LESSONS LEARNED 2001

Research and
Statistics Division

2001

The views expressed in this report are those of the author and do not necessarily represent the views of the Department of Justice Canada.

Foreword

I am pleased to introduce the first edition of Lessons Learned. This publication has been developed as a companion to the Directory of Research, a directory of the research underway in the Division, which we publish annually. Lessons Learned is a report which will be published at the end of each year and which will provide a synthesis of some of the lessons we have learned from our research over the previous year. It attempts to capture some of the ideas, themes, findings, new insights, theories, concepts, etc., that have emerged from the various research-related activities of the Division. Whether drawn from the deliberations of our expert panels, seminar presentations made by leaders in their fields, or individual research projects, we believe that these learnings will be of as much interest to policy and research specialists outside the Department of Justice as they are to us.

The report is organized in the following policy-related themes:

Access to Justice
Environmental Analysis
Building a Costing Capacity
Family Violence
Sentencing
Community/Restorative Justice
Northern Justice Issues
Disseminating Research Results.

I would like to acknowledge the contribution of Jeff Latimer, Senior Research Officer in the Division, in developing the concept for Lessons Learned and for his tireless efforts in seeing this first version through all the stages from conception to final product. While a number of people assisted him in the production of this report, Dr. Tom Gabor, Visiting Scholar from the University of Ottawa, deserves special recognition for all his hard work as editor. We would also like to thank Richard Gill, Jim Cofflin, Tammy Landau, Julian Roberts, Jane Sprott and Tim Roberts who helped to extract the pertinent lessons from our research. Finally, this project would not have been possible without the co-operation and assistance of all of the research staff within the Division, who collected and organised material, and made themselves available to the individual authors for discussions and more formal interviews.

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Acknowledgements

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1.0 Theme : Access To Justice

1.1 Introduction

Access to justice has long been an important area for programming and research at the Department of Justice (DOJ). Traditionally, legal aid has been the key focus of access to justice programming, with the DOJ maintaining cost-sharing agreements with the provinces and territories in the funding of criminal legal aid services. The DOJ has also promoted the development of a national network of organizations responsible for public legal education and has provided assistance to Native Courtworker programs in a number of jurisdictions. Underlying these specific programs has been an ongoing commitment by the DOJ to work with partners in the legal community, academia, other levels of government, and communities to develop new approaches to enhancing access to justice for all Canadians. Research has played an important role in this regard.

The focal point of the Access to Justice area in 2000-2001 was a major national symposium held in Ottawa in March, 2000. Approximately 100 participants from a wide variety of interests generated ideas and new approaches to achieving access to justice. In addition, two research studies have examined legal aid delivery models and the implications of new approaches to access to justice for these models. In another initiative, the DOJ provided funding for and monitored a New Brunswick project in which an Aboriginal lawyer was hired to address delays in court proceedings, a concern of many Aboriginal defendants.

1.2 Documents Reviewed

The discussion in this section is based on the following documents:

- A. Currie (2000) *Riding the Third Wave: Rethinking Criminal Legal Aid Within an Access to Justice Framework*.
- A. Currie (1999) *Legal Aid Delivery Models in Canada, Past Experience and Future Directions*.
- Department of Justice Canada (2000) *Expanding Horizons, Rethinking Access to Justice in Canada*. Proceedings of a national symposium.
- A. Currie (2000) *The New Brunswick Aboriginal Duty Counsel Project*.

1.3 Lessons Learned

1.3.1 The Meaning of Access to Justice

The national symposium revealed certain disenchantment with the existing justice system and an eagerness to experiment with innovative ways of ensuring that all Canadians have access to justice. In addition, there was a collective realization that more holistic approaches to justice, while sometimes preferable, may be more demanding and difficult to achieve than the traditional approach. A number of themes discussed at the symposium shed light on the meaning of access to justice to symposium participants:

Restorative justice is oftentimes preferable to existing justice system processes. The justice system should incorporate the concept of restorative justice, a recognition of the importance of community, human interaction, healing, and spirituality. Such an approach would restore meaning to the term "justice" for the average citizen.

Access to the justice system is not access to justice. Canadians are more concerned about notions of respect and fairness, than the law itself or the justice system. Visions of justice ought to extend beyond a narrow view of legal rights.

Justice is achieved when a solution satisfies all parties involved in a dispute. Justice is solution-oriented; hence, it does not fit easily into a strictly defined and narrow legal regime. Furthermore, it is not, by nature, adversarial.

One size does not fit all. Access to justice is contingent upon a recognition of differences and diversity. Therefore, it cannot easily be accommodated by a single set of procedures.

The capacity to solve problems rests in part within community-based justice programs. The traditional justice system cannot meet community needs alone. The challenge is to find ways to encourage localized approaches to justice, while maintaining equity in the access to justice available to all Canadians.

Meeting needs is as important as protecting rights. The current justice system emphasizes the protection of rights, at the expense of meeting the ordinary needs of

citizens for justice. Equality of access and equality before the law do not mean that the diversity of needs cannot be addressed.

Sharing power and resources is needed to achieve access to justice. The vast majority of resources allocated to the administration of justice in Canada support traditional approaches. Resources could be reallocated to encourage experimentation and innovation, as well as to ensure that marginalized people play a meaningful role in designing new approaches.

1.3.2 Criminal Legal Aid Within an Access to Justice Framework

Recent changes to the *Criminal Code* and a Supreme Court decision have moved restorative justice from the margins and established it as an alternative approach to criminal law. However, the criminal defence bar and legal aid have not embraced a more holistic approach to justice to as great an extent as the judiciary and the Crown. Criminal defence practice is founded on an adversarial approach, an approach not easily adapted to collaborative approaches.

The current approach to legal aid is incompatible with the demands of emerging views of justice. Pressure to change will increase in part because restorative approaches may provide more durable and mutually satisfactory solutions to those in conflict. People may, therefore, demand access to restorative justice processes. As well, legal representation may become desirable in a restorative model to ensure that miscarriages of justice are not a by-product of this new paradigm of justice.

With new forms of justice competing for scarce resources, legal aid may be faced with an expansion or re-shifting its role in providing access to justice. As the need for legal representation changes in the context of new approaches to justice, the challenge will be to find ways to modernize legal aid.

1.3.3 Legal Aid Delivery Models in Canada

The long-standing debate as to the relative cost effectiveness of staff lawyer delivery versus private bar delivery of legal aid has stifled the evolution of legal aid delivery. Innovations in legal aid delivery are not keeping pace with new conceptions of what it means to expand access to justice to all citizens. What is needed is openness to experimentation with multidimensional legal aid delivery that can accommodate a range of needs within a single, coordinated delivery model. Some work has begun under this "complex mixed model" through the use of contracting, specialized panels, and expanded duty counsel to address specific types of problems. Research on legal aid needs to focus on how a range of delivery modes can be accommodated and coordinated under a legal aid framework.

1.3.4 Dealing With Delays in Proceedings Involving Aboriginal Defendants

A project to provide Aboriginal people in the Richibucto area of New Brunswick with duty counsel services by an Aboriginal lawyer succeeded clearly in reducing the number of adjournments required at first appearance in court. While the study lacked a jurisdiction that could serve as a control, the reduction did coincide with the introduction of Aboriginal duty counsel services. Therefore, the project appears to support the idea that communication problems between accused persons of Aboriginal descent and non-Aboriginal duty counsel have been responsible for many of the delays in the past.

Because of the general shortage of qualified Aboriginal lawyers in New Brunswick, however, there is a risk that innovative projects of this nature depend on the availability of individuals with specific attributes. The labour market implications of this finding must be addressed. Also, alternative approaches, such as the training of paralegals for some duty counsel functions, ought to be examined. Such training exemplifies the new directions legal aid delivery can take to accommodate a more holistic way of making justice accessible, especially to marginalized populations.

1.4 Future Initiatives

What we have learned is that there is a need for a fundamental rethinking of the meaning of access to justice. The need for change in the administration of justice is recognized not only by marginalized people, but also by a wide range of those working within the current system and those seeking to improve it. Access to justice means more than equal access to the law and the courts. Canadians expect justice to have a meaning they can relate to in their everyday lives, involving a sense of fairness and mutual satisfaction for the parties involved in conflicts that arise.

Legal aid, in the current model of justice administration, is the paramount avenue for access to justice for those with limited resources. The studies discussed indicate that emerging new holistic approaches to justice delivery will place an increasing demand on legal aid institutions to offer more flexible arrangements and a greater diversity of services. New services are needed,

necessitating the training of a new cadre of front-line workers to serve those segments of the population that are currently marginalized. The Research and Statistics Division, in co-operation with the Legal Aid Team, Programs Branch, is developing a multi-year legal aid research plan. The primary goal of the research is to document the nature and extent of unmet needs in the area of criminal legal aid. Second, the research will examine unique pressures and priority issues in civil legal aid and assist the jurisdictions in developing cost effective and appropriate delivery mechanisms for legal aid services.

Building on the symposium and the other projects discussed above, researchers from the Research and Statistics Division are engaged in ongoing discussions with others within the Department of Justice to explore the changing conceptions of "access to justice" and the impact they have on the Department's work. Also, the Division will soon release research findings bearing on access to justice issues, including the needs of the justice system in delivering services within an "access to justice" framework.

2.0 Theme : Environmental Analysis

2.1 Introduction

In addition to its statistical analysis and research support activities, the Research and Statistics Division provides environmental analysis services (commonly called environmental scanning). In this context, environmental analysis refers to the identification of issues in society in the form of emerging crimes, as well as potential threats (e.g., litigation) and opportunities to which the federal government – in particular, the Department of Justice – may be exposed. Globalization, new technologies, and communications media are changing the nature of risks and harms in the 21st century. New challenges include financial crimes (bank and stock fraud), cybercrime, and the trafficking of new forms of drugs and other contraband. Also important are the policy implications of DNA testing and biotechnologies.

To identify these issues, innovative data sources and research methods are needed, alongside more conventional sources (official crime statistics and polling information). This section draws on reports prepared or commissioned by the Division, as well as on discussions with a panel of experts.

2.2 Documents Reviewed

This section is based on the following documents:

- R. T. Naylor (2000) *Emerging Profit-Driven Crimes: Meeting The 21st Century Challenge-Final Report*. Proceedings of the Experts Panel.
- Research and Statistics Division (no date) *A Scan for Early Warning Identification Practices in Risk Management.*
- S. Lipinski (2000) *The Feasibility of Undertaking a Best Practices Project in Legal Issue Identification and Response: Learning from the Legal Service Units.*
- N. Quann (2000) *Questions and Answers on Drug Use and Offending.*
- N. Quann, K. Hung, and C. Nguyen (2000) *Clearance and Charging of Drug Offences.*
- K. Hung and N. Quann (2000) *Profile and Projection of Drug Offences in Canada.*

2.3 Lessons Learned

2.3.1 Emerging Crimes

An international panel sought to identify emerging crimes, as well as their economic, research and policy implications. The panellists possessed expertise in areas such as national and transnational organized crime, money laundering, financial crimes, and corruption. In addition to Tom Naylor of Canada, the panellists included Petrus van Duyne (Netherlands), Mike Levi (UK), Niko Passas (USA) and Francisco Thoumi (USA and Colombia).

The consensus was that the concept of "emerging crimes" obscured more than it elucidated. Panellists were unanimous that, leaving aside the purely tautological (new crimes are whatever governments decide in the future to criminalize), the most useful guide to the future is the recent past. Profit-driven crimes (e.g., theft, extortion, commercial and financial fraud, trafficking in contraband goods and services) can be expected to persist. In terms of contraband, the nature of the goods and services trafficked may change. Increasingly, new substances will be synthetic, homemade, and produced strictly for commercial purposes. This new face of drug trafficking will render traditional models of organized crime anachronistic.

One might also predict that as new psychotropic substances are invented, governments will create new forms of crime in an attempt to ban them. Thus, the market-based crimes of interest in the future will, in part, be determined by the offences that are subject to criminalization.

Apart from expected changes in the nature of crime, a broader segment of society may get involved in various crimes due to: 1) corporate globalization, which will result in a declining level of allegiance to companies by their employees; 2) increasing population mobility, leading to an increasing exposure of people to criminal opportunities, along with a declining impact of traditional means of social control; and, 3) the changing nature of "organized crime" into more fragmented groups.

There was considerable consensus among the emerging crimes panel that activity traditionally associated with organized criminal networks is less concentrated in the

hands of powerful groups than was originally thought. The media and vested interests (e.g., security industry) fuel the mythology surrounding organized crime. More attention ought to be paid to the activities themselves, as opposed to specific groups.

2.3.2 Trends and Patterns in Drug Use

Drug use constitutes an evolving area in which significant changes are anticipated both in the nature of substances consumed and in policy. The "Questions and Answers" document covers matters ranging from changes in legislation and public opinion on the medicinal use of controlled drugs to trends in police-reported drug offences and differences in drug offence patterns across the provinces. The document relies on data collected by a range of agencies.

Some of the most salient findings were:

- Twice as many men as women reported using illicit drugs during the previous year and those in the 15-24 year age group reported the highest consumption levels;
- Cannabis is the most widely used drug in Canada;
- Among the provinces, Newfoundland residents polled reported the lowest drug use rates (4%), while British Columbians reported the highest use (12%);
- Just 27% of Canadians favoured decriminalizing the possession of a small quantity of marijuana – men were more likely than women to favour such a step.

Another document examined national policing data to identify drug offence reporting, clearance and charging levels, as well as trends. Data from the incident-based Uniform Crime Reporting Survey (UCR-I) were used to measure the actual offences as a percentage of the total number of incidents reported by police and incidents cleared as a percentage of actual offences. Also undertaken were analyses across time and jurisdictions. The study found significant differences in aggregate clearance and charge rates across provinces and metropolitan areas for the period 1996-1998. Nationally, clearance and charge rates decreased, by 5% and 4%, respectively.

A third study examined national data on drug charges against adults over a 20-year period. The study reveals a significant drop in the number of charges – from just over 53,000 charges in 1977 to about 38,000 in 1998. The downward trend, however, seems to have stabilized in the 1990s. Using data from the Canadian Centre for Justice Statistics, the Division projected that drug charges would increase by about 6% per year over the five-year period ending in 2003. Although the document itself does not discuss the issue, Division statisticians have observed that the projected increases would have significant implications for the Department of Justice in the form of increased demands on prosecution services and pressures on policy centres to deal with "the growing drug problem".

2.3.3 Legal Risk Management

Federal departments, like some corporations and other public institutions, have developed risk management policies and procedures actively encouraged by Treasury Board. Risk management is designed to protect, and consequently minimize risks to, the government's property, interests, and employees. Risk includes the chance of damage to or loss of government property, and the chance of incurring second- or third-party liability to non-government entities.

The Department of Justice has undertaken a broader Legal Risk Management project to identify better ways to manage civil litigation and legal risk across the federal government. The project's goals are to determine the nature and volume of litigation, to describe how risks are currently managed, and to estimate their costs. The Research and Statistics Division, in response to requests from the Legal Risk Management Project, investigated risk management "early warning" practices and explored the feasibility of a study to develop an environmental analysis capacity that would identify critical litigation issues and risks to the federal government. Thus far, two consultancy reports on corporate risk management, commissioned by the Treasury Board Secretariat, have been located. The Division's feasibility study report, which highlights some of the best practices information, concluded that the consultancy reports responded to the request from the Legal Risk Management project and that further work was unnecessary.

In related activity, the Division has explored the feasibility of research into legal issue identification and response practices in departmental legal services units (DLSUs), to identify best practices and to assess whether DLSU issue identification activities would contribute to improved environmental scanning and legal risk management in the Department. A Division document

identifies the diverse needs of the Department of Justice in relation to environmental analysis:

- Supporting policy work where there is a long tradition of using environmental scanning;
- Supporting litigation work by focusing on issues, already in the public domain, pertaining to the specifics of a litigation case; and,
- Supporting legal service clients in areas of concern that have the potential to become public issues.

Division statisticians have observed that the work carried out in individual sectors can make a contribution to environmental analysis and issue management in other sectors, or the Department generally. For example, a legal opinion database that served as a legal research tool for DLSUs could be used by the Research and Statistics Division to identify emerging issues and/or monitor trends that would be of interest to others in the Department.

2.4 Future Initiatives

While its statistical products are generally well received, the Division is concerned that the full potential of its environmental scanning services is not being realized. The Division believes that scanning activities should have two separate components. One component deals with identified issues, using readily available sources such as research, newspapers, and polls. The second aspect assesses broader social, economic, and political issues, as well as trends, to identify emerging issues that are likely to affect the government's "legal business".

The majority of the Division's scanning products are of the first type; i.e., responding to requests from others in the Department for information on identified issues. Less frequently, such products are the result of the Division's internal assessment that a special report might be helpful in a particular subject area, or that an overview of information collected for other purposes might prove helpful in policy development or organizational planning. To a large extent, such work is ad hoc in nature and done within short timeframes by analysts using only the most readily available information sources. This suggests that the Division's environmental scanning process is still in its formative stages.

By contrast, formal scanning is proactive, planned, and purposeful information gathering designed to give decision-makers a continuing understanding of their organization's external environment and aiding them in strategic planning. Scanning is expected to identify scientific, technical, economic, social, and political trends to determine whether they represent threats or opportunities for the organization. A sustained effort is also essential if the exercise is to identify long-term trends. *Ad hoc* forays into the information ocean may be helpful in responding to specific events or to clearly identified issues, but are unlikely to produce useful knowledge about the economic, political, technological, and social currents that continually affect organizations. The Division may want to consider reassessing its clients' scanning needs and, where necessary, move towards a more formal scanning process.

3.0 Theme : Building A Costing Capacity

3.1 Introduction

In the spring of 2000, the Research and Statistics Division began to explore the development of a capacity to provide estimates of the benefits and costs of policies, litigation, the administration of justice, as well as the costs of particular categories and types of crime. This effort has been motivated by client requests for this type of information as well as a move toward evidence-based decision-making in the federal government. In this context, this means devising cost estimates that are sound, both methodologically and economically. Overall, costing analyses have been said to promote both efficiency and accountability.

Costing issues concern such matters as the global cost of crime in Canada, the costs to the economy of organized crime or of a particular court decision, and the cost effectiveness of a particular law, crime prevention initiative, or community sanctions as opposed to prison sentences.

Cost estimates must take into account both public and private costs. Public costs are those incurred by the justice system: salaries and benefits of police officers, judges, lawyers, court administrators, and correctional personnel; the capital and operating costs of facilities, vehicle and computer expenses, and so on. Public costs also include the costs of services provided by voluntary, non-profit and community-funded agencies.

Private costs include direct costs such as the value of lost property or income, legal fees, medical and mental health costs, insurance costs, and lost wages. Indirect or *intangible costs* include pain, suffering, and lost quality of life incurred by victims of crimes, and the economic impacts on communities and businesses (e.g., through reduced productivity).

Few data sources provide detailed information about public costs of justice services and virtually none provide information about the private costs of crime and civil litigation. Researchers, therefore, must extrapolate costing information from "other data" sources. The Division's work towards developing the capacity to undertake cost/benefit analyses began with internal consultations and discussions that led to the following observations:

- Answering costing questions requires economic and analytical tools and concepts that are not widely used in federal departments and agencies with justice responsibilities;
- Some consensus must be reached about the key costing questions, as well as methodological and value assumptions that come into play in answering them; and,
- The data required for cost/benefit analyses are often not readily available.

3.2 Documents Reviewed

With these and other considerations in mind, the Division set out to identify the types of costing analysis that would meet the Department's needs. Three reports, produced by academics with experience in costing analysis and related studies, have helped to give form to what the Department can achieve in this area. These reports are as follows:

- O. Lippert (2000) *Report to the Department of Justice on the Seminar "Costing Justice Policy: Methodology and Means".* Proceedings of the Department of Justice Seminar on Costing Justice Policy.
- A. Leung (2001) *Understanding Social Costs of Crime Through Costing Analysis.*
- S. T. Easton and N. Veldhuis (2001) *The Size of the Underground Economy: A Review of Estimates.*

3.3 Lessons Learned

3.3.1 Costing Issues

Leung distinguishes between cost-benefit and cost–effectiveness analysis. He reports that cost-benefit analysis, which attempts to derive a ratio of all costs and all benefits expressed in monetary terms, is more appropriate for studies, such as evaluations of crime prevention programs, that are small in scale and scope. Cost–effectiveness studies, which only require that costs be tallied while benefits are expressed in terms of common denominators such as comparable crimes, comparable injuries, and years of life lost, are better

suited to broadly defined issues (e.g., assessing the aggregate social cost of crime).

Leung's review also describes a range of methodological concepts (marginal, fixed, and opportunity costs; discounting; and, sensitivity analysis) to examine whether outcomes and policy implications remain the same in different geographical, economic, and political contexts. His review also illustrates the extent to which many studies have used incomplete data and highlights the need for the Department of Justice to work with a variety of federal and provincial departments, as well as private sector organizations (e.g., insurance provider associations), to identify existing data sources and to construct new databases to address information gaps.

A costing seminar, organized by the Division, was attended by Owen Lippert of the Fraser Institute, Paul and Patricia Brantingham, along with Stephen Easton, of Simon Fraser University, Gloria Laycock of the British Home Office (also a research fellow at the US National Institute of Justice), and Paul Reed of Statistics Canada. The participants arrived at the general conclusion that the costing of crime and justice policy options, despite methodological difficulties, political challenges, and data issues, is important work that should be done by the federal government in cooperation with the provinces. While generally advocating that the Department develop a costing capacity, several notes of caution were reported. Gloria Laycock, for example, indicated that this could be quite expensive, as in the cost-effectiveness evaluation of the burglary portion of the British crime reduction program, which cost more than six million dollars. She further noted that the data limitations and methodological difficulties involved in measuring "benefits" often achieve little more than ballpark results.

3.3.2 The Underground Economy

Easton and Veldhuis' paper was commissioned by the Department to examine the economic impact of organized crime. The study reviewed attempts to estimate the economic value of the underground economy as a way of estimating the costs of hidden transactions. The paper describes eight broad techniques used to estimate the magnitude of underground economies internationally and concludes that the different methods produce very different results. Depending on the method used, estimates of the size of the underground economy in Canada for 1981-1985 ranged from 1.3% (survey method) to 15.4% (econometric model) of the GDP. The authors further report that the various approaches yield different trends, with some suggesting growth in the underground economy and others showing stability or a decline. They conclude that there is little evidence that one method is superior or that there are universal criteria by which to judge the different approaches.

The paper also addresses conceptual issues regarding the underground economy, such as the measurement of activities (e.g., refuse collection) that are legal but controlled by criminals. These activities are included in the GDP, but the proceeds are returned to both the legitimate employee and, in some cases, the criminal owner. Are they part of the "underground" economy? Some aspects of their enterprise may be, but control by criminals is not an activity *per se* of the underground economy.

A second concern is the accumulated proceeds of past criminal activities. Is there an "empire" of illegal funds and how should it be treated vis-à-vis the wealth and resources of the rest of society? Checking the flow of funds from criminal elements by using the national accounts measure of capital flows is impractical at present. Capital flows are massive. Even the most pessimistic (large) estimate of the underground economy and the size of organized crime are unlikely to provide a measurable impact on capital flows that is somehow distinct from other transactions. There is little professional literature on this topic. Law enforcement may have insights into the manipulation of funds across borders, but the literature does not point to agreed upon statistical techniques that can tease out the relationships between the underground economy and capital flows at the national level.

3.4 Future Initiatives

The commissioned reports and expert consultations on costing analysis support the view that the Department of Justice should have the capacity to cost crime and other justice issues, as well as to use that information in cost-benefit and cost-effectiveness studies. Not all, however, would support an aggressive strategy of the kind adopted in the United Kingdom. An expert panel on emerging crime trends, hosted by the Division, cautioned that costing analyses should avoid the search for an aggregate magic number, as such numbers provide little practical benefit, can be misleading or even fraudulent. The danger is that, once these numbers are used, they enter the public domain and become what a panellist referred to as "facts by repetition".

A potentially useful exercise, in terms of meeting demands for an immediate response (e.g., estimates of the aggregate costs of organized crime) would be to

compile an inventory of "magic numbers" and the criticisms of them. That way, whenever politicians, police, or the media toss a number at the Department of Justice, it can be addressed in an informed manner. Even better, it might be possible to produce an inventory of counter-numbers from those that already exist.

The panel argued that cost-benefit analysis should not be applied to crime-control policies. While a properly done cost-benefit study can produce an impressive looking document, the assumptions underlying such studies do not stand up to serious scrutiny. Decisions regarding the parameters of costing models are arbitrary. As a result, a cost-benefit study can be made to produce virtually any result desired, giving it the illusion of scientific certainty.

The reports on costing reviewed here indicate that the Department, in developing a costing capacity, needs to proceed in full awareness of concerns about the utility and application of aggregate cost calculations and of cost-benefit studies, as well as the complexity of the methodologies available and data limitations. These cautions aside, there is agreement that the Department should take concrete steps toward building its costing capacity.

Based on the seminar and his own analysis, Owen Lippert recommended a multi-year strategy for the development of a costing capacity in the Department of Justice. His work plan, at least in its preliminary stages, provides a reasonable point of departure for the Department and the Research and Statistics Division, providing the appropriate preparations are made.

Specific initiatives and research projects could include:

- A survey of experts probing recommended research methods and data sources;
- Internal consultations to assess the interest in using costing analysis in different areas of responsibility, including criminal law policy, programs, civil law policy, litigation, prosecutions, and legal services as well as consultations with governmental and private research organizations with "costing" experience;
- The formation of an informal advisory group on justice statistics with membership from federal, provincial, academic, and private sector organizations collecting relevant statistical and financial data;
- Preparation of a research paper on the ethical, legal, and political implications of crime and victimization cost estimates; and,
- Developing a pilot costing analysis research protocol that would cover: i) options for, and the cost of, costing research; ii) a strategy for filling in the missing or incomplete data sets; iii) a work plan including consultations with other interested parties; iv) a timeline for completion and publication; and, v) a communication strategy.

4.0 Theme : Family Violence

4.1 Introduction

Family violence and violence against women have been prominent issues on the social policy agenda over the last two decades. In the past three years, the Research and Statistics Division (Family, Children and Youth Team) has commissioned a series of studies dealing with wife abuse and sexual assault. Many of these studies relate to wife assault in rural areas; specifically, in six Ontario and two British Columbia rural sites. A follow-up study assesses the research methods used in the Ontario Rural Woman Abuse Study (*ORWAS*). Also commissioned was a critique of the entire rural woman abuse project by a prominent feminist scholar.

Two additional studies deal with legislative and justice system responses to spousal assault. There is also a study of sexual assault survivors focusing on their reasons for reporting and not reporting criminal incidents, their experiences with the justice system, and issues relating to the disclosure of personal records (e.g., counselling, medical) to defence lawyers and other justice system personnel. Another study supported by the Department of Justice provides a statistical profile of family violence in Canada, including spousal violence, violence and abuse against the elderly, violence against children and youth, and family homicide. One further study is a literature review assessing the extent to which prostitution by youth is linked to experiences of sexual, physical, and emotional abuse at the hands of family members.

4.2 Documents Reviewed

The specific documents upon which this section is based include:

- L. Biesenthal et al. (2000) *The Ontario Rural Woman Abuse Study: Final Report.*
- M. Nelder and S. Snelling (2000) *Women Speak: The Value of Community-Based Research on Woman Abuse.*
- Y. Jiwani, S. Moore and P. Kachuk (1998) *Rural Women and Violence: A Study of Two Communities in British Columbia.*
- M. Bertrand (no date) A critique of the *ORWAS* project and British Columbia reports.
- T. Brown (2000) *Charging and Prosecution Policies in Cases of Spousal Assault: A Synthesis of Research, Academic, and Judicial Responses.*
- Prairie Research Associates Inc. (1999) *A Further Review of the Saskatchewan Victims of Domestic Violence Act.*
- T. Hattem (2000) *Survey of Sexual Assault Survivors.*
- Statistics Canada (2000) *Family Violence in Canada: A Statistical Profile 2000.*
- S. Bittle (1999) *Youth Involvement in Prostitution: A Focus on Intrafamilial Violence.*

4.3 Lessons Learned

4.3.1 Family Violence in Context: A Statistical Profile

The 1999 General Social Survey estimated that 7 % of Canadians who were married or living in a common-law relationship had experienced some form of violence during the previous five years. While the victimization rates were similar for women and men, women were more likely to report having experienced more severe forms of violence, such as being beaten, choked, or threatened by a weapon. Women were also more likely to report that they faced repeated victimizations and sought medical attention or sustained injuries due to spousal violence. Furthermore, women were more likely to indicate that they feared for their lives and that they suffered emotional consequences as a result of spousal violence. Approximately half a million children witnessed a parent being assaulted during the five-year period covered by the GSS survey, raising the concern that a large number of Canadian children may be at an elevated risk with regard to aggression or victimization. Young people, those having a lower income, and those with spouses engaging in heavy drinking were at greater risk to experience spousal violence than were other groups. A comparison of the 1999 GSS with the Violence Against Women Survey (1993) suggests a slight decline in wife assault, although official figures drawn from the Uniform Crime Reporting Survey (UCR2) suggest a modest overall increase in spousal assault from 1995-1999.

Family violence, of course, is not limited to spousal violence. While adults 65 years of age and over are more likely to experience violence at the hands of a stranger than a family member or acquaintance, assaults by family members are most likely to be committed by adult children and spouses. Emotional and financial abuse of the elderly, however, is far more commonplace than physical or sexual abuse.

In 1999, children and youth under 18 years of age made up 60% of all sexual assault victims and 20% of all physical assault victims reported to the police in the UCR2 Survey. They were most likely to be victimized by acquaintances, followed by family members and strangers. Among family members, parents were the most likely to inflict physical and sexual assaults upon children and youth.

The most extreme manifestation of family violence is homicide. Statistics Canada's Homicide Survey indicates that, over the past 20 years, one-third of homicide victims were related to their killers. The spousal homicide rate has declined in Canada over the last 20 years. Women were more than three times as likely as men to be victims of a spousal homicide. Individuals of both sexes under the age of 25 were at greatest risk. Age was also a factor in the case of children killed by their parents. The majority of these victims were three years of age or younger.

4.3.2 Features of Wife Abuse in Rural Communities

Wife abuse in urban and rural areas has many common features, although the consequences are more pronounced in small, remote communities. Various aspects of these communities make it even more difficult for women to leave abusive situations. Women experiencing abuse in rural communities face some of the following:

Patriarchal attitudes supporting male domination in the home and expecting women to remain silent and stay for the sake of the family are particularly common in rural areas. Women are frequently blamed for the abuse they experience and may be ostracized. Denial by the community is common – people often do not want to get involved. Denial may be magnified where the abuser is well regarded in the community. There is also an ethic of self-sufficiency in rural areas that discourages abused women from seeking social and other assistance. Such assistance is often a necessary part of leaving an abusive situation.

Personal isolation arising from abuse is compounded in rural areas by the long distances between homes and communities, lack of public transportation, lack of social services or shelters and information about them, low level of police protection, rigid attitudes, and gossip.

Financial abuse has more dire consequences as there are few job prospects for women in rural areas, as well as limited opportunities for education and training.

Institutional support systems may be seriously limited. Mental health services are lacking in many small communities and medical personnel may be insensitive and are often unaware of resources available. Physicians are often the first professionals to be told of the abuse. Police and school personnel may be insensitive. The justice system frequently is unresponsive to the needs of abused women. Services are often poorly coordinated.

The ***lack of anonymity*** in rural areas inhibits women from seeking services. Abused women may hesitate to seek hospital treatment, for example, because they may know staff there or staff members may be related to the abuser.

Fear may be elevated in rural communities due to the prevalence of firearms and lack of easy access to emergency services. There are fewer safe places for women to go. Harassment and stalking is facilitated by the small size of these communities and lack of anonymity.

The ***ORWAS*** project underscored the role of children as both an impetus for staying in and then leaving abusive relationships, as women were concerned about the impact of spousal abuse on their offspring. One potential consequence of witnessing such abuse is running away and eventual participation in prostitution. One review of the literature on youth prostitution has found that the evidence is somewhat mixed in terms of the link between familial abuse (sexual, physical, or substance abuse) and subsequent prostitution.

4.3.3 Reporting Violent Incidents to the Police

A comparison of the 1999 GSS with the 1993 Violence Against Women Survey indicates that female victims of violence may be somewhat less reticent, than in the past, to report incidents to the police. Even so, rural women who have been abused, as well as sexual assault survivors, are quite negative with regard to the justice system's overall treatment of victims.

The primary reasons offered by sexual assault survivors for reporting crimes include a desire to expose or punish the perpetrator, protect themselves or others (siblings, children, or other women) from abuse, to promote their healing, or as a result of the encouragement and support of others.

Many of the reasons for non-reporting centred on a fear of the justice system. As a result of their own negative experiences or those of other women they knew, spousal assault and sexual assault survivors feared that they would not be believed or taken seriously by the police or the courts. These women mentioned that this concern was especially pronounced when the abuser was a prominent or influential member of their community. Sexual assault survivors also feared the impact of the revelations of the assault on their families and relationships. Furthermore, they feared that their confidential counselling and other records would be revealed to the perpetrator or others during criminal proceedings, placing their personal lives under a microscope. Other women remained silent due to their fear that the perpetrator might harm them or other family members.

4.3.4 Survivors' Views of the Criminal Justice System

Many survivors of spousal abuse and sexual assault had unflattering views of the justice system. Police personnel often respond slowly and are lacking in sensitivity as victims' experiences are often invalidated. Restraining orders/peace bonds and their enforcement tend to be viewed with cynicism. Mandatory charge policies are implemented inconsistently. Courts, too, are viewed as often trivializing woman abuse. Survivors of sexual assault who hoped their experiences would be heard were often disappointed as courts imposed limits on what they could say. Those wishing to confront their assailant with the consequences of their actions found they were unable to do so. Women who had been through the criminal justice process described it as cold, uncaring, and not conducive to healing. Some spousal abuse and sexual assault survivors regard the penalties meted out to abusers as too lenient and not worth the personal price they paid in coming forward and testifying. Moreover, in rural areas, the small courthouses facilitate the intimidation of abused women and legal services were considered inadequate.

4.3.5 Mandatory Charging and Prosecution

A debate rages among academics, victim advocates, and the judiciary regarding the benefits of mandatory charging and prosecution of those committing spousal assault. Some argue that mandatory charging and prosecution is disempowering, denying victims' right to choose whether to charge and forcing them to testify against their will. Proponents of this position argue that this approach re-victimizes women and that coerced testimony may be less reliable as victims may lie or recant. Advocates of mandatory charging and prosecution argue that, while imperfect, mandatory policies validate the victim's situation and offer protection for women at large, as victims are encouraged to report abuse and consequences will ensue for the perpetrator. Evaluations of the effects of mandatory charging policies are mixed in terms of their impact on further incidents of violence.

Victims tend to support mandatory charging, as their experience is validated, the violence is stopped immediately, and a strong message is sent to the abuser regarding the unacceptability of his conduct. Victims, as a whole, are far more ambivalent toward mandatory prosecution, favouring a more flexible approach. Many wish not to proceed, as they seek to reconcile with their partners, fear reprisal while awaiting trial, depend on their partners financially, and feel disempowered by their loss of control over the handling of their case, as well as by the prosecution process itself (e.g., delays, lack of information about the progress of the case). Many victims appear to use the justice system as an immediate intervention to manage the violence and then wish to disengage from the system once their goal has been met.

A Saskatchewan study has assessed the effectiveness of Emergency Intervention Orders, which are intended to provide immediate, short-term protection to victims of family violence. The use of these orders is increasing in Saskatchewan and they are issued in the majority of cases in which they are requested. They can complement criminal proceedings and have been viewed by victim services personnel and justices of the peace as an effective means of helping family violence victims. Aside from protecting victims, they allow victims of spousal assault and their children to remain in their home communities, while also emphasizing the unacceptability of spousal abuse.

4.3.6 Services Viewed Positively By Victims

Some sexual assault survivors felt that the entire criminal justice system required an overhaul and that there was little of benefit to women who reported acts of violence against them. Other victims felt that they benefited substantially from emotional support received from other women who had faced violence. Spousal assault victims, in particular, mentioned transition

houses, women's centres, community-based outreach programs, and victim assistance services as beneficial in a variety of ways. Shelters, for example, were described as safe places in which abused women could be heard and their experiences validated. They also provide referrals and assistance with accessing legal services, social assistance, and housing. Furthermore, shelters provide counselling and information about abuse, as well as advocacy and court support.

4.3.7 The Research Process Adopted in *ORWAS*

The research methods used in the Ontario Rural Woman Abuse Study were themselves the subject of a separate study. Survivors from the six rural sites, as well as community researchers and project leaders, were interviewed regarding the research process – a process adopting a collaborative, community-based approach involving open-ended interviews. Focus groups involving local service providers, community members, and leaders were also conducted.

Many of the survivors were interviewed in their homes and felt that it was important to have a personal contact with a sensitive interviewer in a familiar setting. The open-ended format, sensitivity of the researchers, and the opportunity provided the women to give feedback on the transcripts and the draft report rendered the research process empowering and fostered disclosure. Enlisting survivors as participants in the project appeared to boost their confidence in their ability to make a contribution to knowledge regarding wife abuse. The methodology allowed women's voices and experiences to be heard.

The use of researchers familiar with each community appeared to be critical as they possessed an important knowledge of each site. The community researchers found the interviews and the reading of the transcripts emotionally taxing, underscoring the need for training on methods of coping with vicarious trauma. These researchers stated that they gained new insights into the issue of woman abuse. The community researchers and project leaders found that morale and commitment were enhanced by the bonding that occurred during the training sessions and meetings. The project leaders at Justice Canada also found that the collaborative approach to research raised their awareness of spousal abuse, imposing upon them an increased onus to take action.

The study identified some benefits of a collaborative partnership between government and community. One benefit is that hard-to-reach community members, such as spouse abuse survivors, can be located and queried about their opinions and experiences. The opportunity afforded survivors to comment on draft reports validated their experiences. One concern with such a partnership is that deeper involvement by those conventionally referred to as “research subjects” raises expectations that policy changes will occur and raises cynicism to even higher levels when changes do not immediately materialize.

Community researchers underscored the benefits of knowing the community and being known in it, in terms of the recruitment of study participants and the rapport with the survivors. They considered it important that those familiar with rural life play a key role in the design and implementation of the research. The collaborative, community-based methodology was found to provide skills to community members, raise awareness of spouse abuse, and engender an increased sense of responsibility to effect change.

4.4 Future Initiatives

The Research and Statistics Division is building on the above-mentioned projects in several ways. The *ORWAS* project adopted a novel approach and steps are being taken to publish and widely disseminate the reports as a compendium and by presenting the study at conferences, such as the American Society of Criminology annual meetings in the fall of 2001. Another outcome of *ORWAS* was a report documenting and assessing the research methods used. Other research projects at the Department of Justice are adopting the principles and methods of *ORWAS*.

The Sexual Assault Handbook is being updated in keeping with previous research (e.g., the study of sexual assault survivors) emphasizing that this task was a priority for women who may fall victim to this form of violence.

Previous research, including *ORWAS*, identified post-separation violence and children witnessing violence as two areas requiring further exploration. The Department of Justice has initiated projects in both these areas that make use of the latest (1999) General Social Survey data. Future projects include a study of the physical and sexual victimization of children and possible studies of criminal harassment victims and elder abuse.

The reports discussed above contain a long list of recommendations to improve the community, justice system, and individual responses to wife abuse and

sexual assault. These recommendations are far too numerous to present here individually; however, they fall into the following categories:

An increased awareness about abuse, services for survivors, and changes in attitudes about woman abuse and toward women in general are required through public education and changes in male socialization.

The justice system needs to be more sensitive to survivors' needs and to stop blaming abused women; justice system personnel need more training in dealing with violence against women; restraining orders and peace bonds need to be more vigorously enforced; survivors need to have greater input into key decisions affecting them in the legal proceedings against the abuser; abusers need to be held accountable for their behaviour; and the treatment of the abuser ought to be given serious consideration.

Emergency intervention measures to safeguard abused women in the short-term and social, as well as legal, services to assist them in the long-term ought to be improved and better coordinated. Shelters, in particular, play a critical role in facilitating the transition of women from abusive situations.

Women in abusive relationships need to be encouraged and supported in identifying the behaviour as abusive and ought to develop safety measures and support networks, become aware of services in their communities, and not remain in abusive relationships for the sake of their children.

Health professionals require better training in abuse issues and physicians need to be aware of the key role they play in identifying abuse, referring and treating patients. Mental health services need to be more accessible to rural residents.

Projects that might be pursued in order to achieve a better understanding of, or response to, family violence could include:

- A policy piece on how to deal with the risk factors and mitigate the consequences of wife abuse in rural areas. How do we deal with the community attitudes, social isolation, financial dependency, and other factors that have been shown, in both the Ontario and British Columbia studies, to be so strongly associated with abuse? How can service delivery to these areas be improved?
- Further research, based on the GSS, agency data, and other sources, identifying risk factors related to spousal abuse and testing the predictive power of variables such as age, social class, and alcohol abuse.
- An empirical study examining trends in spousal abuse. The GSS suggests that its incidence has declined in the last few years, while UCR data suggest the reverse. This contradiction among these two data sources needs to be explained.
- A study explaining the long-term decline in the rate of family homicides. Is this phenomenon due to increasing family breakdown, the greater ease of divorce, improved mental health services, or other factors?
- A literature review and empirical study identifying the risk factors underlying the killing of children less than three years of age. The Homicide Survey has shown that, among children, this age group is by far the most vulnerable.
- An examination of physical and emotional abuse directed against the elderly that builds upon and is more qualitative and in-depth than the GSS.
- A study of youth prostitution, building on the literature review and exploring the link between childhood physical and sexual abuse and subsequent prostitution. Such a study can flesh out the importance of situational factors (financial stresses, adverse influences on street youth) relative to family-related factors.
- A study exploring various models used by Crown attorneys to achieve high conviction rates in spousal assault cases despite the challenges posed by reluctant witnesses (e.g., that adopted by the Prosecutorial Unit of the Winnipeg Family Violence Court). There, victim cooperation is elicited through negotiation, rather than induced through coercion. Are there other models that achieve victim cooperation in a respectful manner?
- A policy piece on the measures required to address survivors' concerns about the manner in which the criminal justice

system responds to spousal and sexual assault.

- A policy piece on the disclosure of survivors' personal records. In light of what has been learned about the adverse effects of such disclosure on survivors – including their reluctance to come forward – should the bar be raised in terms of the circumstances in which such records are to be disclosed to defence attorneys?

5.0 Theme : Sentencing

5.1 Introduction

The area of sentencing continues to attract widespread public and professional interest. Evidence of this interest can be found in the publication of new texts on sentencing, as well as special issues of several scholarly journals. As such, sentencing remains a policy priority for the Department of Justice. The major reform in the area of sentencing took place less than five years ago (in 1996) and, in many respects, the criminal justice system is still adjusting to these changes. The primary focus of scholarly attention has been upon the conditional sentence of imprisonment.

Far less attention has been paid to another area of legislative activity: amendments to s. 745.6, which regulates applications for judicial reviews of parole eligibility for offenders convicted of murder who have served 15 years of their sentence. Finally, more recently, there has been a renewed interest in the question of mandatory sentencing. This interest has been provoked by the appeal to the Supreme Court and the subsequent judgment in *R.* v. *Latimer*. Another Supreme Court judgment (*R.* v. *Morrissey*), dealing with the constitutionality of the four-year mandatory minimum sentence of imprisonment, has drawn attention to the mandatory sentencing legislation of 1995 (Bill C-68) dealing with firearms offences.

This section presents the results of a review of activities and research reports in the area of sentencing completed by the Research and Statistics Division over the past two years. Much of the Division's research activity in this area has focussed on the conditional sentence of imprisonment. Also noteworthy was a major review of the literature on the effects of mandatory minimum sentences on crime and justice system expenditures.

5.2 Documents Reviewed

The specific documents reviewed for this section were:

- Canadian Centre for Justice Statistics (2000) *Estimate: Cost Recovery Study on Conditional Sentencing.*[1]
- T. Gabor and N. Crutcher (2001) *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities and Justice System Expenditures.*
- K. Hung (2000) *Workbook on Sentencing Information from Adult Criminal Court Survey (1998/99).*
- D. North (2000) *Conditional Sentencing "Post-Proulx": A proposal for assessing the impact of the Supreme Court Decision through a "Pre-Post" analysis in British Columbia.*[2]
- Research and Statistics Division (2000) *The Changing Face of Conditional Sentencing. Symposium Proceedings.*
- J. Roberts, A. Doob, and V. Marinos (2000) *Judicial Attitudes to Conditional Terms of Imprisonment: Results of a National Survey.*
- J. Roberts and C. La Prairie (2000) *Conditional Sentencing in Canada: An Overview of Research Findings.*

In conjunction with the fact sheets on conditional sentencing and the "applications under the faint hope" clause, these documents represent the output of the Division in this area. As well, this section draws on interviews with departmental officers.

5.3 Lessons Learned

5.3.1 Ensure Close Co-ordination Between Policy/Legislative Initiatives and Research Requirements.

The conditional sentence of imprisonment was introduced in 1996 as part of Bill C-41, the general sentencing reform initiative. The problem created for the Research and Statistics Division was that no plans were put in place to collect data with respect to the usage of the conditional sentence. The Canadian Centre for Justice Statistics was not prepared to provide such data, because the information was not being collected by the provincial court information systems. This meant that the Research Division was required to gather short-

[1] This is one of several empirical analyses of sentencing produced by the same author.
[2] A research report describing the results of this research is expected in the near future.

term information directly from the provinces. The lesson to be learned here is that as legislation is being moved through the Parliamentary review process, steps should be taken to ensure that once a bill is passed, the Division will be in a position to collect or summarize information, with a view to reporting back to the policy sector.

5.3.2 Importance of Collaborative Research

One of the research activities completed in 2000 involved the convening of a research-oriented Symposium on the evolution of conditional sentencing. It was held in collaboration with the University of Ottawa and took place at the Faculty of Law on Saturday May 27, 2000. Over 90 criminal justice professionals, students, public servants, and members of the judiciary attended the sessions. As well, leading academics from Ontario and Quebec made presentations[3], as did a Court of Appeal judge and a trial court judge[4]. In addition, this event carried a modest cost as it involved a collaborative effort with a university.

The lesson here is that public/professional legal education initiatives can be mounted expeditiously and economically by drawing on partnerships in the academic world. Since another May Symposium on a sentencing-related topic is being held in May 2001[5], I would recommend that the Division consider planning a follow-up Symposium in Ottawa in May 2002, to continue the "series".

5.3.3 Conduct Original Research, When Necessary

Many of the activities of the Research and Statistics Division involve summarizing or analysing research findings from other sources (such as the Canadian Centre for Justice Statistics) for the policy sector or other clients. However, in the area of sentencing, the Division ran into two issues (conditional sentencing; section 745.6 applications) where such original research did not exist. As noted earlier, CCJS was not collecting data on conditional sentence orders (even now the Centre is having extreme difficulty generating critical information from provincial authorities with respect to the optional conditions imposed). The necessity for the collection of original data on the topic of conditional sentencing has now receded, as the Centre is now slowly incorporating conditional sentence orders into the Adult Criminal Court Survey and the Adult Correctional Survey.

Similarly, reliable, up-to-date data were not available from CSC regarding the number and outcomes of "faint hope" applications. The Division was, therefore, forced to collect original data; or, in the case of "faint hope" applications, to seek alternative sources of information.

5.3.4 Publish, Publish, Publish!

Sentencing is one of the most visible components of the criminal justice system; it attracts a great deal of attention from the news media, politicians, and members of the public. However, the Canadian Centre for Justice Statistics does not produce a great deal of research on the topic beyond the Adult Criminal Court Survey (ACCS) *Juristat* , which appears once a year. One "overview" report per year is not much information on such a critical topic[6]. This means that there is an obligation and an opportunity for the Research and Statistics Division to produce and disseminate research. The volume of research that the Department has produced over the past year or so has filled an important vacuum with respect to sentencing research. This is particularly the case with respect to conditional sentencing.

The reports produced by Dr. Hung provide a good example of important data that are unavailable from the Canadian Centre for Justice Statistics. It would be valuable to make reports such as these, available to the public, as expeditiously as possible.

5.3.5 Develop a Program of Research

All too often, research is reactive in nature. Research projects get identified in reaction to specific policy-based requests. The immediate, short-term policy needs obviously have to be fulfilled, but they should be placed within a broader, long-term research workplan. It would be beneficial to the Division to have a fairly clear idea of what research is required over a longer period of time. Also, the Division might want to give consideration to placing it on the Web, in order that it be available to all parties wishing to know what kinds of research the Department is undertaking, or envisages undertaking. This procedure is followed in other departments and also by other justice research organizations, such as the British Home Office.

Finally, on the subject of research workplans, a recognition that sentencing issues are relevant to other

3. These included: Professor Kent Roach from the University of Toronto, Professor Patrick Healy from the University of McGill, Professor Allan Manson from Queen's University and Professor David Paciocco from the University of Ottawa.
4. Mr. Justice William Vancise from the Saskatchewan Court of Appeal.
5. Restorative Justice Symposium, Victoria College, University of Toronto.
6. More detailed information is available from shelf tables, but these are used only by a small number of individuals.

policy areas encompassed by the Criminal Law Policy Sector is important. For example, sentencing is relevant to the issue of victims in the criminal process and to youth justice. The Division's activities reflect this reality; at least two sentencing-related projects are currently underway with both the Policy Centre for Victims' Issues and also the Youth Justice Team.

5.4 Future Initiatives

Many gaps exist with respect to the area of sentencing. Some of these are currently being filled by ongoing initiatives; others remain to be addressed. One useful exercise might be to conduct a review of Bill C-41, the 1996 sentencing reform bill, to determine the issues in need of research attention.

5.4.1 Conditional Sentencing

We still know little about the number, nature, and duration of conditional sentence orders imposed. We need much better information on the administration of these sanctions. This implies conducting joint research with the provincial correctional ministries responsible for the supervision of offenders serving terms of imprisonment in the community.

Among the specific questions are the following:

What has been the effect, on conditional sentences imposed at the trial court level, of the unanimous guideline judgment from the Supreme Court?

Have conditional sentences become more rigorous as a result of the Supreme Court decision?

What kinds of optional conditions are being imposed on offenders serving conditional sentences, how often are these conditions being violated and with what consequences for the offender?

It is important to note that many of these questions will be addressed by the ongoing collaboration between the Department of Justice and the Canadian Centre for Justice Statistics. A feasibility study has been completed and it is anticipated that data with respect to these issues will be available in the near future.

5.4.2 Effect of Statutory Aggravating Factors Identified in s. 718.2 of the *Criminal Code*

The recently introduced omnibus bill creates another statutory aggravating factor, this one involving home invasions. The criminal law policy sector chose this route rather than the creation of a new substantive offence, but we have little information about the effect of codifying an aggravating circumstance. We do not know whether the codification of the aggravating factors in 1996 affected sentencing patterns in cases in which these factors were present.

5.4.3 Mandatory Minimum Sentences

In 1995, Parliament approved a series of mandatory minimum terms of imprisonment for offenders convicted of a number of offences involving a firearm. Although the Department has commissioned a general review of the effects of mandatory sentencing (see Gabor and Crutcher, 2001), no research whatsoever has been conducted on the impact of these specific minima, despite the fact they attract widespread professional interest[7]. One such project might involve an examination of public knowledge of, and attitudes toward, the mandatory minimum sentences of imprisonment.

5.4.4 Alternatives to Imprisonment and Crime Victims

Little is known about the views of victims with respect to the use of alternatives to imprisonment and, in particular, the conditional sentence of imprisonment. What is needed is some systematic research into the reactions of crime victims in cases in which a conditional sentence is imposed on an offender convicted of a personal injury offence, particularly the more serious crimes. This research would obviously involve the Policy Centre for Victims' Issues in the Department. A project is currently being conducted in the Division on this issue with respect to conditional sentencing and victims in the North, but it could be beneficial to expand the project to include some urban centres such as Toronto or Vancouver.

[7] For example, a symposium was held at the Osgoode Hall Law School in March, 2001 on the topic of mandatory sentencing, with the papers being published in a future issue of the Osgoode Hall Law Journal. In May, 2001, another day-long symposium on the issue was held in Ottawa.

6.0 Theme : Community/Restorative Justice

6.1 Introduction

Canada is experiencing an increased interest in community-based and restorative justice approaches to crime. They have emerged, in part, due to concerns with the cost and general over-use of the criminal justice system. There is also emerging dissatisfaction with traditional, punitive responses to crime and a recognition of the value of addressing the needs of victims, offenders, and communities more broadly. Community-based and restorative justice approaches are receiving increasing emphasis since the passage of Bill C-41. As Latimer and Kleinknecht (2000) point out in their report, these approaches require "not only a change in practice, but also a transformation in thinking".

This section constitutes an empirically-based analysis of community and restorative justice in Canada. The papers reflect the need to be both more inclusive, with respect to victims and communities, and more reparative with respect to victims and offenders. As such, the methodological approaches transcend traditional criminal justice measures of "success", such as recidivism and justice system costs, to include views and experiences of victims, offenders, and communities.

6.2 Documents Reviewed

The four studies discussed in this section are as follows:

- T. C. Landau (2001) *An Evaluation of Post-Charge Diversion in Old City Hall, Toronto.*
- J. Latimer and S. Kleinknecht (2000) *The Effects of Restorative Justice Programming: A Review of the Empirical Research Literature.*
- J. Latimer, C. Dowden, and D. Muise (2001) *The Effectiveness of Restorative Justice Practices: A Meta-Analysis.*
- S. Kleinknecht (2001) *Community Satisfaction With and Knowledge of the Criminal Justice System: A Review of the Literature.*

6.3 Lessons Learned

6.3.1 The Positive Effects of Community and Restorative Justice Approaches on Recidivism and Offender Compliance

In the meta-analysis of 35 individual restorative justice programs, Latimer, Dowden and Muise found that restorative justice was significantly more successful at lowering recidivism rates than traditional approaches, such as probation, incarceration, and court-ordered restitution. Although the authors point out that the research contains an inherent 'self-selection bias' which diminishes confidence in the findings, it appears that those who choose to participate in restorative justice are more successful at remaining crime-free. In addition, Landau, in her research into the effectiveness of two post-charge diversion projects in Toronto, demonstrated very low recidivism rates. Only 4 % of provincial offenders (i.e., first-time minor offenders) and 5 % of federal offenders (i.e., cannabis possession) had an additional criminal conviction within a six-month follow-up period.

The literature review of restorative justice programs by Latimer and Kleinknecht revealed that a very high number of offenders and victims were able to negotiate and complete restitution agreements in restorative justice programs. This was further confirmed by the meta-analytic work, which also found significantly higher rates of restitution compliance among offenders participating in restorative justice approaches compared to offenders exposed to court-ordered arrangements.

6.3.2 The Positive Experiences of Victims and Offenders

Both of the research projects in restorative justice found that victims tended to be satisfied with the restorative justice experience and that offenders were both satisfied and viewed these programs as fair. The meta-analysis also reported that both victim and offender satisfaction ratings were significantly higher among those participating in restorative justice programs than among comparison groups of victims and offenders experiencing traditional approaches to justice.

6.3.3 Restorative Justice and the Criminal Justice System

Interviews with key stakeholders in the Toronto post-charge diversion projects (i.e., Crown and defence counsel, representatives from community agencies, and diversion clients) indicated widespread support for post-charge diversion as it was implemented in these projects. A broad range of benefits for the accused, community, and the justice system were found to be associated with diversion. However, some concerns were expressed with regard to the fair and consistent application of the law, which is an inherent problem in both traditional diversion and restorative justice programming.

The literature review revealed that the estimated costs of restorative justice programs are lower than traditional justice system responses. There is not clear evidence, however, if there is a "net-widening" effect from community-based justice programming in general, which would increase overall costs and controls on offenders.

The research also revealed significant gaps in our knowledge regarding the effects of community-based/restorative approaches on the criminal justice system. The gaps include the following:

- there is little empirical research on "net-widening" under restorative justice approaches;
- there is an absence of empirical research on the effects of restorative justice on the roles of the police, Crown Attorneys, court and/or correctional officers; and,
- there is a limited understanding of the impact of diverting offenders into community-based approaches on official and unofficial justice data (i.e., reporting trends using the Adult Criminal Court Survey from Statistics Canada). We may need to develop more sophisticated methods of collecting crime-related data in Canada.

6.3.4 The Community's Views of the Criminal Justice System and of Restorative Justice

The literature review on restorative justice revealed that little evidence exists on the effects of restorative approaches on community participants. We do not know if there are discernable changes in participants' satisfaction with the justice system or their fear of crime. Kleinknecht's review of research on community satisfaction with, and knowledge of, the criminal justice system found that there are generally positive views toward restorative justice but that the views of the public toward the justice system overall is less positive. The most salient findings include the following:

- While attitudes toward the various criminal justice components vary (police are viewed more positively than the courts and correctional systems), there are some consistently negative views toward some aspects of the administration of justice. In particular, the system is seen as too lenient, favouring the wealthy, and biased against minorities, the poor, women, and victims of crime.
- Attitudes vary according to variables such as race, age, income, level of education, and previous contact with the police.
- Knowledge of crime and the criminal justice system is poor. For example, many believe crime, especially violent crime, is higher than it actually is and that it is on the increase, even though it has declined consistently over the last decade. The public generally has little specific knowledge of either the *Criminal Code* or the *Young Offenders Act*.
- News media, in particular newspapers and television, are the most frequent sources of information about crime and criminal justice.

6.4 Future Initiatives

All four reports discussed point to either the apparent success of restorative justice programs or the generally positive public or community response to them. As a result, such programs are seen as key areas for further program research and development.

Specifically, the Division is currently building on the lessons learned by attempting to develop research in this area that fills key gaps in knowledge. For example, while intuitively restorative justice programs appear to be less expensive to operate than the traditional system for certain offences, there are issues that need to be examined such as the potential 'net-widening' effect and the additional costs associated with offenders not complying with restitution and re-entering the traditional system. Also, there are clear gaps

surrounding the impacts of community-based justice on community members themselves. The Division is working on a project that will address this and other gaps identified in the previous research.

With regard to the evaluation of restorative justice programs, Latimer, Dowden and Muise suggest that standard elements should be included in the reporting of future research results such as gender, age and criminal history of offender, specific program practices such as the use of training or manuals and information on the types of crimes (i.e., property versus offences against the person). In order to more confidently claim restorative justice successful, future evaluations of restorative justice programs should also consider the confounding effects of a self-selection bias. The possible higher initial motivation of restorative program participants, as opposed to comparison groups, makes it difficult to determine the actual impact of program participation. Motivation must, therefore, be measured prior to program participation in both the treatment and control groups.

At the system level, measures of success should go beyond traditional analyses to include the impact of restorative justice programs on the various components of the formal criminal justice system. More sophisticated data collection methods are needed to take into account the increasing number of community programs that operate outside or along side the formal system.

The review on community knowledge and satisfaction recommended that the government must continue to work towards dispelling public misperceptions about the criminal justice system. In addition, it must work toward addressing those areas viewed negatively, but accurately, by the public (e.g., that the system moves slowly and is too complex to understand). Reliance on new technologies, such as the Internet, to educate the public about crime and criminal justice is but one area in which significant inroads might be made.

7.0 Theme : Northern Justice Issues

7.1 Introduction

The Department of Justice has made a commitment to assist the government of Nunavut in developing a justice system that meets the needs of its population. This initiative includes research to assist the Nunavut government in making policy decisions, as well as monitoring and evaluating programs. General guiding principles in Nunavut include an emphasis on community justice approaches, building local capacity, and engaging all voices of the community in these processes.

The five studies reviewed here pertain directly to structures and processes in Nunavut, describe northern issues of relevance to Nunavut, or review legislation in other jurisdictions for consideration by the government of Nunavut.

7.2 Documents Reviewed

The studies reviewed for this section are:

- M. Crnkovich, L. Addario and L. Archibald (2000) *Inuit Women and the Nunavut Justice System.*
- Department of Justice Canada (2000) *Summary of the Inuit Women and the Nunavut Justice System Workshop.*
- N. Giff (2000) *Nunavut and Justice Issues: An Annotated Bibliography.*
- J. MacDougall (2000) *Access to Justice for Deaf Persons in Nunavut: Focus on Signed Languages.*
- T. Roberts (2001) Review of Provincial and Territorial Domestic Violence Legislation and Implementation Strategies.

7.3 Lessons Learned

7.3.1 Planning, Evaluation, and Accountability

In her review of 32 documents related to community justice initiatives in Canada, Giff identified a number of elements involved in the effective planning and monitoring of programs:

- the need for a high level of organization (i.e., ways of knowing the community), defining the goals of an initiative, and developing plans for implementation;
- seeing justice as a process; i.e., maintaining flexibility, having feedback mechanisms, accepting that learning is accomplished by trying, and realizing that refinement will always be necessary;
- communities addressing what "success" means to them, how it will be measured, and where efforts at change will be focused;
- acceptance that there is no "right way" to implement community-based justice – communities will vary in terms of their needs, desires and capacity;
- clarity about whom the program is serving (e.g., youth and adults often commit different types of crimes and have different needs); what form it ought to take in relation to existing institutions (e.g., operate within the system, as in sentencing courts, or outside, as in tribal courts); the meaning of prevention (e.g., preventing recidivism or preventing the onset of criminal activity. Also, prevention for adults often involves healing, but for youth means addressing factors that get youth started in crime).

Crnkovich, addressing the concerns of women, emphasizes the need for effective monitoring and evaluation of the three main components of the new approach to justice in Nunavut: the unified court structure, justices of the peace (JP), and community-based justice initiatives. While acknowledging that these components address cultural and accessibility concerns, she states that the potential for JP courts and community-based justice committees to further victimize women is equal to that of the existing system. Hence, mechanisms are needed to respond to complaints about the committees or JPs and their determinations. In her workshop summary, she places

the issue in the wider context of accountability, calling for:

- a readily accessible record of the decisions of judges;
- a mechanism to review the conduct of JPs and community justice committees (CJCs);
- standards for JPs and CJCs;
- understanding of the JP's role;
- appeal mechanisms (complaints, redress) of CJC decisions.

Roberts' review of domestic violence legislation in five jurisdictions suggests that the following planning issues need to be assessed before such legislation is implemented in Nunavut:

- multiple players at the community and territorial level need to perform as a team if the legislation is to be workable;
- safety planning and follow-up capacity at the local level are critical if victims are going to be helped rather than re-victimized by well-intentioned legislation;
- resource needs over and above personnel (technology and training) need to be assessed.

7.3.2 Culture, Tradition, Communication, and Language

All authors addressed the issue of how respect for and sensitivity to Inuit cultural traditions can be interpreted and played out in a modern context. MacDougall concludes:

> ...whatever the status of signed languages used by the deaf people of Nunavut, these languages, or at the very least these complex communication systems, provide the basis for social intercourse in their daily life and therefore should be available in the courts and the justice system generally. (p.17)

He also notes that:

- deafness and sign language are not stigmatized in Nunavut;
- a surprisingly high number of hearing persons use the sign language (in contrast to experiences in southern Canada);
- there is a good deal of transparency between signed languages in different communities;
- the proclivity of individuals to adapt or generate "new" signs when moving to a new community is an important indicator of the capacity of the signing system to adapt to new situations. This has obvious positive implications for its use in courts and the justice system generally.

MacDougall recommends that the court interpreter training program at Arctic College in Iqaluit be further developed to draw on the existing expertise of hearing and deaf people who know the appropriate signed languages.

Giff addresses three cultural themes covered by the works she reviews:

- despite concerns in some quarters that traditional Inuit mechanisms for social control are ineffective in the modern world, there is a conviction that the *spirit* that guided traditional mechanisms can be incorporated into community-based initiatives;
- the implications that the high use of Inuktitut have for any given initiative must always be examined;
- "liaison services" (e.g., Native Courtworkers, victim-witness programs, Inuktitut-English interpreters) are vital not only as resources in themselves, but in their interface between community-based initiatives and the criminal justice system.

Crnkovich picks up the latter theme in relation to public education. She states that, if adequately trained, JPs and CJCs could act as public educators to increase understanding among Inuit of the judicial system and the new initiatives in Nunavut. Such efforts, in turn, would enable the public to evaluate the performance of all players in the new system.

In her workshop summary, Crnkovich emphasizes that the existing court structure and administration of justice is rooted in Euro-Canadian culture, that the system is punitive, and that both of these aspects of the system are contrary to Inuit culture. Of particular note are judges' cultural misunderstandings at sentencing stages—misunderstandings that result in decisions prejudicial to women. There is also a tension involved in trying to

make the system more culturally appropriate, insofar as Inuit traditional values associated with "not passing judgment" create reluctance to convict or punish offenders, especially in spousal and sexual assault cases.

7.3.3 Gender Bias, Victims and Community: Whose Voices are Heard?

Giff states that it is clear from the works she reviewed that domestic violence is an issue that must be addressed as an integral part of any justice strategy. Re-victimization of women occurs due to two fundamental reasons: 1) negative views of women held by powerful community members and 2) the inability of community initiatives to protect women from further abuse. Giff also notes that the "offender focus" in community-based justice – which arises from the emphasis on healing and preventing the cycle of crime – can preclude real attention being given to the needs of the victim.

Roberts further notes that an assessment of the capacity of communities to protect spousal assault victims from further victimization is critical in deciding whether domestic violence legislation which removes an offender from his home is feasible or appropriate.

Crnkovich stresses that gender and racial sensitivity training is necessary for all justice personnel – judges, Crown Attorneys, RCMP officers, JPs, and community justice committee members – to help bridge the distance between the experience of Inuit women with both the community-based justice initiatives and the Euro-Canadian justice system. She notes, for example, that some women have experienced elders who do not view violence against women as a serious problem or do not have the acquired skills to provide effective counselling to those assaulting their spouses.

Equally, she cites numerous stereotypes used by judges to mitigate punishment in sexual assault cases (e.g., that women who are intoxicated or asleep when assaulted do not suffer as serious an assault as if awake or sober; that there is no prima facie age restriction on sexual intercourse in Inuit culture, so that sexual assault is sometimes "acceptable" in Inuit society; that coming from a good family, being an accomplished hunter, a high level of education, or alcohol consumption should be mitigating factors in sentencing).

7.3.4 Need for Training

Crnkovich explores concerns about the manner in which community justice committees deal with violence against women. She concludes that many of those concerns – expressed by Inuit women who survived violence – are actually about resources and training: the lack of adequate resources and ongoing training provided to these committees to perform these tasks in a manner that protects and supports the women and adequately addresses the underlying reasons for the violence.

She emphasizes the need for training JPs and committee members in criminal justice rules, procedures and practices, Inuit traditions and practices, and the dynamics of abuse; in particular, sexual violence against women. Furthermore, she states that there is a need for an improved mechanism to screen candidates for all judicial positions on the basis of their awareness of gender, racial, and cultural bias.

Roberts stresses the following elements in training to support domestic violence legislation:

- an understanding of team work requirements within a community;
- knowing the legislation and knowing when to use tools other than domestic violence legislation;
- teaching about the dynamics of domestic violence;
- emphasizing the need for compassion for the victim; and,
- covering the elements of safety planning.

7.3.5 Dealing With the Complexity of Violence and Other Crime

All authors identified the need to understand and work with the complexity and multiple components of these issues, rather than approaching them from one perspective only. Thus, Giff urges that the strategy developed must incorporate all relevant social, economic, and political factors. Roberts states that new approaches to domestic violence legislation consider training not just as providing information, but as a form of community development in which participants are encouraged to develop a more comprehensive awareness of the range of players involved and the need to constantly reinforce the relations and team work of players.

Crnkovich provides three examples of the need for a holistic approach:

- Attempts to make the court system more "culturally sensitive" by turning to elders for advice may have a negative impact on women and child victims of family

violence where the elders blame women for the violence they sustain.
- Increased roles for community justice committees to deal with more serious crime must be analyzed and evaluated in the context of the resources available in the community, training opportunities, levels of public awareness and attitudes toward violence against women and children, and an appreciation of whose voices are being heard as representatives of the community.
- Reforms enabling Inuit who only speak Inuktitut to participate in jury trials, while being "culturally appropriate," create problems insofar as the traditional Inuit reluctance to judge one another results in few convictions in sexual assault trials. Thus achieving progress in cultural rights can result in a diminution of gender rights if a more holistic approach is not undertaken.

7.4 Future Initiatives

Future efforts in dealing with Northern Justice issues may want to consider:

- the importance of developing ongoing planning, monitoring, and evaluation mechanisms to ensure the high quality and accountability of justice programs;
- the effects on program design of the high use of Inuktitut;
- that justice reforms be planned and implemented to reflect multiple visions and the concerns of *all* members of the community;
- that the needs of women and victims be more fully addressed in any justice reforms;
- that training is a critical need at all levels of the new justice system, not just to increase knowledge of the criminal justice system, but to develop an understanding of Inuit traditions and practices, the dynamics of abuse and sexual violence, safety planning for victims, and the need for accountability at all levels.

8.0 Theme : Disseminating Research Results

8.1 Introduction

Providing our research and statistical results to justice policy-makers and practitioners within government, to the research community, and to the general public in a timely and relevant way is a common goal of the Division. A unit was created within the Division almost 18 months ago to address the need for more effective dissemination strategies. It is responsible for several broad areas: product preparation and publishing; dissemination of information; a seminar series; outreach activities including marketing, promotion, and special events; and using technology, such as the internet and intranet, to facilitate these goals.

To date, a variety of new print publications have been developed, a new Research and Statistics website has been launched, and outreach activities such as conference participation, Research Week, and the Seminar Series are ongoing. These are described below.

8.1.1 Print Publications

We distribute our research and statistical results via print products to targeted audiences, some as large as 800 participants, depending on the type of publication and timelines, and topicality of the content. Several shorter, more digestible products have been created, including Fact Sheets, Question and Answer Sheets, one-page Highlights, and Research and Statistics Summaries. Our Research Report Series continues with a wide readership within the research community and the general public, and the quarterly publication *JustResearch* is in its second year of publication. Several new publications prepared in cooperation with Communications have been well received, including the Research and Statistics Series of reports, and the Methodology Series.

8.1.2 Website

The Internet is essential to providing research and statistical results in a timely, relevant and responsive way. Internet users have immediate access to research and statistics results, and also significantly reduces some costs related to publication, such as printing and postage. The Research and Statistics Division's website has been completely revised, providing users with hundreds of our publications in both official languages. In addition, users can find out information about upcoming events, about our Visiting Scholar Initiative and other employment opportunities, and can locate a Research or Statistics Officer contact in any area of research.

8.1.3 Conference Participation

Outreach activities, such as participation at national and international conferences, is a key component of Research Dissemination. Researchers and statisticians participate in conference sessions as attendees, speakers and panellists, and engage with conference participants at our exhibit. The exhibit provides an excellent venue for promoting our work to colleagues we might not otherwise have an opportunity to reach.

8.1.4 Seminar Series

The Seminar Series, created in 1999, has grown and broadened in the past two years, and has greatly contributed to the enhanced exposure of the Research and Statistics Division. The series introduces members of the justice community, as well as others, to a variety of topics that they might not otherwise be exposed to. In addition, the series endeavours to integrate research, policy, and legal service perspectives on important justice-related topics. The presentations draw on speakers in a number of academic and policy areas including criminology, law, philosophy, psychology and sociology as well as Canadian and international government and non-government agencies. The audience members come from within Justice, as well as other federal departments and academic institutions.

8.1.5 Special Events

Thus far, the largest special event hosted by the Division has been Research Week. Research Week is an entire week of special events designed to showcase research within Justice, as well as research of topical interest produced outside the Department. Events include presentations, panels and debates, multi-media lunch hours, displays of research in the Justice lobby, and a Research and Statistics Division Open House. All Justice employees are invited to these events, as well as research and policy colleagues from other federal departments, members of the academic community and non-governmental organizations.

8.2 Lessons Learned

8.2.1 Invest in New Ideas

While the dissemination of research and statistics results is one of the most important steps in a research project when supported by public funds – one must make research results known for the project to be successful – it has often been overlooked in the research process.

Championing dissemination within the Research and Statistics Division has been instrumental in creating a new dissemination team, and continues to contribute to its successes. Creating new product lines, processes, outreach activities and events, in addition to developing a new dissemination team, takes time and resources. An investment in strategic planning for each new product in terms of target audience, packaging and promotion is essential.

With the recent addition of the Contract and Research Review Committee to the Division, there is an opportunity to identify what kind of product(s) will come out of each research and statistics project and build in the costs of production and dissemination at the outset. The most effective approach is to have a member of the Dissemination team sit down with researchers at the beginning of each research project to explore together who the various audiences are for each research product and what product type will best suit their needs.

8.2.2 Use What the Experts are Using

More than any other area within the Division, the Research Dissemination team had to become experts in areas traditionally outside the realm of research and statistics. Being able to consult with those in other industries or take ownership of various aspects of production and dissemination meant learning Internet programming languages, desktop publishing techniques and software, as well as publishing, printing, layout and design. Using the same technology and language of these other industries means long-term cost-savings through more in-house production. Looking to other research and statistics groups within the federal government with this kind of dissemination model proved an invaluable exercise.

8.2.3 Dynamic Teams Need Good Communication Skills

In practice, the dissemination of research and statistics results is a constant juggling of priorities, deadlines, team players, budgets, and projects. The Research Dissemination team is the embodiment of dynamic teams in action. What this means is having the ability to effectively communicate within the Dissemination area, as well as with the researchers involved in each project, the necessary consultants, and colleagues from other departmental groups such as Communications and the Information Management Branch. It is a hard lesson to learn when a project is delayed or derailed due to a lack of communication among team members. Coordinating efforts and communicating among team members on an ongoing basis takes a large amount of time, but is necessary to keep these teams on track.

8.2.4 One Size Does Not Fit All

Traditionally, a research project culminated in the publication of research results in a lengthy printed report, which was sent to a small group of clients and stakeholders. Many interested groups, such as other government departments and agencies, university departments, and members of the public were not aware of these publications and did not have easy access to them. Moreover, these long, detailed and sometimes highly technical documents did not always address the information needs of all clients.

The Research Dissemination team has developed a new line of products, in more than one medium, to address a wider variety of client needs. Shorter products, such as Question and Answer Sheets, complement our longer research reports, and make the research more accessible to many groups. Specialized products, such as the quarterly *JustResearch*, are tailored to the needs of a particular client group – in this case, the information needs of our policy colleagues in the Department and outside. Our products are also available on the new Research and Statistics portion of the Department's website in more than one electronic format, making research and statistical results available to anyone with internet access.

Products are distributed in print, via e-mail, by the website, and through special events, to a targeted audience that includes many people and groups that are interested in a particular socio-legal research topic. This

flexible approach to packaging, promotion and dissemination of individual research and statistics results is essential to the Research Dissemination area, and creating a dissemination strategy at the outset of each research project is our goal.

8.2.5 Get Out There

A unique focus of Research Dissemination is outreach activities. Being able to get "out there", with other departments and agencies, and within the academic community has been especially important for introducing the Division to the larger research community, to establishing contacts, and to fostering collaborative relationships. Outreach activities such as national and international conference participation, information sharing, interdepartmental committee work, the Seminar Series and Research Week have been fairly successful thus far, and it is hoped to strengthen this outreach capacity in the coming year.

9.0 Future Directions for the Research and Statistics Division

This concluding section presents some broad initiatives that the Research and Statistics Division might consider in its future work. These suggestions flow from the various sections of this document and in consultation with Divisional staff. Many of these potential avenues for research were mentioned by several contributors and are, in fact, currently underway in the Division.

On the whole, the contributors agree that the Division should maintain, as part of its responsibilities, its traditional role of supporting the policy sector and legal service clients in their requests for particular research products. Also, traditional research methods and data sources (e.g., analyses of official crime data and survey data) should continue to be used, where appropriate. However, studies commissioned and symposia organized by the Division indicate the Division's traditional role might be expanded to also include a more proactive role. Some novel directions for research were also identified.

Rather than reiterating the valuable substantive lessons learned within research projects, the discussion that follows covers some of the most salient lessons learned regarding the Division's overall emphasis and new initiatives that might be explored.

9.1 Developing a Research Program

While the Division currently prepares comprehensive workplans in relation to the principal areas of research within its responsibilities, one author noted that these workplans could be expanded in order to be more proactive. He further asserted that these workplans might be placed on the Web, making them accessible to those interested in learning about the Department's research activities.

9.2 Conducting Formal Environmental Scanning

While continuing to provide traditional environmental analysis on identified issues using available sources, such as polls and media sources, the Division might consider more formal, proactive environmental scanning. More proactive scanning yields documents that are expected to be useful, rather than producing them on request. Formal scanning is ongoing and uses diverse sources to identify social, economic, and political trends that may represent threats or opportunities to the Department or society at large. For example, analyses of this kind can help identify emerging crimes and their implications for societal and Departmental resources. Another key aspect of formal scanning is the communication of its output to management on a regular basis so that it is considered in the strategic planning process.

9.3 Adopting Innovative Research Methods and Data Sources

Several contributors indicated that new research methods were required to tackle issues ranging from organized crime to spousal abuse in rural communities. It was pointed out, for example, that the study of organized crime could benefit from the use of structured interviews with informants, offenders, victims, and witnesses. In another area, the Ontario Rural Woman Abuse Study adopted a novel approach involving a collaborative partnership with abuse survivors and local agency personnel. The implications of these and other initiatives must be assessed with regard to eliciting cooperation, the validity of results, costs, and their impact on the well-being of all participants.

Diversifying research approaches may also be beneficial in corroborating the findings achieved using other methods. A "triangulation of methods" can, for example, sort out the meaning of contradictory information obtained from different sources. The Uniform Crime Reporting System and General Social Survey provide contradictory information about trends in spousal abuse. Such contradictions point to the perils associated with undue reliance on any one data source and the need to use additional, untapped sources.

Gaps were identified in terms of data available in a number of areas. There is a dearth of data, for example, on the public costs of justice services, private costs of crime, and the costs of civil litigation. The analyses of the costs and benefits of various policies and programs require such information.

Finally, it was noted that research conducted or commissioned by the Division should consult the scholarly literature in fields other than law, criminology, and sociology. For example, research on organized

crime can benefit from studies in economics, political science, and psychology.

9.4 Conducting Original Research and Developing New Databases

Where data is not available to monitor legislation (e.g., on conditional sentences, organized crime provisions, or the "faint hope" clause–Section 745), to identify emerging trends, or deal with costing issues, the Division might need to collect its own data. Contributors recommended the creation of a number of databases to fill the gaps in available data. A legal opinion database could help identify emerging issues and monitor trends of interest to various clients in the Department. A database on prosecutions of organized crime offences could track the application of legislative provisions and monitor *Charter* challenges.

9.5 Developing In-House Expertise

It follows that undertaking original research requires expertise in areas within the Division's mandate. In particular, expertise needs to be cultivated in areas likely to carry a high-priority status for a number of years. In this regard, in-house expertise is being nurtured, for example, in the area of organized crime. Furthermore, it would be beneficial to develop in-house expertise where gaps have been identified such as in the area of crime costing.

9.6 Monitoring

Among other reasons, monitoring occurs to ensure the high quality of policy and programs, as well as to foster accountability. These are core functions of the Division in relation to all the substantive areas. It has been suggested that, once a policy has been adopted, plans should be in place to collect data to monitor its implementation and provide critical feedback to the policy sector.

With regard to any substantive area, there is likely to be an interest in both the implementation and impact of policy initiatives of specific programs. Apart from the fundamental interest in monitoring across all areas, several issues were raised in relation to some of the substantive areas.

It was noted that new measures of success are needed in assessing new approaches, such as restorative justice. Aside from performance measures such as recidivism and cost, the experiences of victims, offenders, and the community ought to be gauged. Furthermore, the impact on the components of the criminal justice system (e.g., net-widening, the roles of system personnel) should be examined.

In the realm of Northern Justice, it was stressed that research focus on the impact of policies and programs on women, victims, and Aboriginal people. In the family violence area, it was recommended that various models of justice be examined with a view to improving victim satisfaction and to eliciting their cooperation in spousal assault cases. Further examination of mandatory charging and prosecution policies ought to occur. With regard to sentencing, there is a need for research on the four-year mandatory minimum sentences for selected firearm offences and of the "faint hope" clause. In the area of organized crime, there is a need to examine policies and practices in other countries.

9.7 Developing a Costing Capacity

Costing analyses are undertaken to estimate the global costs of crime, the costs of particular court decisions, the cost effectiveness of a law or crime preventive initiative, or the relative costs of, for example, community-based versus custodial sanctions. Cost effectiveness assessments involve significant investments; therefore, projects need to be prioritized.

Expert panellists cautioned the Division to be wary of figures providing aggregate "magic numbers" on the cost of crime. There are significant methodological problems and assumptions involved in arriving at these numbers. The Division was advised to be prepared to critique aggregate figures that may be advanced by various interest groups.

Once an economist with costing experience is hired, it was suggested that this individual head a small multi-disciplinary team to develop a strategy for ongoing costing analysis within the Department. A communication plan would be an integral part of this strategy.

9.8 Experimenting and Innovating

The Division also has a role to play in breaking new ground in terms of innovative approaches to justice and in developing pilot projects. In relation to the issue of access to justice, for example, approaches to justice other than the traditional adversarial and often retributive approach can be examined. It has been proposed that marginalized people ought to be involved

in the development of new approaches. There is also room for experimentation in many of the substantive areas. With regard to access to justice, it has been proposed that experimentation can revolve around the development of multidimensional legal aid delivery models that accommodate both traditional and evolving needs.

9.9 Focusing on Core Research Areas

One of the contributors noted that research on sentencing is especially critical, as this issue touches on many of the substantive areas of interest to the Department, including conditional and mandatory sentencing, comparisons of adult and youth sentences, sentencing of Aboriginal youth, and victims' views of sentencing.

It may be worth noting that other areas also overlap with several substantive areas. Organized crime is dealt with in the context of emerging issues and costing, rather than simply by the Criminal Law Team. It might be a good idea for the Division to identify the core issues that are highly interconnected with several substantive areas and that are thereby likely to endure as focal points of policy and research.

9.10 Consulting and Collaborating

Several contributors indicated that consultations and/or collaboration with the Department of Justice personnel outside the Division, with other federal departments, criminal justice system personnel, and academics had proven to be of value in their work. As several other departments deal with the issue of organized crime (e.g., the Solicitor General Canada, the Canada Customs and Revenue Agency), research projects ought to be coordinated and duplication avoided. It was also recommended that the Division continue its dialogues with departmental and justice system personnel about the varying conceptions of access to justice and their projected impact on the Department's work and on resources in general.

It was also pointed out that collaboration with the academic community had proven valuable and economical (e.g., the symposium on conditional sentencing). That symposium, held at the University of Ottawa in May, 2000, was followed by a symposium on restorative justice at the University of Toronto in May of this year. It has been suggested that this "series" on sentencing continue in May, 2002.

9.11 Publishing and Dissemination

The Division's efforts with regard to publication and the dissemination of research findings have been outlined in an earlier section of this report. The dissemination of research products can inform policy-makers, justice system personnel, academics, and the general public. Public education can help dispel myths about crime and justice—myths that can result in political pressure to enact policies that may respond inadequately to public concerns. The Internet can be a useful tool in educational initiatives.