knowledge related to neurodivergent people and differences in communication. Additionally, the onus should not solely be on the professionals working within the youth justice system (e.g., police officers, lawyers, etc.); neurodiversity ought to be part of the structure and support of the law and system. Nonetheless, it is important that practitioners are supported in continued education opportunities to increase the knowledge around neurodiversity-affirming topics such as cross-neurotype communication.

From a Foucauldian perspective, the variation in knowledge underscores how power operates through knowledge production and access. For example, those with more knowledge on neurodiversity might feel better equipped to facilitate restorative justice conferences where accommodations need to be made for the neurodivergent justice-involved young person. Further, those with less knowledge may unintentionally reinforce stigma and barriers to participation. The variations in knowledge reveal a key consideration for the justice system. The justice system should prioritize structuring awareness, education, and training on diverse topics (such as neurodiversity) into its foundation to ensure justice-involved young people can engage with neurodiversity-affirming practices and language. This would reflect the broader commitment of ensuring barriers are removed to allow disabled people to meaningfully engage in all aspects of society, as detailed within the UNCRPD.

The Redistribution of Power in Restorative Justice

The underlying principles of the YCJA relate to Articles in the UNCRC, where the processes that justice-involved young people engage with are meant to respect their voices, encourage their participation, and be meaningful for them, while respecting their level of development. Gur (2005) discusses the reduced level of brain maturation in young people, highlighting the need to understand criminal culpability as different from adults. With the recognition that young people have a reduced level of maturity than adults, the YCJA emphasizes alternative approaches to justice, such as restorative justice conferences, rather than solely relying on punitive responses.

One of the core findings from the semi-structured interviews was that participants view restorative justice conferences as a valuable part of the youth justice system. Unlike traditional justice that often centralizes power around courts and justice professionals, restorative justice conferences can disrupt and decentralize that power. The decision-making power is shifted towards conference facilitators who are deeply committed to justice-involved young people, the victim(s), and other participants (Fugeman-Millar, 2003). As Foucault (1972; 1982) reminds us, power circulates everywhere and does not solely operate in a top-down fashion. By encouraging the justice-involved young person, victim(s), and broader community to participate in an alternative justice process that emphasizes accountability and repairing relationships, power circulates between all participants of a restorative justice conference where they have the agency to shape the experience and outcome.

Although power is redistributed within the restorative justice conference, it is not removed, as power exists everywhere (Foucault, 1972; Lohmeyer, 2017). In restorative justice conferences, justice can be negotiated outside the rigid structures of the legal system, thus empowering conference participants to take an active role in repairing harm. This participatory,

community-based approach shifts the power from the state to the community and positions the justice-involved young person, victim(s), and community members in the center of this process. Instead of a top-down approach to power, restorative justice encourages collaborative decision-making and active efforts to repair the harm that was caused (Fugeman-Millar, 2003).

Despite the redistribution of power within alternative approaches to justice, justice-involved young people are still subject to existing power dynamics. For example, participants highlighted that justice-involved young people are given a timeline (though it can be flexible) to complete the program/restorative justice process. Otherwise, they risk having their matter sent back to the courts. Foucault (1975) reminds us that the justice system is a societal institution that exercises power, regulates behaviour, normalizes certain standards, and produces various subjects. Conference facilitators exist within this societal institution and can therefore unintentionally reproduce and reinforce certain knowledge and power hierarchies (Lohmeyer, 2017). As Lohmeyer (2017) emphasizes, "the inescapable dynamics of power/knowledge relationships must be laid open" to ensure the justice system is not continuing to reproduce oppressive norms (p. 388).

Conference facilitators may unknowingly reproduce and reinforce power dynamics over justice-involved young people, where they become another adult in the young person's life tasked with guiding them (Lohmeyer, 2017). For example, facilitators might unintentionally reinforce institutional expectations related to things such as accountability, responsibility, and remorse. This can lead to restorative justice practices inadvertently replicating other systems of control, despite its efforts to shift power dynamics (Lohmeyer, 2017).

Remorse is an important concept in the youth justice system because it reflects the genuine acknowledgement of harm. Justice-involved young people who outwardly express

remorse fit the profile of being an 'ideal offender' in restorative justice (Maglione, 2018). However, as Zhong (2013) highlights, remorse is a complex and subjective emotion that can be difficult to discern. If some justice-involved young people are viewed as outwardly taking remorse, this can contribute to the discourse surrounding the 'ideal offender' vs. 'problematic' offender' in restorative justice.

Although these processes reshape power, it does not automatically create equitable access or address underlying barriers. These ideas are further outlined in Maglione's (2018; 2019) work that utilizes Foucault's theories to analyze discourse in restorative justice. Maglione's (2018; 2019) work highlights the ways in which restorative justice is not a purely alternative form of justice, but rather a governed practice that is shaped by dominant discourses and political reasoning. Maglione (2018; 2019) recognizes that Foucault (1972) emphasizes how certain discourses can create "truths" about society, making it important to challenge the way certain knowledge is legitimized. For example, if there are certain criteria related to what makes an 'ideal offender' in restorative justice, certain young people might be left out of these processes.

Institutional Discretion and Barriers to Equity

As indicated by Paquin-Marseille and Higgison (2022), the use and implementation of restorative justice conferences for justice-involved young people varies greatly across Canada. The findings of this thesis also suggest that restorative justice conferences vary across the province, despite operating within the youth justice system. The findings highlight that institutional discretion can lead to inconsistencies across Ontario in terms of who is offered a conference and how conferences are conducted.

This aligns with previous research by Caputo (1987) and Smandych and Corrado (2018) that highlights the problems associated with leaving the discretion to justice professionals in

determining eligibility for which cases are dealt with outside of the traditional justice system. Discretion means that justice professionals have the freedom to decide how cases will be handled and processed. While there are guidelines related to the nature of the offence allowed in restorative justice conferences (211 Ontario, n.d.), it is unclear what other guidelines or criteria exists for these conferences. When decisions about eligibility are made on a case-by-case basis, it can become difficult to track patterns of inclusion or exclusion. This can risk reinforcing social hierarchies related to participation rather than challenging them.

As the findings of this thesis suggest, a lack of universal guidelines for these conferences can lead to inconsistencies across the province, as different professionals may apply different criteria based on their own perspectives, training, or knowledge. This can be seen as relating to Foucault's discussion of the circulation of power, where justice professionals are ultimately responsible for deciding how justice-involved young people's cases will be handled. At the same time, blame is less likely to be directed towards the system itself and the law that supports it. When justice professionals control access to restorative justice conferences, they engage in discourse surrounding which young people are seen as worthy of rehabilitation and which young people are not. This relates to the nuanced understanding of the 'ideal offender' that Maglione (2018) discusses as a constructed figure in restorative justice.

If discretion is left unchecked, restorative justice processes could become a privilege for certain groups, instead of a universal alternative to punitive responses. As research already indicates, there is an overrepresentation of certain groups of young people within the justice system and custodial facilities, such as neurodivergent young people (Day et al., 2024; Kirby, 2021), Black young people (Abrams et al., 2021; Justice Canada, 2019; McMurtry & Curling, 2008), and Indigenous young people (Cesaroni et al., 2018; Jackson, 2015; Justice Canada, 2019;

McMurtry & Curling, 2008). Throughout the semi-structured interviews, participants highlighted the overrepresentation of certain groups of young people in the justice system, including BIPOC and neurodivergent young people. When access to restorative justice approaches rely on discretion, it allows the justice system to ultimately exercise power over who is deemed reformable or not, leading to disparities. Maglione's (2018) work highlights the ways in which justice-involved young people's identities can be formed through language, policies, and practices, ultimately highlighting the importance of unearthing the discourse at play.

The semi-structured interviews revealed that some participants felt it might be difficult to facilitate restorative justice conferences if young people have unsupportive or uncooperative parents. One participant mentioned that sometimes parents are also dealing with their own mental health or neurodevelopmental conditions and recognized the importance of also helping parents navigate the system. Other participants mentioned that it could be difficult to facilitate a restorative justice conference if the young person has complex trauma or exhibits "atypical" behaviour, such as the inability to sit still or regulate their emotions. While many young people might struggle with the aforementioned, restorative justice conference facilitators also discussed the ways in which they would accommodate young people who have these concerns. However, these examples can implicitly send the message that those who do not fit within the institutional and neurotypical expectations are not conceptualized as an 'ideal offender' for restorative justice. When participants discuss the difficulties associated with facilitating a restorative justice conference, they might unintentionally be participating in the discourse surrounding who is viewed as a redeemable and 'ideal offender' for restorative justice and who is subsequently seen as a 'problematic offender'.

While restorative justice serves as an alternative to traditional justice, there are mechanisms to further allow for justice to be dealt with in other ways. The YCJA allows justice-involved young people to be dealt with through creative and flexible approaches, emphasizing rehabilitation, reintegration, and alternatives to punitive justice. Some of the recommendations within the semi-structured interviews related to increased collaboration among parties, tailored approaches for working with neurodivergent justice-involved young people, and increased trauma-informed practices. Tailored approaches for neurodivergent justice-involved young people can help to ensure that they are receiving personalized supports and services (American Association on Intellectual and Developmental Disabilities, n.d.) Trauma-informed practices can also be beneficial in reducing recidivism rates (Mouhiddin & Adams, 2023). This reflects a shift in dominant knowledge systems, where participants recognize the need for interdisciplinary approaches to justice. However, FDA can help to highlight that collaborative approaches do not necessarily mean young people are empowered within them.

As highlighted by participants, it is imperative to engage in further education and training to effectively serve the justice-involved young people they encounter. As the YCJA emphasizes, there is a need to engage with justice-involved young people in processes that are meaningful for them. This can look like connecting young people with culturally relevant services, engaging in trauma-informed practices, or increasing their knowledge about how best to support underlying causes. Research by Hyde and colleagues (2016) discussed within the literature review further points to the need to engage with justice-involved young people in meaningful ways through educative aspects or working on how to improve relationships.

While some guidelines exist related to who gets offered a restorative justice conference in Canada (e.g., nature of the offence), the discretion of professionals to review eligibility on a

case-by-case basis means decisions can rely on a professional's judgement, knowledge, biases, and other factors in determining whether or not a justice-involved young person will be referred to a restorative justice program. This can create inconsistencies in the access to and use of restorative justice conferences in the province, with research by Paquin-Marseille and Higgison (2022) supporting this unevenness. To prevent bias and inconsistency, restorative justice conferences should have clear, standardized criteria with built in supports for young people. While professional discretion might be warranted, it is imperative to have clear inclusion or exclusion criteria to be able to further promote fairness and consistency. This can help to ensure that restorative justice is applied fairly and reduces biases and inequities.

Chapter Seven: Conclusion and Limitations

This study looks at the ways in which discourse surrounding neurodiversity and justice-involved young people informs participation within restorative justice conferences as well as how power and knowledge are distributed within these processes. Specifically, I highlight the medicalized/deficit vs. neurodiversity-affirming discourse surrounding neurodivergent young people as well as the 'ideal offender' vs. 'problematic offender' discourse that surrounds justice-involved young people. By engaging with five professionals across Ontario, I was able to fill gaps in knowledge and literature related to the use and implementation of conferences for justice-involved young people in Ontario. Grounded in Foucault's theory of discourse and critical neurodiversity theory (CNT), Foucauldian discourse analysis (FDA) serves as an analytical framework to help better understand, within the context of power and knowledge dynamics, conference facilitators' perspectives about decision-making processes and experiences with neurodivergent justice-involved young people in conferences.

This study reveals that while restorative justice approaches can offer a more flexible and community-driven approach to justice for neurodivergent justice-involved young people, power is not removed. This is because power exists everywhere and is diffused and circulated in everyday interactions, including in restorative justice conferences (Foucault, 1972; Lohmeyer, 2017). Instead, power is restructured, diffused, and dispersed within the restorative justice conference for both the professional, justice-involved young person, and other participants. While restorative justice shifts power decentralizes power, it still operates within institutional frameworks to define legitimate knowledge about topics such as accountability and remorse, structure participation within the conference, and regulate young people who are justice involved (Lohmeyer, 2017).

Although restorative justice approaches allow justice-involved young people to take accountability outside of formal adversarial approaches, FDA serves as an analytical tool in questioning the extent to which young people are given free choice. While it is up to them to demonstrate accountability and to take responsibility, one could argue that the structures of the justice system might persuade some people to want to engage in "lesser" forms of punishment, such as restorative justice conferences. As Lohmeyer (2017) highlights, restorative justice practices are imbedded with power relationships that can both reinforce and resist systems of control. This could mean that some young people might be enticed to accept a restorative justice conference if the alternative means a harsher form of punishment, such as going through to a trial.

My findings also indicated that not all justice-involved young people have equal access to restorative justice processes. For example, although the YCJA outlines that the law must "respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements" (s. 3(c)(iv)), certain factors (e.g., nature of the offence, power dynamics, knowledge, etc.) can influence who gets to engage with restorative justice and on what terms. This relates to Foucault's (1975) work that shows how certain societal institutions, such as the justice system, structure the ways in which people can engage with power and knowledge dynamics and to what extent. Future research can extend this work by accounting for intersecting factors (e.g., race, gender, socioeconomic status, etc.) that contribute to a young person's access to restorative justice processes.

The key findings of this study recognize knowledge disparities among restorative justice conference facilitators on topics such as neurodiversity, which can ultimately impact neurodivergent justice-involved young people's experiences. This is because discourse can have

an impact on the ways in which people are constructed within society (Foucault, 1972; 1982; Miller, 1990). This highlights clear future steps that need to be taken, including more clarity within the system about how conferences can be structured for all justice involved youth, and increased education and training for professionals within the justice system and restorative justice organizations. Ensuring that all professionals have a baseline understanding of neurodivergent conditions such as ASD, ADHD, FASDs, and others, is important to ensure best practices and outcomes for these young people. As disability advocates, scholars, and those with lived experiences would advocate, the social model of disability can help to focus on removing societal barriers, improve access to justice, and advocate for equal rights and opportunities (Guevara, 2021).

Another important aspect to consider that was highlighted within the semi-structured interviews is the need for increased funding and resources. This can allow for greater support for diversion programs and alternatives to incarceration. It can also allow for access to specialized training and professional development opportunities for professionals and investing more in community-based organizations. This can potentially lead to equitable and fairer access to justice, reduced recidivism, and addressing underlying needs in a way that benefits society as a whole.

A main limitation of this research is that it did not directly engage with neurodivergent justice-involved young people to understand their perceptions. Time constraints and the nature of the Masters-level thesis made it difficult to address this main limitation. Future research would benefit by hearing the voices of neurodivergent justice-involved young people. The absence of their input further relates to the distribution of power and knowledge because it places the researcher and the research participants in a position to produce and legitimize certain “truths”,

without directly hearing from neurodivergent justice-involved young people. Future research can expand on this study to directly engage with neurodivergent justice-involved young people to better understand how they create, reinforce, reproduce, and resist discourses related to neurodiversity and justice-involvement.

Another limitation of this study is the small sample size. While I initially hoped to connect with 12-15 professionals, it was not the case. The goal was 12-15 because of the complexity of my topic, diverse perspectives, and varied backgrounds of professionals. However, I discovered it can be difficult to connect with professionals who work in the justice system or community-based organizations for justice-involved young people because of the demands of their jobs, busy schedules, and other reasons.

In line with research conducted by Guest and colleagues (2020), I can recognize that my study did not reach qualitative saturation. However, the five participants of my study were still able to provide in-depth responses for me to analyze. Nonetheless, I do not know whether and how my findings, discussion, and conclusions would change if I had access to more participants. Future research can continue to expand on this work by gaining more diverse perspectives across Ontario.

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Appendix A – Email Script

Dear X,

My name is JaCoya Laplante, and I am in my Masters of Child and Youth Studies at Brock University. My research is being supervised by Dr. Voula Marinos, who is a Professor in Brock's Child and Youth Studies Department, as well as the Director of Forensic Psychology and Criminology.

I am writing to you today to invite you to participate in a qualitative study entitled *The Implementation of Restorative Justice Conferences for Neurodiverse Justice-Involved Young People*. **The goal of this study is to engage with professionals who have experience with restorative justice conferences. More specifically, this study seeks to explore whether and how conferences can be an effective approach for neurodiverse justice-involved young people. I would be grateful if you could forward this email and the Letter of Invitation to people responsible for conferences within your organization.**

While a list of restorative justice conference providers was provided by the Ministry of Children, Community and Social Services (MCCSS), the Ministry is not connected to this research in any way. The identity of the participant will be protected and remain confidential, and they will be provided with a pseudonym. Both the name and location of the agency they work for will not be identified in any way within the study.

This study involves one 45–60-minute interview that will take place over Zoom. With the participant's consent, the interviews will be audio-recorded and transcribed. Once the recording has been transcribed, the audio-recording will be destroyed. Before the transcriptions are used for data analysis, participants will have 14 days (two weeks) to review the transcript and edit or delete any information that they would like to revise or omit.

Participation in this study is voluntary and they may withdraw from the study at any given point without penalty. If the participant chooses to withdraw, all information that was provided until that point will be destroyed.

I do not anticipate that there will be any risks to participating in the study. There may not be any direct benefits from participation in this study. However, participation will help to better understand the use of conferences across Ontario and how they can be utilized for neurodiverse justice-involved young people.

This research was reviewed by Brock University's Research Ethics Board (REB 23-162 MARINOS).

Sincerely,

JaCoya Laplante
Department of Child and Youth Studies
Brock University

jl21xg@brocku.ca

Voula Marinos
Professor in the Department of Child and Youth Studies
Director of Forensic Psychology and Criminology
Brock University
vmarinos@brocku.ca

Appendix B - Letter of Invitation

Dear Individual Responsible for Conferences,

My name is JaCoya Laplante, and I am in my Masters of Child and Youth Studies at Brock University. My research is being supervised by Dr. Voula Marinos, who is a Professor in Brock's Child and Youth Studies Department, as well as the Director of Forensic Psychology and Criminology.

I am writing to you today to invite you to participate in a qualitative study entitled *The Implementation of Restorative Justice Conferences for Neurodiverse Justice-Involved Young People*. **The goal of this study is to engage with professionals who have experience with restorative justice conferences. More specifically, this study seeks to explore whether and how conferences can be an effective approach for neurodiverse justice-involved young people. I would be grateful if you could forward this email and the Letter of Invitation to people responsible for conferences within your organization.**

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This study involves one 45-60-minute interview that will take place over Zoom. With your consent, the interviews will be audio-recorded and transcribed. Once the recording has been transcribed, the audio-recording will be destroyed. Before the transcriptions are used for data analysis, you will have 14 days (two weeks) to review the transcript and edit or delete any information that you would like to revise or omit.

Your participation in this study is voluntary and you may withdraw from the study at any given point without penalty. If you choose to withdraw, all information that you have provided up until that point will be destroyed.

I do not anticipate that there will be any risks to participating in the study. You may not receive any direct benefits from your participation in this study. However, your participation will help to better understand the use of conferences across Ontario and how they can be utilized for neurodiverse justice-involved young people.

This project was reviewed by Brock's Research Ethics Board (File 23-162 MARINOS). If you have any ethical concerns with the study or questions about your participant rights, please contact reb@brocku.ca .

Sincerely,

JaCoya Laplante

Department of Child and Youth Studies, Brock University
jl21xg@brocku.ca

Voula Marinos, PhD.
Professor in the Department of Child and Youth Studies and Director of Forensic Psychology and Criminology, Brock University
vmarinos@brocku.ca

Appendix C – Research Consent Form

Name and Contact Information of Student Researcher:
JaCoya Laplante
Brock University – Department of Child and Youth Studies
Email: jl21xg@brocku.ca
Name and Contact Information of Supervisor:
Dr. Voula Marinos, PhD
Brock University
Professor in the Department of Child and Youth Studies
Director of Forensic Psychology and Criminology
Email: vmarinos@brocku.ca

Project Title: The Implementation of Restorative Justice Conferences for Neurodiverse Justice-Involved Young People

Invitation:
You are invited to participate in a Masters level research project because you are a professional who has knowledge and/or experience on the use of conferences for justice-involved young people. The information in this form is intended to help you better understand what is being asked of you so that you can decide whether you agree to participate in this study. Your participation in this study is completely voluntary and you may withdraw from the study at any given point. A decision to not participate will not be used against you in any way. As you read this form and decide whether to participate, please ask all the questions you might have, take whatever time you need, and consult with others as you wish.

What is the purpose of this study?
The purpose of this study is to examine whether and how conferences can be an effective restorative justice approach for neurodiverse justice-involved young people, from the perspectives of professionals who run restorative justice conferences. Approximately one in three justice-involved young people are neurodiverse (Kirby, 2021), though little research exists related to their involvement in conferences.

This study is qualitative and aims to collect and analyze interview data from professionals who run conferences across Ontario. The proposed project will fill gaps related to neurodiversity in the criminal youth justice system. Through the semi-structured interviews, participants will be able to share their perspectives related to neurodiverse justice-involved young people and any associated benefits and challenges related to the use of conferences.

What will I be asked to do?
If you agree to participate in the study, we will schedule one 45-60 minute Zoom interview. You are able to skip any question you do not wish to answer. With your consent, the interviews will be audio-recorded. Once the recording is transcribed, the audio-recording will be destroyed. If you do not consent to audio-recording, please inform the research prior to your interview and as an alternative, with your consent, the researcher will take notes during the interview.

After the semi-structured interviews are completed and transcribed, the transcriptions will be sent to participants via email. Participants will have two weeks (14 days) to review the transcripts and edit or delete any information they wish to revise or omit.

Risks and Inconveniences
I do not anticipate that there will be any risks from participating in this study.

Possible Benefits
You may not receive any direct benefits from your participation in this study. However, your participation will be beneficial in allowing the researcher to better understand the use of conferences for neurodiverse justice-involved young people.

Compensation/Incentives
There will be no compensation for this research study.

No waiver of your rights
By signing this form, you are not waiving any rights of releasing the researcher from any liability.

Withdrawing from the study
At any point throughout the study, participants can withdraw their participation and will not face any consequences. If at any point you wish to withdraw from the study, please alert the student investigator via email or during the Zoom interview and the student investigator will begin the withdrawal process. This involves discarding all information that has been collected from you.

Confidentiality
While a list of restorative justice conference providers was provided by the Ministry of Children, Community and Social Services (MCCSS), the Ministry is not connected to this research in any way. Your identity will be protected and remain anonymous, as you will be provided with a pseudonym. Both the name and location of the agency you work for will not be identified in any way within the study.

The results of this study may be published or presented at an academic conference or meeting, but the data will be presented so that it is not possible to identify any participants. To protect your identity, you will be assigned a pseudonym so that your identity will not be directly associated with the data you have provided. All data, including coded information, will be kept in a password-protected field on a secure computer. Your name will only be associated with this consent form.

Your personal information will be treated as confidential, although absolute privacy cannot be guaranteed. No information that discloses your identity will be released or published without your specific consent.

For further information related to Zoom's privacy policy, please see https://explore.zoom.us/en/privacy/ .

Data Retention
After the study is completed, your data will be retained for five years and will remain de-identifiable.

New information during the study
In the event that any changes could affect your decision to continue participating in this study, you will be promptly informed.

Ethics Review
This project was reviewed by Brock's Research Ethics Board (File 23-162 MARINOS). If you have any ethical concerns with the study or about your participant rights, please contact reb@brocku.ca .

Statement of consent
I voluntarily agree to participate in this study ___ Yes ___ No
I agree to be audio-recorded ___ Yes ___ No

I have read the letter of information and have had any questions answered to my satisfaction. I agree to be involved in the research project described.

Name:

_____

Date:

_____

Signature of participant:

_____

Researcher who interacted with the participant
I have explained the study to the participant and answered any and all of their questions. The participant appeared to understand and agree. I provided a copy of the consent form to the participant for their reference.

Name:

_____

Date:

_____

Signature of researcher:

_____

Appendix D – Interview Script

Thank you again for agreeing to participate in this research study for my thesis. I'm doing my Masters in Child and Youth Studies at Brock University.

Before we get started with the interview, I just wanted to confirm that you read and understood the Research Consent Form that was emailed to you. Do you have any questions? And do you agree to be audio-recorded?

So, before I start the recording, there are a few main things I have to mention. The first thing is that this interview is completely voluntary and completely confidential. If there any questions you do not wish to answer, please feel free to skip over them. You are also able to withdraw from the interview at any point. I won't ask any questions; I'll simply end the interview and discard of the information I've gathered from you.

If following the interview, you have any questions or concerns, you are welcome to direct them towards my supervisor, Dr. Voula Marinos, or Brock University's Research Ethics Board, and the contact information is listed within the documents I have sent to you.

Role of the Professional

1. Can you please tell me about your current position and how long you have been in this position? (If recent, what was your previous position?)
2. In your position, have you ever obtained professional training regarding vulnerable populations of young people? What populations?

Neurodiversity

1. What is your personal knowledge on neurodiversity?
2. Would you distinguish someone who is neurodiverse from someone who has a mental health issue, or would you categorize them in the same category?
3. Approximately how many young people coming through your program do you think are neurodivergent?
4. What are some challenges or barriers that you think neurodiverse young people face within the justice system broadly, but more specifically in conferences?
5. How would you accommodate a young person coming through your program who is neurodivergent?
6. Are there any times when a neurodiverse young person may not be an appropriate candidate for a conference?
7. Would you be informed about whether the justice-involved young person who is coming through your organization is neurodiverse? What other characteristics (age, gender, race, disability, etc.) would you know about the young person ahead of time?
8. What would happen if a young person coming through your program has not had any previous assessments and they are suspected of having a disability? Are you able to refer that young person for assessments?

YCJA

1. Do you refer to the Youth Criminal Justice Act during conferences for young people who are involved with the law, and to what extent?
2. Section 3 (c)(iv) states: within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should… respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements. What do you think constitutes "special requirements"?
3. Would you say that neurodiversity constitutes a special requirement, why or why not?

Conferences

1. Approximately how many conferences have you been a part of?
2. Can you briefly describe how conferences work and who would be coming to the table? (Young person, victim(s), parent(s), teachers, social workers, etc.)
3. Prior to being offered an EJM or an EJS, the young person must demonstrate that they have taken accountability for their actions. How do you decide whether they've actually taken accountability?
4. Can you tell me a bit about how young people are assessed when it comes to eligibility for offering them a conference? What sort of factors are taken into account when deciding whether a young person is an appropriate candidate for a conference? Are there some limitations related to the crime committed, or other factors, that would make someone not an appropriate candidate?
5. What do you think is the value of having conferences available as a part of the youth criminal justice system?
6. What offences have young people been charged with when being part of a conference? Are there any restrictions in terms of the Ministry's policy or your organizational policy related to the type of charge?
7. Broadly, can you tell me a bit about the young people who have taken part in conferences? Like maybe characteristics related to age, gender, class, ability, disability, or any other characteristics.
8. Do you feel as though conferences are underutilized? If so, for whom and why?
9. Are there any suggestions you would make to improve the use of conferences?
10. What do you think victims get out of the conference?
11. Do you think the victims should be informed about any diagnoses the justice-involved young person has?
12. Do you have any recommendations related to policy or practice involving neurodiverse young people and conferences?
13. Are there any other things you would like to mention about conferences? (E.g., Things that are working vs. not working, etc.)

Appendix E – Brock University Ethics Approval

Social Science Research Ethics Board

Certificate of Ethics Clearance for Human Participant Research

DATE: April 10, 2024

PRINCIPAL INVESTIGATOR: MARINOS, Voula – Child and Youth Studies

FILE: 23-162 – MARINOS

TYPE: Masters Thesis/Project

TITLE: The Implementation of Restorative Justice Conferences for Neurodiverse Justice-Involved Young People

ETHICS CLEARANCE GRANTED

Type of Clearance: MODIFICATION Expiry Date: 1/1/2025

The Brock University Social Sciences Research Ethics Board has reviewed the above named research proposal and considers the procedures, as described by the applicant, to conform to the University's ethical standards and the Tri-Council Policy Statement.

Modification:

- Updated list of questions

The Tri-Council Policy Statement requires that ongoing research be monitored by, at a minimum, an annual report. Should your project extend beyond the expiry date, you are required to submit a Renewal form before **1/1/2025**. Continued clearance is contingent on timely submission of reports.

To comply with the Tri-Council Policy Statement, you must also submit a final report upon completion of your project. All report forms can be found on the Office of Research Ethics web page at: https://brocku.ca/research-at-brock/office-of-research-services/research-ethics-office/#application-forms

In addition, throughout your research, you must report promptly to the REB:

1. a) Changes increasing the risk to the participant(s) and/or affecting significantly the conduct of the study;
2. b) All adverse and/or unanticipated experiences or events that may have real or potential unfavourable

implications for participants;

3. c) New information that may adversely affect the safety of the participants or the conduct of the study;

4. d) Any changes in your source of funding or new funding to a previously unfunded project.

We wish you success with your research.

Approved:

Caitlin Mahy, Chair
Social Science Research Ethics Board

Note:

Brock University is accountable for the research carried out in its own jurisdiction or under its auspices and may refuse certain research even though the REB has found it ethically acceptable.

If research participants are in the care of a health facility, at a school, or other institution or community organization, it is the responsibility of the Principal Investigator to ensure that the ethical guidelines and clearance of those facilities or institutions are obtained and filed with the REB prior to the initiation of research at that site.