

Table of Contents

1. The Review of Community Justice	3
1.1. History of the Review and Related Events.....	3
1.2. Guiding Principles	6
1.3. Methodology.....	6
1.4. Phase 1 - Review of Community Justice - Stakeholder Meetings	7
2. Relevant Documents, Studies and Practices – Yukon.....	8
2.1. Aboriginal Justice Strategy (AJS) Evaluation – 2000	8
2.1.1. Two Yukon Communities Included	8
2.2. Aboriginal Justice Strategy (AJS) Trends -2000	8
2.2.1. Six Yukon Communities Included.....	8
2.3. Restorative Justice in the Yukon - 1999.....	8
2.4. Building Community Justice Partnerships - 1997	9
2.5. Satisfying Justice, Safe Community Options – 1996	9
2.5.1. Six Yukon Programs Included.....	9
2.6. Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon – 1992	9
2.7. A Review of the Justice System in the Yukon – 1986	10
2.8. Community Justice Workers – 1984	13
3. Relevant Documents, Studies and Practices – Other Northern Territories.....	17
3.1. Nunavut (Northern) Justice Issues - 2000.....	17
3.2. A Framework for Community Justice in the Western Arctic – 1999.....	17
4. Relevant Documents, Studies and Practices – Other Canadian	24
4.1. Guide to Project Evaluation: A Participatory Approach	24
4.2. Protocols & Principles for Conducting Research in an Indigenous Context	24
4.3. Restorative Justice: Directions and Principles –Developments in Canada - 2002.....	24
4.4. Public Dialogue: When, Why and How? - 2002.....	27
4.5. Restorative Justice - A program for Nova Scotia - 2001.....	27
4.6. The Effectiveness Of Restorative Justice Practices: A Meta-Analysis – 2001	28
4.7. Law Commission of Canada - 2001.....	28
4.8. Law, Justice, And The Community - 2001	28
4.9. Aboriginal Justice Strategy (AJS) Evaluation – 2000	31
4.10. Aboriginal Justice Strategy (AJS) Trends -2000.....	33
4.11. Best Practices and Lessons Learned: Multidisciplinary and Integrated Justice Projects – 1999.....	33
4.12. Alternative Measures in Canada -1998.....	37

4.13.	Planning/Evaluating Community Projects -1998	37
4.14.	Developing/Evaluating Justice/Community Projects -1998	47
4.15.	First Nation Self-Evaluation Of Community Programs - 1998.....	48
4.16.	Restorative/Criminal Justice–Identifying Some Preliminary Questions, Issues/Concerns – 1998	48
4.17.	Meaningful Consultation: A Contradiction in Terms? -1997	49
4.18.	Satisfying Justice, Safe Community Options – 1996	50
4.19.	Community Development and Research - 1996	64
4.20.	Evaluating Aboriginal Justice Projects - 1994.....	65
5.	Relevant Documents, Studies and Practices – USA.....	67
5.1.	S-O-F-T Analysis	67
5.2.	A Comparison of Four Restorative Conferencing Models - 2001	67
6.	Relevant Documents, Studies and Practices – International	80
6.1.	An Exploratory Evaluation of Restorative Justice Schemes -2001	80
6.2.	An International Review of Restorative Justice -2001.....	81
6.3.	Evaluating Restorative Justice Programs -2000	81
6.4.	Restorative Justice The Public Submissions-1998.....	86
6.5.	Restorative Justice - 1996	87
6.6.	Putting Aboriginal Justice Devolution into Practice - 1995.....	89

1. The Review of Community Justice

1.1. History of the Review and Related Events

Date	Events
July 2002	“Research Framework for a Review of Community Justice in Yukon” – completed
May 2002	The Community Justice Review is presented as part of Yukon Justice’s Accountability Plan – see chapter on “Results-Performance Measurement-Accountability”
Aug 2001 – June 2002	<p>Stakeholder Consultations on the Review of Community Justice – see 1.4 Review on Community Justice</p> <p>YTG Department of Justice initiated a broad review of community justice and other alternatives to the mainstream justice system. This review will be conducted in stages over the next few years. Planning for this review is underway and is expected to be conducted in stages over the next two years.</p> <p>A number of stakeholders will be consulted throughout the Review. Groups include Victims and their respective support/advocacy groups; Offenders and their respective support/advocacy groups Justice Committees; Communities/Volunteers; First Nations; Non-Governmental Organizations, Private Sector; Faith-Based Organizations; YTG departments, Federal Department of Justice – Aboriginal Justice Strategy, Northern and Regional Offices; RCMP; Judiciary – Territorial and Supreme Courts; Defense/Legal Aid and Crown Prosecutors.</p> <p>At this point, a number of broad preliminary issues for review have been identified with respect to community justice including: objectives, roles and responsibilities, traditions/culture/values, nature of offences, nature of circumstances, need for standards, training/education, accountability mechanisms, costs/benefits, funding, alternative approaches being used in terms of process and outcomes, best practices, community capacity, relationships with other stakeholders and other concerns/issues.</p>
May 2001	<ul style="list-style-type: none"> • Minister of Justice Pam Buckway wrote to the Community Justice Coordinators to respond to several issues raised by the Coordinators. • The following is a summary of the key points raised in letter. • She advised that funding levels would be maintained in FY 2001/02. ▪ Yukon Justice had identified \$293,000 that was available to fund community justice projects. ▪ In addition to that amount, Yukon Health and Social Services had provided some additional funding (either in kind or direct) financial support for community justice projects that primarily support youth. ▪ The majority of the funding provided by the Government of Yukon for community justice in the Yukon is matched by the Federal government through the Aboriginal Justice Strategy. ▪ Justice Canada had advised that this strategy would be continued and although they had not received final approval of their funding levels they had been authorized to operate at the same funding levels during the upcoming year. ▪ If that situation changes, and the Federal government did not continue to provide funding through the Aboriginal Justice Strategy, the Yukon would not likely be in a position to step in and fill that funding gap. ▪ Between Yukon Justice, Yukon Health and Social Services, and Justice Canada’s Aboriginal Justice Strategy, almost a million dollars has been spent annually in the Yukon directly on supporting community justice and community justice committees in the Yukon. ▪ This amount does not include any of the indirect costs to government, such as personnel costs, training, research, etc. that are incurred in supporting community justice. ▪ One of the priorities of her government and certainly one of her personal priorities as Minister of Justice is to support programs that address the social and economic causes of crime. ▪ As part of that priority, she had instructed Yukon Justice to work with all Yukon

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

Date	Events
	<p>communities to develop and support healing initiatives.</p> <ul style="list-style-type: none"> ▪ We also want to continue to develop crime prevention initiatives with an emphasis on those that target children and youth ▪ Last but certainly not least, she had asked the department to initiate a broad review of community justice and other alternatives to the mainstream system. This review would be conducted in stages over the next few years. ▪ During this review, we will need to look at questions that the (Community Justice Coordinators) raised in their letter relating to: <ul style="list-style-type: none"> ❑ statistical information – see various chapters ❑ cost savings of community justice programs - see chapter on <u>costs</u> ❑ the effect that community justice has had on mainstream justice system – see various chapters ❑ are we making a difference– see various chapters ❑ what are the best practices every chapter has a section on relevant practices, studies and documents ❑ what crimes are appropriate to be dealt with by community justice committees see chapter on <u>offences</u> ❑ what are the community accountability mechanisms between the community justice committees and the community they represent and are they working - see chapter on <u>results/performance measurement/accountability</u> ❑ do we have effective conflict resolution mechanisms see chapter on <u>activities/services/approaches</u> ❑ are we meeting the needs of the community see chapter on <u>community</u> ❑ are victims ever re-victimized by the process see chapter on <u>victims</u> ❑ are we helping offenders – see chapter on <u>offenders</u> ▪ This is certainly not an exhaustive list and we will be involving your community as we develop the review model ▪ Before we can consider committing any additional funding for community justice, we will need to know what we have done to date to make a difference ▪ You had also asked in your letter about the availability of adequate support services. ▪ My government has identified seven strategic initiatives that will be the focus of this mandate ▪ The two that are most relevant to you are the commitment to address substance abuse problems and to maintain quality health care in the Yukon ▪ Both of these priorities are a key component in any efforts to support community healing ▪ They cannot and will not be done by Yukon Justice but will require the coordination of services throughout government ▪ The first step in addressing this priority is the formation of an Alcohol and Drug Secretariat and you will hear more about this and other initiatives to address these strategic initiatives as this work proceeds
Spring, 2000	<ul style="list-style-type: none"> - Community Justice Coordinators wrote to the Minister of Justice asking a number of questions relating to community justice. - In the letter, a number of issues were raised including continued financial commitment to community justice, the availability of aftercare and support services and the lack of statistical information that would help to assess the effectiveness of community justice projects. -
1999-2000	<p>Restorative Justice in the Yukon</p> <ul style="list-style-type: none"> • Phase 1: In December 1998, the Minister of Justice tabled a draft discussion paper on Restorative Justice in the Yukon as part of the government’s goal of fostering safe and healthy communities. • To focus the consultation process, the draft “<i>Restorative Justice in Yukon</i>” paper and information pamphlets highlighted a number of issues and questions dealing with correctional reform, crime prevention, policing policy, victim services and community and aboriginal justice projects.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

Date	Events
	<ul style="list-style-type: none"> • Phase 2: In May-June 1999, the Minister of Justice, the Commanding Officer of the RCMP and members of their staff visited most of the Yukon communities to hear what Yukon people had to say about the future direction for Justice in the Territory. • Phase 3: During the months of July-August 1999, the comments heard at the public consultation meetings were included in “Restorative Justice in the Yukon, Community Consultation Report.” • Copies of the report were made public.
February 2000	<p>Minister of Justice responds to Chief Judge’s letter:</p> <ul style="list-style-type: none"> ❑ Agrees with the need to develop a framework for the evaluation of restorative justice initiatives. ❑ shares concerns in relation to the need for an evaluation to be useful: <ul style="list-style-type: none"> ▪ to engage the users in the design and actual implementation of such an evaluation. ▪ to be transparent. ▪ to utilize quantitative and qualitative approaches. ▪ to ensure that approaches to an evaluation to be developed that will foster inclusion of and support by Yukon communities. ❑ a preliminary step in the process should be to undertake a research component which would pull together current literature and research related to restorative justice. ❑ the process must be transparent and there must be a working group of users thoroughly involved in designing and assessing the study. ❑ it is important that the Minister and the Chief Judge step away from the evaluation process to ensure its impartiality.
December 1999	<p>Chief Judge of the Territorial Court of Yukon writes to the Minister of Justice about evaluating current restorative justice practices. He suggests an evaluation framework.</p>
Other Related Events	
2002	“The Criminal Justice System – Significant Challenges:” – several chapters quote its sections
2001	“A Program for Nova Scotia” – see 4.5
2001	“The Effectiveness Of Restorative Justice Practices: A Meta-Analysis” see 4.6
2001	“An Exploratory Evaluation of Restorative Justice Schemes” see 6.1
2001	“An International Review of Restorative Justice” see 6.2
2000	“Nunavut (Northern) Justice Issues” – Annotated Bibliography see 3.1
2000	Aboriginal Justice Strategy Evaluation – National – 2 Yukon Communities see 4.9
2000	Aboriginal Justice Strategy Trends – National – 6 Yukon Communities see 4.10
1999	“A Framework for Community Justice in the Western Arctic” - NWT see 3.2
1999	“Best Practices and Lessons Learned: Multidisciplinary and Integrated Justice Projects” see 4.11
1998	“Alternative Measures in Canada” see 4.12
1998	“Making It Work: Planning/Evaluating Community Corrections/Healing Projects in Aboriginal Communities” – Yukon and Other see 4.13
1998	“Developing and Evaluating Justice/Community Corrections Projects: A Review of the Literature” – Yukon and Other see 4.14
1997	“Building Community Justice Partnerships” – Yukon and Other see 2.4
1996	Satisfying Justice, Safe Community Options – Yukon and Other see 2.5
1992	“Resolving Disputes Locally: Alternatives for Rural Alaska” – USA see 5.5
1992	“Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon” see 2.6
1986	“A Review of the Justice System in the Yukon” see 2.7
1984	“Community Justice Workers” - Yukon see 2.8

1.2. Guiding Principles

The following principles guided the work done in Phase 1 to develop the “Research Framework for a Review of Community Justice in Yukon”;

- **Objective:** the author will accept and review on its merits any data, analysis and recommendations to strengthen the quality and effectiveness of the Review.
- **Open and Transparent:** the author will operate in open and transparent manner by make every reasonable effort to ensure that a review is completed of:
 - research undertaken;
 - submissions received, whether or not these have been formally solicited; and
 - relevant advice, reports or correspondence to or from federal, provincial and territorial, community and First Nations’ officials or representatives.
- **Inclusive:** the author will make every reasonable effort to collaborate with a wide range of stakeholders affected by and concerned with community justice, and seek to give a voice to those not ordinarily heard.
- **Multidisciplinary Approach:** the author will make every reasonable effort to review the area of “Community Justice” in its societal context and therefore draw on diverse sources of legal and non-legal experience and expertise.
- **Evidence-based:** the author will make every reasonable effort to gather, synthesize, assess and reference any available evidence - both qualitative and quantitative - that she is aware of that supports the findings, conclusions or recommendations
- **Meta-Analysis:** the author will refer to this comprehensive quantitative research method - which is an analysis of analyses - a statistical analysis of a group of studies to integrate the various and, often times discrepant findings from a body of literature.
- **Partnerships and Networks:** Whenever possible, reasonable and appropriate, the author will make every reasonable effort to:
 - take account and benefit from existing knowledge;
 - avoid asking individuals or groups to submit information or views they have already made publicly available; and
 - minimize the risk of duplicating or overlapping with ongoing or completed consultative efforts.
- **Northern Rural-Based Analysis:** the author will use a northern/rural based lens/analysis.
- **Diversity-Based Analysis:** the author will use a diversity-based lens/analysis.
- **Gender-Based Analysis:** the author will use a gender-based lens/analysis.
- **Comprehensive:** the author will make every reasonable effort consider alternative perspectives and will demonstrate that the research methodology is sound and objective.
- **YTG or AJS Funded Projects:** It must be kept in mind that the projects examined in this report were restricted to those that have been or are currently receiving funds from YTG Justice.
 - There are many community-based projects operating in the Yukon that are not included in this report because they do not have a funding relationship with Yukon Justice or Aboriginal Justice Strategy, operating instead with other sources of financial and human resources.

1.3. Methodology

The methodological approach for the study included three components.

- A draft document (see “**Draft Presentation?**”) was developed and presented to the stakeholders consulted (see 1.4) with a view collaborating with them to ensure the preliminary issues for review were relevant to the Yukon
- A review of literature was conducted to examine existing research and policy issues on community justice.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

- Finally, this Research Framework was developed.

1.4. Phase 1 - Review of Community Justice - Stakeholder Meetings

From August 2001 to July 2002, numerous meetings were held to gather information used in preparing this Research Framework.

Meetings were held with Yukon Community Justice Coordinators, Dawson City Women's Shelter, Council for Yukon First Nations (CYFN), CYFN Aboriginal Courtworker Program, L'EssentiELLES, Victoria Faulkner Women's Centre, Yukon Aboriginal Women's Council, Yukon Women's Advisory Council, Yukon Status of Women Council, Kaushee's Place, and the Yukon Legal Services Society.

Meetings were also held with representative of the RCMP, the Intergovernmental Community Justice Working Group, the Yukon Territorial Court judiciary, the Yukon Supreme Court judiciary, and Yukon Justices of the Peace. Meetings took place with Yukon government officials in Justice, Health and Social Services, Women's Directorate, Executive Council Office (ECO) – Government Audit Services, ECO – Bureau of Statistics, Public Service Commission. Contacts were made with Federal Justice Canada officials in the Northern Regional Office, the Whitehorse Criminal Prosecutions Office, the Aboriginal Justice Directorate and the National Crime Prevention Centre. Contacts were made with consultants who have authored numerous studies in this field and with staff at Yukon College as well as with staff in Victim Services, Prince Edward Island.

Meetings took place were made in the communities of Whitehorse, Kwanlin Dun, Watson Lake, Teslin, Carcross, Haines Junction, Ross River, Old Crow, and Dawson City.

2. Relevant Documents, Studies and Practices – Yukon

2.1. Aboriginal Justice Strategy (AJS) Evaluation – 2000 ¹

see also 4.9

2.1.1. Two Yukon Communities Included

- Included in this study were data from the following projects:
 - Kwanlin Dun Community Social Justice Program
 - Southern Lake Justice Committee

2.2. Aboriginal Justice Strategy (AJS) Trends -2000²

- see also 4.10

2.2.1. Six Yukon Communities Included

- Included in this study were data from the following projects:
 - Haines Junction Community Justice Program
 - Liard First Nation Dena Keh
 - Kwanlin Dun Community Social Justice Program
 - Southern Lake Justice Committee
 - Tan Sakwathan Diversion Program
 - Teslin Tlingit Council Peacemaker Court

on page 2 it indicates “a detailed description of each program was prepared. This document highlighted much of the qualitative information surrounding each of the AJS programs, addressing the challenges they reported, their successes and their particular program structure and activities.” Do we have a copy?

2.3. Restorative Justice in the Yukon - 1999

- **Phase 1:** In December 1998, the Minister of Justice tabled a draft discussion paper on Restorative Justice in the Yukon as part of the government’s goal of fostering safe and healthy communities.
 - To focus the consultation process, the draft “*Restorative Justice in Yukon*” paper and information pamphlets highlighted a number of issues and questions dealing with correctional reform, crime prevention, policing policy, victim services and community and aboriginal justice projects.
- **Phase 2:** In May-June 1999, the Minister of Justice, the Commanding Officer of the RCMP and members of their staff visited most of the Yukon communities to hear what Yukon people had to say about the future direction for Justice in the Territory.
- **Phase 3:** During the months of July-August 1999, the comments heard at the public consultation meetings were included in “Restorative Justice in the Yukon, Community Consultation Report.”
- Copies of the report were made public.

¹ Department of Justice Canada, Evaluation Division, Final Evaluation Aboriginal Justice Strategy, Technical Report, October 2000

² Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

2.4. Building Community Justice Partnerships - 1997^{3 4}

2.5. Satisfying Justice, Safe Community Options – 1996⁵

2.5.1. Six Yukon Programs Included

A selection of initiatives that attempt to repair harm from crime, attend to related needs and avoid or significantly reduce the use of custody

Kwanlin Dun Community Justice - Circle Sentencing, Yukon 7

A selection of initiatives that attempt to repair harm from crime and attend to related needs, with some implications for the reduced use or length of custody

Teslin Tribal Justice Project - Sentencing Panel, Yukon 75

A selection of initiatives that attempt to avoid the use of custody, with or without some reparative elements

Curative Discharge Program - Yukon Territories 103

Fine Option Program, Yukon Territory 143

Administrative Sanctions, Yukon Territory 144

A selection of initiatives that attempt to reduce the length of custody by alleviating the enforcement of imprisonment

Keeping Kids Safe - Children and Sexual Abuse, Yukon 155

2.6. Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon – 1992^{6 7}

- My task was to identify the range of Yukon Aboriginal Justice issues in a general way and to elicit information about the justice interests of Yukon First Nation communities in order to develop a strategic plan of action for policy-making and programming at the territorial level.
 - From the perspective of Justice Canada, the project provided an opportunity to develop a model of tripartite co-operation between the three levels of government in an environment where the federal department has prosecutorial responsibility for the Criminal Code and other Statutes.
 - It also allowed the possibility of ‘testing’ of certain justice approaches within the longer-term policy mandate of the Aboriginal Justice Initiative.
 - For First Nation communities, the project provided the occasion to express justice interests and to begin the work of developing justice approaches compatible with community needs, whether in the short term or in relation to longer term self-government activities.
- This document represent two months of fieldwork in the Yukon Territory, the objective of which was to elicit information from First Nation communities and criminal justice personnel about the state of tribal justice (also referred to as aboriginal justice) in the Territory.

³ Stuart, Barry. 1997. Building Community Justice Partnerships: Community Peacemaking Circles. Ottawa: Aboriginal Justice Learning Network, Department of Justice.

⁴ Solicitor General Canada, Rick Linden University of Manitoba and Don Clairmont, Dalhousie University, Making It Work: Planning And Evaluating Community Corrections & Healing Projects In Aboriginal Communities, 1998 <http://www.sgc.gc.ca/epub/Abocor/e199805b/e199805b.htm>

⁵ The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁶ Laprairie, Carol, Report to Department, Yukon Territorial Government, First Nations, Yukon Territory, Justice Canada, Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon. September 1992.

⁷ Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

- **Methodology:** The methodology involved interviews with First Nations leadership, band managers, NNADP workers and social service personnel, RCMP, judges, courtworkers, correctional officials (including probation) and the collection and analysis of secondary data including police, courts, corrections, and demographic data and criminology and aboriginal justice literature available in 1992.
- Here the author makes a strong case for community justice development which can provide community-based alternatives to formal criminal justice processing described as "not working" and out-of-sync with the disruption and disorder problems with which it is involved.
 - She advances the view that the varied community conditions, small widely-scattered population, Aboriginal and non-Aboriginal mixing, and political-constitutional context of the Yukon make it an appropriate site for comprehensive justice programming where approaches and programs can be implemented, evaluated, and subsequently exported to other jurisdictions.
 - After identifying the major partners, namely First Nations, Yukon Territorial Government and Justice Canada, and discussing the crime and correctional data along with extant Justice programming (e.g. native courtworker program, circle sentencing, police diversion), the author examines the justice activities and interests of First Nations in the Yukon.
 - Virtually all these bands have significant aspirations in the justice field.
- LaPrairie notes that the pattern of repeat offenders, problem families, and the ostracized can be found in virtually all the communities.
 - Also, the role of the elder while significant in Aboriginal justice discourse is problematic in practice.
 - Community resources required for justice interventions are scant and most previous justice projects have been introduced piece-meal, with little pre-implementation work, little community participation, and minimal monitoring and evaluation.
 - As a result there has been little sense of any incremental development.
 - She contends that advocates may be seriously underestimating the complexities of introducing viable justice alternatives.
 - LaPrairie spells out a strategy for community justice development stressing information needs/dissemination activities, research and evaluation, and identifying possible projects and specific research questions.

2.7. A Review of the Justice System in the Yukon – 1986 ⁸

The Government of the Yukon, in response to concerns expressed about the justice system, appointed a panel to review the Justice System in the Yukon.

Terms of Reference:

- The Panel was to visit all communities in Yukon, document the concerns expressed and formulate recommendations to address those concerns.
- The Government of the Yukon provided the following terms of reference for the review:
 - Provide a forum for the public airing of concerns and perceived problems concerning the justice system
 - Increase public awareness and understanding of justice system services and processes including the underlying values and philosophy
 - Examine specific topics that appear to be problem areas in order to define the precise nature of problems and remedial action options.
 - Areas to be examined shall include but not limited to court sessions, sentencing, policing, legal aid and crime prevention
 - Assess the feasibility of possible remedial actions; and
 - Recommend to the Minister of Justice to improve the systems operations and image in the immediate term and responsiveness on an ongoing basis.

⁸ John Wright and Joanne Bill – A Review of the Justice System in the Yukon, 19 December 1986

Criterion for Public Participation – Objectivity in Developing Recommendations:

- From the terms of reference, the Panel developed a number of criterion to ensure public participation in the process of review as well as objectivity in developing recommendations. The criterion were:
 - Access to the process will be made as convenient as possible for the public and they will be actively encouraged to participate
 - The process will provide meaningful, constructive communication between the public and members of the panel.
 - Problem definition and development of recommendations will, to the extent possible, be carried out by members of the public.
 - Formal recognition of public participation in the review will be made in the final report preserving, where appropriate, the anonymity of those participants who request it.
 - The Panel in any public meeting would not hear concerns of individuals directed against a specific person in the justice system.
 - Such complaints would be heard by the Panel in private meetings; however the specifics of such complaints would neither be investigated nor documented in the final report by the Panel.
 - Such complaints could, however, serve to illustrate a particular weakness in the system or its components.

The Process:

- The Panel's perception of the justice system was defined in the broadest sense, to enhance the public's ability to convey their perceptions about system related problems or concerns. The following functions were addressed at many meetings.
- **Functions**
 - **Court Sessions:** (Registry functions, Circuit court, Criminal court, Small claims court, Family court, Young Offenders court)
 - **Sentencing:** (Disparities, Sentencing options available, Victim Impact recognition)
 - **Policing:** (Priorities for enforcement, Public perception of the role of police, Public perception of effectiveness of policing)
 - **Crime Prevention:** (Role of the individual, Role of the police, Roles of other agencies and organizations, Effectiveness of current programs)
 - **Legal Aid:** (Underlying Philosophy, Effectiveness of the program, Aid options within the programs)
 - **Crown Prosecutors**
 - **Corrections** (Whitehorse Correctional Centre, Incarceration outside the Yukon, Young Offenders closed and open custody facilities, Rehabilitative program options for inmates)
 - **Probation Services** (Rehabilitative program options available, Effectiveness of probation programs)
 - **Court Workers** (Value and effect of court workers, Role of court workers in the future)
 - **Justice of the Peace** (Role and responsibilities, Effectiveness of program)
 - **The Legal Profession** (Role and responsibilities of lawyers, Effectiveness of profession)
 - **Mediation** (Small claim disputes, Divorce and separation duties, When is it useful as an alternative to court resolution in disputes, Effectiveness of current mediation service)
 - **Diversion** (Effectiveness in dealing with young offenders, Potential for use with adult offenders)
 - **Tribal Councils** (Role and responsibilities in criminal/civil matters, Potential for resolving conflict)
 - **Public Legal Knowledge** (Needs of the public for knowledge, Effectiveness of current efforts to deliver knowledge about the law to the public)
 - **Sheriff's Office**
 - **Young Offenders**
 - **Victims of Crime**
- **Phases**
 - **Phase I: Problem Identification**
 - The Panel visited all communities.
 - At the meetings held in the communities, the Panel provided all Yukoners with the opportunity to vote their concern about the justice system and assurances that those concerns expressed were clearly understood by the Panel.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- **System components** were briefed on the purpose and scope of the Review and invited to identify the problems they perceive within the “system.”
 - The following were contacted at this time: Minister of Justice, Minister of Health & Human Resources, Deputy Minister of Justice, Deputy Minister of Health & Human Resources, Supreme Court Judge, Territorial Court Judges, Director of Whitehorse Correctional Centre, Director of Court Services, Director of Probations, Royal Canadian Mounted Police Headquarters, Yukon, Crown Attorney’s Office, Law Society of Yukon, Youth Probation Supervisor, Legal Aid Coordinator, Legal Services Society, Yukon Legal Public Legal Education, Alcohol and Drug Services, Director, Skookum Jim Friendship Centre, Crossroads, Detoxification Centre, Whitehorse City Council, Whitehorse By-Law Enforcement, J.G. Moore & Associates (Court Reporters), Sheriff’s Office, Council of Yukon Indians, Liberal Caucus, Progressive Conservative Justice Critic
- **Outlying Communities:** The following numbers of persons were interviewed in each community. Most of the interviews were private individual ones and each interview was approximately one hour in duration.
 - Carcross/Tagish (15); Teslin(9); Carmacks (18); Haines Junction (21); Faro (7 – the population of Faro was in the process of expanding from approximately 50 permanent residents to about 780 at the time the Panel visited this community); Ross River (17); Watson Lake (43); Pelly Crossing (14); Stewart Crossing (4); Mayo (9); Elsa/Keno (5); Dawson City (24); Old Crow (28); Beaver Creek (4); Burwash Landing (8); Destruction Bay (3). **Total interviewed: 229 people**
 - **Whitehorse: 258 people were interviewed** and as was the experience in the outlying communities, most of the interviews were individual, private ones. There were 14 group discussions and 143 private interviews, the latter either in person or by the telephone.
- **Phase II: Research**
 - Following the initial meetings with members of the communities and documenting the many observations voiced, the Panel conducted further research.
 - Discussions were held with seventeen (17) representatives of the various justice system components and the specialists in the various areas of human services visited in Phase 1.
 - These representatives were advised of the concerns expressed by the members of the different communities and ways of responding to those concerns were discussed.
 - The knowledge gained through these meetings was supplemented by research conducted independently by members of the Panel.
 - The Panel then developed draft recommendations to be discussed with those people who voiced their concerns in Phase 1 of the Review.
 - Reports on related subjects conducted in the Yukon were pursued and interviews took place with the authors. Many texts on the subject of human services were thoroughly digested.
- **Phase III: Options/Recommendations**
 - All communities in Yukon were revisited by the Panel to discuss the findings and to formulate and discuss recommendations, which would be presented to the Territorial Government.
 - The draft recommendations were presented to those members of the communities who had voiced their concerns to the Panel in Phase 1 of the Review and they were invited to examine recommendations to determine whether or not they adequately addressed the concerns addressed.
 - Draft recommendations were mailed to each person who participated in Phase 1 of the Review in advance of the Panel’s visit.
 - An agenda was established at the outset of each meeting and only those recommendations that required further examination or comment were discussed.
 - In addition to hearing from members of the public, the panel met with the Village/Town/Band Council and Community Club representatives in every community.
 - The Panel then directed their attention to writing the final report preserving the valuable contributions made by the public in the review.
 - When no public consensus was possible regarding recommendations the Panel assumed the responsibility of making those recommendations.

- **Concerns/Recommendations:**
 - It was the Panel's intention, at the outset of the review, to summarize concerns by community; however, the concerns expressed in each topic area were so consistent that to do so would have resulted in constant repetition in the report.
 - Accordingly they chose to summarize the mutual concerns by topic area as follows: (Circuit Courts, Sentencing, Policing, Public Legal Information and Education, Young Offenders, Diversion, Mediation, Tribal Justice Committees, Victims of Crime, Justice of the Peace Courts, Legal Aid, Native Court Workers, Crime Prevention, Corrections (Jail & Probation), Young Offenders)
-

2.8. Community Justice Workers – 1984 ⁹

This research project was sponsored by the Department of Justice, Adult Probation, Whitehorse, Yukon.

Summary

The purpose of this study was to develop project parameters for potential community justice workers for the communities in the Yukon.

In order to do this, a survey was conducted with 33 persons from the Criminal Justice System and 52 people from Teslin, Carcross, Haines Junction, Carmacks, Ross River and Dawson City, to ascertain the need, support, duties of potential justice workers, training needs and qualifications of potential community justice workers.

Data for this survey was collected over the period from February 1984 to May 1984. Interviews were conducted mainly on a personal basis with telephone follow-up to ensure that the data was adequate.

It was concluded that since the majority of persons appearing before the courts are Native people, it is important to have a Native person undertake the role of the Community Justice Worker. This would benefit the Native probationer by directly linking him/her to existing community resources (such as NNADP workers; social band administrator and cross-cultural coordinator) through probation orders. By having the community justice worker, these community resource people could be more effectively used for alternative sentencing measures. This would help deter and rehabilitate at the community level.

Another conclusion is that there is a need to bring Native people into the justice system. Currently, when court is held there is no representation from the Native community who have knowledge of the justice system's procedures (except for the accused, whom in many instances has little or comprehension of what is going on before him/her). The community justice worker would be able to bridge the gap between the community and the justice system; the probationer and the justice system and the family of the probationer and the justice system, benefiting all concerned.

The Community Justice Worker could provide public legal education to the community and act as a contact for the probation officers, the court, registry, lawyers, courtworker, YTG social workers, mental health and others who may need assistance. The Community Justice Worker would also be able to initiate such projects as diversion groups, mediation and victim-offender mediation to the benefit of the whole community.

All persons interviewed felt that the Community Justice Worker's position should be a paid position, and a majority of persons felt that the Community Justice Worker should be paid through a community organization such as the Band Council and would then be overseen by the organization. Each community had differing reactions to whether this position should be a part or full-time position; three felt their community needed a part-time position and three felt that their community warranted full-time positions.

In response to qualifications it was felt that the qualifications for this position should not be set so high as to discourage persons who have the qualities to undertake this role, but do not have the adequate educational

⁹ Bill, J. – Community Justice Workers, Unpublished Report prepared for the Department of Justice, Government of the Yukon, 1984

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

requirements. It was felt emphasis should be placed on respect, credibility, communicative and counseling skills.

As part of the duties, the respondents felt that emphasis should be placed on preventative and rehabilitative programs. In addition, active involvement in recreational activities (which could be considered a preventative or rehabilitative measure) would lessen or alleviate the possibility of community alienation. As part of the duties of the Community Justice Worker, it was felt that a community advisory committee be established, to be utilized in the initial planning stages of the preventative and rehabilitative programs, victim-offender mediation, mediation and diversion programs and act as an advisory committee in the case of difficulties encountered in the field such as problem probationers. This advisory committee would be an added support mechanism for the Community Justice Worker.

The training for the Community Justice Worker should be one that would give a good basis understanding of the role of the justice worker would have to perform. The initial training should include the process of the justice system, roles by key actor plays, the courts (pre-court, during and post-court), procedures of sentencing, Territorial Acts, Federal Acts and administrative duties. The training should be an extensive and consistent to cover the areas and to ensure that the Community Justice Workers would be accepted by the Judiciary and would help the Community Justice Worker do a better and more efficient job, as they would then know what was expected of them within the court process. Additionally, they would be able to communicate their solutions for and understanding of the needs of the probationer and community through the compilation of Pre-Sentence Reports. It was strongly recommended by the respondents that this training program be fully accredited.

It has been recommended that the community of Haines Junction be used for the Pilot Project for the Community Justice Worker program. This community would give a good foundation on which other future Community Justice Worker projects could be molded from. It would be used to develop a type of Community Justice Worker that would be flexible and successful within the community, Probation Services and the courts.

Due to time and budget restraints the community of Old Crow was not surveyed and the fact that it is inaccessible on a regular basis, it has been recommended that Old Crow receive primary considerations as a second pilot project location.

In conclusion a project such as the Community Justice Worker would be worthwhile and successful for the communities that were researched. There is definite need for someone within the community to be knowledgeable about the justice system and be able to pass on that knowledge through Public Legal Education to the community. The Community Justice Worker would be a needed resource person and act as a liaison for Probation Services, the courts, lawyers, crown attorneys, courtworkers and other relevant resources within the community or in Whitehorse.

Recommendations

- i. Owing to the fact that the majority of persons appearing before the courts, are native people, it is recommended that: a person of native ancestry be given priority in the hiring process.
- ii. Due to the fact of budget restraints, the native courtworker services are limited and/or unavailable to the communities, it is recommended that: the department of justice give serious consideration into providing added funding for the native courtworkers to cover the communities on a regular basis, both for circuit court and when required for J.P. court' and, the department of justice give serious consideration into providing funding for the hiring of local residents to undertake the role of a native courtworker in specific needed communities.
- iii. Due to the fact that Legal Aid does' not cover Justice of the Peace Court, it is recommended that The Department of Justice give serious consideration of incorporating into the Legal Aid system, that lawyer services be implemented where practical in J.P. Court for the communities
- iv. Owing to the fact that 58% of sentenced inmates and probation admissions, were under the age of 20 in 1983-1984 it is recommended that: as part of the duties the C.J.W. assists in the establishment of victim-offender mediation, mediation and diversion programs
- v. Owing to the fact that in 1983, 37.80% of total number of sentenced inmates were incarcerated for default of fines, it is recommended that: the minister of justice give serious consideration for the reinstatement of the fine option program

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- vi. Owing to the fact that many native people, in the 'communities do not have the educational requirements to be a probation officer, it is recommended that: qualifications for this position be discretionary, and based on respect, credibility, communicative and counseling ability, residency, and empathy.
- vii. Due to the expressed concern regarding the possible negative feedback, if the person hired was paid directly by the department of justice, it is recommended that: the department of justice enter into a contract with the Band, with the CJW being answerable to the band council and the department of justice, probation, and that an operational advance' for (6) six months be given and an actual expenditure for every month be submitted by the C.J.W.
- viii. Due to the expressed concern regarding juveniles, it is recommended that: the department of justice approach human resources with the concept of including juvenile probationers into the C.J.W. program.
- ix. Owing to the fact that concerns have been expressed about the extensiveness and accuracy of pre sentence reports, it is recommended that: the community justice worker would assist in supplying the courts with pre sentence reports.
- x. Owing to the fact that many community people really have little or no knowledge of the judicial process, rights, roles each key actor plays, etc. it is recommended that: the C.J.W. have some responsibility for public legal education, not instead of other people in-the system, but in addition-to other support facilities.
- xi. Owing to the fact that the N.N.A.D.A.P. workers have a full-time job and the respondents felt that there would be a conflict of interest with combining the two roles, it is recommended that: separate person', from the "alcohol worker be hired to undertake this role.
- xii. Due to the concern expressed regarding the C.J.W. having to testify in court when a breach is contested, it is recommended that: in the initial stages of this project that the regular probation officer who covers the community, be the person designated to lay the breach, until the C.J.W. has confidence in assuming that responsibility.
- xiii. Due to the fact that many crimes committed by native people are alcohol related, it is recommended that: the minister of health and human resources give serious consideration into providing a more intense 'and consistent training package for the N.N.A.D.A.P. workers. with consideration for training to be done outside the Yukon, by professional groups and/or agencies. and that funding be made available for alcohol treatment outside of the Yukon, for residents who would benefit from this service
- xiv. Due to the expressed regarding the person designated to supervise the C.J.W., it is recommended that: The Probation Officer who regularly covers that community be the person designated to supervise the C.J.W. AND, The Probation Officer provide regular support and supervisor to the C.J.W. every (2) two weeks *in* the initial stages of this project.
- xv. As part of the duties of the Community Justice Worker, it is recommended that: The C.J.W, establish an advisory committee in the community comprised Of locally concerned members and the supervising Probation Officer.
- xvi. Due to the fact that Probation Officers do not receive credit for preventative or rehabilitative programs, it is recommended that: The C.J.W. have clearly defined into their job description the preventative and rehabilitative programs. AND, serious consideration should be given with respect to compensation for overtime for the preventative and rehabilitative programs.
- xvii. In the hiring process, it is recommended that: The Chief of each Band or designated persons be present in the hiring process. AND, The C.J.W. be fully endorsed by the Chief and Band Council." AND, The C.J.W. not be subject to firing in the event of a change in Chief and Band Council.
- xviii. Due to the fact that many training programs for Native people are not accredited, it is recommended that: The C.J.W training package be an accredited training
- xix. Due to concern expressed about training and its consistency it is recommended that: Training for the C.J.W. be consistent and the on-going training be planned accordingly to the abilities of the C.J.W.- AND, The ongoing training be carried out in the community where applicable.
- xx. Due to expressed concern regarding training coverage, it is recommended that: The training package be covered by the Department of Justice, accommodation, meals, and incidentals.
- xxi. Due to the fact that there is not a specific person designated to co-ordinate this project, it is recommended that: A specific person be designated to co-ordinate this project, and serious consideration be given "to designating a person of Native ancestry.
- xxii. Due to results from the respondents, it was felt that this position should be a paid position, therefore, it is recommended that: The position of the Community Justice Worker be a salaried position, AND the salary be based on a pay scale of \$11.50-\$12:50 an hour., \$11,040.00 - \$12,900.00 a year at 80 hours per month.-
- xxiii. Due to time and expense, the community of Old Crow was not surveyed. Concern has been expressed about the quality of Probation Services available to this community, as Old Crow is not accessible on a regular basis. The Probation Officer is allotted (5) five trips a year, and since the

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- circuit court goes to this community three to four times a year, the Probation Officer has one trip remaining to follow up on clients. Therefore it is recommended that: -The community of Old Crow receive primary consideration for a second pilot project
- xxiv. Mention has been made that the pilot project(s) would possibly be evaluated in (6) six months. Therefore it is recommended that: The evaluation process not-be carried out in six (6) months, and that the first (6) six to (8) eight months be a period of establishing measurements for the evaluation, and, that the evaluation process take place in one (1) year.

3. Relevant Documents, Studies and Practices – Other Northern Territories

3.1. Nunavut (Northern) Justice Issues - 2000¹⁰

- This annotated bibliography brings together voices from across Canada, representing a cross-section of scholars, community justice workers, and government representatives to share some of the key elements that require consideration for community-based justice in the North (specifically in Nunavut).
 - This collection addresses the Northern environment (social issues, crime and justice issues in the North), lessons learned (the nature and results of community-based justice projects in Canada), the nature of community relationships and the dynamics of community mobilization, as well as the inter-relationships between community-based justice and mainstream justice.
 - While the materials indicate that hard and fast answers regarding community-based justice development, implementation, and operation are difficult to present, the literature included in this report does highlight a number of key areas that play a fundamental role in facilitating success in community-based justice programming. Specifically:
 - a community-driven approach that has addressed the power dynamics that may operate in the community,
 - a clear articulation of who the community is and how they will participate,
 - a holistic focus that understands and incorporates the role of recreation, health, and housing in crime prevention,
 - supportive linkages between the community-based justice program and the relevant elements of the mainstream justice system, and
 - a clear articulation of the needs of the community, as well as the goals and objectives of the initiative.
-

3.2. A Framework for Community Justice in the Western Arctic – 1999¹¹

- This document presents the findings and conclusions of a review of the Community Justice Program of the Government of the Northwest Territories Department of Justice.
 - This review was carried out from January to April 1999 by the team of Campbell Research Associates, Kelly and Associates and Smith and Associates.
 - The consultants spent a total of 28 person days in eight communities in the Northwest Territories and, over the course of the study, interviewed approximately 75 individuals either in person or by telephone with the assistance of an associate in Yellowknife.

Purpose of the Study

- The purpose of the project was to:
 - provide a description of community justice activities in all communities in the Western Arctic;
 - identify how the Department of Justice, through its funding and the structure and organization of its Community Justice Division and in collaboration with other justice agencies (including the RCMP and the Crown), can best support community justice in the western territory given the changing social, political and policy context; and
 - evaluate the effectiveness of these supports.

Terms of Reference

- The agreed upon terms of reference for the review asked for:
 - A description of the community justice committees in the Western Arctic, including:
 - their structure, membership, criteria for membership, mandate and training;

¹⁰ Department of Justice Canada, Research and Statistics Division, by Naomi Giff, Nunavut Justice Issues: An Annotated Bibliography, March 31, 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-7a-e.pdf>

¹¹ Campbell Research Associates, Kelly & Associates, Smith & Associates, prepared for Government of Northwest Territories, Department of Justice, A Framework for Community Justice in the Western Arctic – June 1999

Community Justice - Review Methodology

- resources available to support committees;
- the role played by the Community Justice Specialist;
- the use of contribution funding; and
- level and type of community justice activities.
- A summary description of community justice initiatives and activities in other jurisdictions;
 - an analysis of how the activities of the community justice committee the problems in the community and make recommendations concerning the kind of activities that should be emphasized, the resources needed to deal with the problems and identify gaps in information on community justice initiatives.
 - recommendations based on community consultations and a review of other jurisdictions' best practices regarding:
 - how the Department of Justice can best support community justice including:
 - the structure of the Department of Justice Community Justice Division and
 - the location of its resources; and
 - a consideration of how the model would lend itself to transfer or devolution to an Aboriginal government, claimant or other appropriate organization;
 - the relationships between community justice committees and outside agencies (Crown, RCMP, other GNWT departments, etc.) required to better support community justice and how cooperation and support can be ensured;
 - an evaluation framework for the monitoring and evaluation of community justice initiatives (both process and outcome) including:
 - consideration of how monitoring can be structured to best facilitate community development and project development;
 - the role of the Department of Justice in this process; and
 - a process for collecting the information and using it effectively.

Study Methodology

Site Visits and Interviews

- The review respondents and communities to be visited were determined by the Department of Justice project committee (including the Deputy Minister, Assistant Deputy Minister, Director of the Community Justice Division and the Director of the Policy and Planning Division.)
 - Both this committee and the consultants felt that community visits were necessary to provide an appropriate context for the review and to adequately address the review questions within this context.
 - Although it was recognized that visits to all Western Arctic communities would be most desirable approach, the timing of the review and resources available precluded this.
 - Within these constraints, eight communities were selected, representing all of the Western Arctic regions, varying population sizes and diverse conditions.
 - These communities were: Yellowknife, Hay River, Rae-Edzo, Fort Simpson, Fort Resolution, Inuvik, Fort McPherson and Deline.
- The individuals and organizations to be interviewed were also defined by the project committee.
 - A list of 67 persons (including GNWT Department of Justice respondents, community justice committee representatives, First Nation Chiefs, Aboriginal organization representatives, RCMP management personnel and individuals in a variety of organizations related to the program) was provided to the consultants.
 - The Department of Justice notified these individuals by a letter that review was being carried out and outlined the schedule of community visits when the consultants would be available meetings.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- The recipients of the letter were asked to contact the Division of Community Justice to arrange either a personal meeting or a telephone interview according to their preference and availability.
- An additional survey of RCMP officers in 21 Western Arctic detachments (ie. including those in communities not visited) was conducted by the local associate.
- Three different interview instruments were used:
 - One for Community Justice Division staff,
 - Community justice chairs and coordinators;
 - One for RCMP detachment officers.
- Some questions were not relevant to every individual identified because of the range of different respondents – some having a close relationship to the program (ie. community justice specialists, committee chairs and coordinators) and others (in the ‘community respondent’ category) having varying levels of knowledge about the program.
 - As a result, some of the information provided for the various areas covered in the study rests on a smaller number of responses than the total number of interviews carried out.
 - For some questions, the numbers in each respondent category were too small to permit break-down of the responses by these different groups without risking identification of specific individuals.
 - In other cases, the small numbers in a particular respondent category did not enable conclusions to be drawn about the overall views of that group.
- In reporting our study findings we have identified differences, where there were any, between major respondent groups but otherwise have presented responses for our respondent group as a whole.
 - The responses reflect a diverse range of perspectives based on the position held by the individual and the extent of their involvement with the Community Justice Program.
 - The findings and conclusions also reflect the fact that just eight communities were visited (out of a possible 31 for which funding had been designated in 1998.99) although telephone interviews were carried out with committee chairs, coordinators or community representatives in another nine communities.

Evaluation And Monitoring Framework for the Community Justice Initiative

Program Logic Model

- Evaluation requires a clear definition of the objectives of the program as well as of the actions that are being taken to achieve these objectives.
 - In the case of the Community Justice Program, it is not clear what the intended outcomes are and, therefore, how these can be measured.
 - There are several versions (some marked draft and others not dated) of the mission statement/values/principles document but no indication of which is the most current "official" version.
- To evaluate the effectiveness of the current operation of the Community Justice Program, the chain of actions, the agent responsible for implementing these actions and the expected results (i.e., goals and objectives) for each need to be specifically defined before measurable indicators and appropriate data collection processes can be determined.
- The importance of information from coordinators/committee members lies only partly in helping the Community Justice Division maintain program accountability and provide evidence that additional funding will be well-used for the benefit of communities and the justice system.
- It is just as important that the information be made available to communities both so that they can see whether the Division is doing the job it should and so that they can learn from each other's experience.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- The first task of the Community Justice Division, however, must be to clearly establish the program's parameters, aims and objectives and the ways in which it is purporting to achieve these.
- Defining what to measure and why has to be done before it is possible to determine the indicators and methods through which this can be carried out.

- Evaluation focuses on questions of effectiveness, i.e., is the program achieving the results intended for it?
 - In developing an evaluation framework, it is therefore important to:
 - establish what the planned outcomes (i.e., results) are;
 - define these outcomes in a way that makes them amenable to measurement;
 - determine which activities are supposed to lead to which results.

- This process provides a program logic model outlining the specific program actions and the expected results of these actions.
 - An important assumption is that these results would not occur in the absence of the activities delivered by the program.
 - The Community Justice Program can be seen at two levels: the program as implemented by the Community Justice Division and the projects that it supports in communities. The Division's "program" can be understood as:
 - acquisition, allocation and disbursement of funds to communities; +
 - provision of technical assistance to communities, through the CJSs; ↓to produce
 - 'community justice'

- The community projects vary in type, as permitted by the program, and are determined at the local level.
 - Thus many communities have committees (though these are not required by the program) and, although committees may decide to undertake various justice-related functions, most are operating as pre-charge diversion programs.
 - Some communities also administer fine option/community service order programs.
 - In addition, the Division enables communities to carry out occasional functions such as workshops and conferences.

- In the case of the Community Justice "program", it is not clear what the intended outcomes are and, therefore, how these can be measured.
 - According to the mission statement "Community Justice is committed to community empowerment and a real shift in power, authority and allocation of resources".
 - The stated values and principles appear to describe those characteristics that the program is to demonstrate in its operation though some could also be interpreted as outcomes, e.g., "people must have the principle (sic) role in the development, delivery, governance and evaluation of their community justice practices and the community justice specialists will be guided by their evaluations".
 - However, there are several versions (some marked draft and others not dated) of the mission statement/values/principles document, hence no indication of which is the most current "official version.
 - The Contribution Agreement includes a Statement of Purpose which outlines that: "The Department of Justice provides contributions to communities for projects that promote and encourage the participation of communities in the justice system and the development and implementation of culturally relevant, community-based alternatives to the formal justice system".

- A major question for the Division, then, is what its specific aims are. i.e., what are its intended outcomes to

- develop justice committees
 - create diversion programs,
 - save court time and costs,
 - help communities heal
 - have communities develop other types of alternative justice programs
 - assist communities resolve conflict
 - create safe and secure communities
 - increase community capacity for assuming responsibility for justice?
 - All of these have been cited as the purpose of the program in various reports and documents as well as by a range of respondents.
- A recent article in Federal Probation (evaluating community justice programs: 1997) succinctly explains the difficulty in
- "Many restorative and community justice initiatives have objectives that are far more holistic than traditional crime control responses which have typically utilized recidivism rates as a primary outcome measure. An evaluative framework for these approaches would, therefore, have to include measurable criteria to assess outcomes of 'community empowerment and solidarity', 'victim interests' and 'crime prevention'. The relative importance assigned to such outcomes as community and victim involvement, offender shaming, reparation to victims, dispute resolution and healing will also determine how one gauges the effectiveness of any model. However, as new, more appropriate standards emerge for evaluating the impact of community justice, the most important concern, as suggested by the quote from one of the key practitioners [at the beginning of the article], is that the basis for comparison be the reality of the current system rather than an idealized version of its performance." (Bazemore & Griffiths, 1997, p.9)
- For evaluation purposes, definition of the program's intended results should be consistent with the program's sphere of operation.
- There is a difference between those things that the Division's program can directly achieve and those things that are In communities' /committees' power to achieve.
 - The program essentially funds and supports communities to develop and implement justice mechanisms that they determine and subsequently carry out.
 - Many of the community-level projects depend upon the cooperation of other agents (e.g., the RCMP in the case of diversions).
 - Without this cooperation, a community's project may not be implemented in the intended way.
 - However, it is beyond the power of communities/committees to control this completely although they can influence it to some extent through appropriate actions on their part (i.e., developing good relations, establishing protocols, etc.).
- To evaluate the effectiveness of the current operation of the Community Justice Program, the chain of actions, the agent responsible for implementing these actions and the expected results (i.e., goals and objectives) for each need to be specifically defined before measurable indicators and appropriate data collection processes can be determined.
- Respondents told us what results of justice activities in the community would be the most important ones to look at to show whether the program is working. CJSs mentioned:
- the activities of the committees;

Community Justice - Review Methodology

- the number of meetings with families, number of family group conferences;
 - number and types of contacts with organizations, number of community meetings, how many people attend, number of meetings in the schools, other indications of community visibility;
 - the comments of RCMP, judges, Crowns;
 - feedback from the community, other organizations;
 - types of offences being diverted;
 - the number of clients by age and gender;
 - the types of dispositions being determined at diversion meetings;
 - whether offenders are participating in and completing their disposition agreements;
 - offenders who do not re-offend;
 - whether offenders have changed their lives; . identification of the resources they need;
 - having the communities/committees/sponsoring organizations evaluate the performance of the CJS.
- The coordinators and committee members, in naming the results they considered to be important, essentially agreed with the CJSs:
- the activities being carried out;
 - the number of persons diverted;
 - the number completing their dispositions;
 - number of letters of completion accepted by the court;
 - how individuals feel about the community process in comparison with the court process;
 - communities' perceptions of committees and what the community sees as working;
 - how clients feel about themselves, whether they learned anything, what changes they made in their lives;
 - whether clients committed offences again;
 - changes in crime statistics in the different regions;
 - changes in the size of court dockets;
 - whether people are understanding traditional restorative justice.
- The above lists contain some useful suggestions for measuring program functioning and assessing its results.
- However, they also illustrate that, for the most part, the current understanding of the Community Justice Program is that it is a diversion program.

Supports Required for Monitoring and Evaluation

- A primary task for the program is to educate communities/committees of the value of maintaining systematic records for evaluating their projects and the program as a whole.
- While respondents accept the need for financial accountability, they tended to see other information requirements as only creating "paperwork" just because governments like statistics.
 - This perception arises partly from their own traditions which are based on oral narratives, partly from not seeing any value in, or advantage of, such information for their programs and partly from confusion about what is being requested.
- The supports required for monitoring and evaluation are:
- information and education about the purpose of evaluation and its uses for committees and programs;

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- training in the basic principles of evaluation and data collection;
- training in the use of appropriate software (e.g., Word, Excel) and access to a computer;
- supportive assistance available to answer questions and to follow-up regularly with coordinators/committees;
- resource materials and identification of on-line resource sites;
- simplified recording forms provided to coordinators/committees.

Role of the Department of Justice

- If the Department of Justice requires information that must come from the committees/sponsoring organizations it will be necessary to provide the kinds of supports and resources outlined above.
 - The first task of the Community Justice Division, however, must be to clearly establish the program's parameters, aims and objectives and the ways in which it is purporting to achieve these.
 - Defining what to measure and why has to be done before it is possible to determine the indicators and methods through which this can be carried out.

Recommendations

- Before an evaluation framework can be designed, the Community Justice Division must clearly define its aims and objectives as well as the activities it is undertaking to specifically achieve these aims and objectives.
- The uses to be made of the information should be established as a guide to setting priorities for collecting the necessary data.
 - Among these uses should be that of providing to committees/community projects the accumulated knowledge about their own programs and the results they are achieving.
- A number of supports (including training) are required by committees/sponsoring organizations if the Department of Justice will be asking them to collect and provide a range of detailed data.
 - The Community Justice Division must make provision for these supports in order to be able to obtain consistent, reliable and accurate information.

Concerns

Evaluations Providing Empirical Analysis

- Several justice programs, e.g., sentencing circles, have claimed to reduce recidivism rates among offenders processed through the initiative, to prevent or reduce crime and disorder, to lower costs, to advance victims' interests and to promote community solidarity. However, while these program benefits are measurable, most often they have not been evaluated and thereby subjected to empirical analyses to determine the extent to which these benefits have been achieved and to assess whether justice programs have been successful in meeting their stated objectives. In the Northwest Territories, coordinators, committee members and other respondents indicated that they would like to know whether community justice activities are leading to the results they are hoping for. Currently, there is little systematic reporting and no evaluation framework in place to provide the required information. As chapter 7.0 has pointed out, appropriate training for coordinators and committees is one of the prerequisites for this.

Evaluation - Evaluation should be built into the program components to measure the program's impact and to provide a basis for recommendations for future improvements.

4. Relevant Documents, Studies and Practices – Other Canadian

4.1. Guide to Project Evaluation: A Participatory Approach¹²

4.2. Protocols & Principles for Conducting Research in an Indigenous Context¹³

The IGOV research protocol complements UVIC's Human Research Ethics Policy by recognizing its responsibility to address the need for an institutional protocol for both staff and students for conducting research involving Indigenous participants. The protocol upholds the program's commitment to the principles of the Coast Salish people by acknowledging Indigenous values and ownership in the research design; open, direct and transparent methods and the full consent and collaboration of the people involved in the research. The IGOV protocol reaffirms Indigenous peoples' right to participate in and enjoy society's benefits including those that might result from research and Indigenous involvement in research activities.

See online for entire document.

4.3. Restorative Justice: Directions and Principles –Developments in Canada - 2002¹⁴

Abstract

The purpose of this paper is to summarize the directions and developments in respect of restorative justice (RJ) in Canada as well as Canada's efforts in support of the adoption of international principles to guide policy and practice in this emerging field. The summary of RJ in Canada includes a brief account of its roots in Aboriginal cultures, faith communities and non-governmental organizations, the milestone events that led to an expansion of programmes during the 1990s, and an overview of recent activities that have promoted awareness, discussion and education in RJ across the country. The paper also provides a synopsis of the results of research on RJ in Canada, including evaluations of programmes, meta-analyses of the impacts of RJ, victims' perceptions of RJ and public attitudes towards RJ. The policy debate and expressed concerns about RJ are highlighted. This summary of developments and debate, which serves to illustrate the promise and pitfalls of RJ, is followed by an account of Canada's contribution to the elaboration of U.N. Basic Principles of Restorative Justice. The paper concludes with a call for further research to guide future policy and programme development.

Canadian Research on Restorative Justice

Various goals have been articulated for different restorative justice programmes. These have included: to better meet the needs of victims; engage communities in the justice process; rehabilitate/reintegrate the offender; reduce recidivism; serve as an alternative to incarceration while providing meaningful consequences and obligations; increase public confidence in the justice system; reduce pressure on the criminal justice system and lower costs by diverting cases. Of course, whether these goals are met in particular programmes is an empirical question, and there is a broad recognition among policy makers and practitioners of the need for ongoing evaluation of programmes.

Notwithstanding the recognition of the importance of research and evaluation, there have been relatively few formal evaluations of restorative justice programmes in Canada. An evaluation was done of the court-based victim offender mediation programmes (VOMP) in four Canadian cities (Umbreit, Coates, Kalanj, Lipkin, and

¹² <http://www.hc-sc.gc.ca/hppb/phdd/resources/guide/index.htm#CONTENTS>

¹³ University of Victoria – Faculty of Human and Social Development, Protocols & Principles for Conducting Research in an Indigenous Context, – February 2001, <http://web.uvic.ca/igov/research/>

¹⁴ Robert B. Cormier Restorative Justice: Directions and Principles –Developments in Canada 2002-02, Department of the Solicitor General Canada <http://www.sgc.gc.ca/EPub/Corr/e200202/e200202.htm>

Petros, 1995). These researchers found that victims and offenders who participated in mediation were more likely to be satisfied with the manner in which the justice system responded to their case than offenders and victims who were referred to but never participated in mediation. Satisfaction with the outcome of the mediation was very high among victims (89%) and offenders (91%).

An evaluation of a court-based VOMP in another Canadian city examined the process and outcomes for completed mediation cases but did not include interviews with the victims and the offenders (Nuffield, 1997). Nuffield found that many of the offences which led to a referral to mediation were minor, involving little or no injury and small material losses, and were described by prosecutors as "petty crimes" that should not take up court time. About half of the mediated agreements reviewed in the study called for restitution to the victim. Victims who had suffered material losses were more than four times as likely to receive restitution through the mediation process than those victims whose cases proceeded to the court. Comparisons of the outcomes for the offenders who participated in mediation with a group of offenders who were referred but did not go through mediation showed no difference in recidivism rates, although the author noted that the mediation group consisted of higher risk offenders (i.e., a larger proportion had a prior record).

The application of a VOMP post-sentence in cases of serious crime, such as aggravated sexual assault, murder and armed robbery has been the subject of a preliminary evaluation (Roberts, 1995). This programme involved extensive screening and therapeutic preparation before a face-to-face meeting was arranged. Interviews were conducted with victims and offenders who participated in the VOMP as well as practitioners who were involved in the programme. The major finding of the study was that there was strong support for the programme from all the victim and offender respondents. Specifically, participants appreciated the "reality of the experience", the flexibility and absence of pressure, and the caring, supportive staff. The results also showed that the motivation for victims' participation was twofold: to know about the offence and why it took place and to communicate about the impacts, whereas the motivation for offenders was most often that it was the right thing to do, both for themselves and for the victim. A very high percentage (91%) of the criminal justice practitioner respondents indicated strong support for the programme (Roberts, 1995).

The Community Justice Forums that are operated by the Royal Canadian Mounted Police have been the subject of a preliminary evaluation (Chatterjee, 1999). The results of this evaluation showed high levels of satisfaction with Community Justice Forums among offenders, victims and facilitators. The participants in this study indicated high levels of satisfaction overall as well as with the procedures of the forum and the fairness of the outcome (Chatterjee, 1999).

Bonta, Boyle, Motiuk and Sonnichsen (1983) conducted a study of a programme that involved offenders being released from prison to community resource centres (CRCs) or halfway houses in order to make restitution to their victims. The study found generally positive attitudes towards restitution among victims, with the level of satisfaction related to the amount of money repaid to the victim. Comparison of the recidivism of the group of offenders who had restitution agreements with those who were sent to CRCs without the requirement to pay restitution was complicated by the fact that the restitution offenders constituted a higher risk group at the outset (i.e., younger with more extensive criminal histories). Despite the expectation that the restitution group would have a higher recidivism based on their risk level, the restitution offenders were no more likely to be reincarcerated than the comparison group. Another interesting finding of this study was that the more that the offender repaid the more likely he was to successfully complete his CRC placement.

A programme called Restorative Resolutions was introduced by the John Howard Society of Manitoba to provide a community-based alternative sentencing plan to the court, with input from victims, for offenders who were otherwise likely to be incarcerated. The evaluation showed that victim-offender meetings occurred in a relatively small percentage (i.e., 10%) of cases but there were higher percentages of written apologies (24%), restitution (56%), victim impact statements (79%), and community service (96%) (Bonta, Wallace-Capretta and Rooney, 1998). The results of the evaluation also indicated that the offenders who participated in the programme, which included treatment to address the identified needs of the offenders as well the restorative component, had a lower recidivism rate than matched groups of probationers and inmates.

The Community Holistic Circle Healing (CHCH) Process in Hollow Water First Nation has been evaluated (Couture, Parker, Couture and Laboucane, 2001). The CHCH process, which is founded on Aboriginal teachings and traditions, addresses sexual abuse in an holistic manner involving victims, victimizers (offenders)

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

and their respective families and community. The process, which continues to evolve, involves 13 steps that begin with disclosure by the victimizer or the victim and ensuring safety and support for the victim, followed by circles with the victim and the victimizer and preparatory meetings with their families, leading to a special gathering/healing circle and ending with a cleansing ceremony. The underlying concept for the process is "healing as a return to balance" (Solicitor General Canada, 1997a, p. 128). Offenders in the community who have been charged (in most cases with a sexual offence), plead guilty and choose to enter the programme, are sentenced to probation with a condition that they participate in the CHCH process. The evaluation included interviews with community members and practitioners involved in the CHCH process, cost comparisons between CHCH and processing through the mainstream justice system, and an analysis of re-offending. The results of the interviews revealed that the respondents attributed significant improvements in the health and wellness of their community to the CHCH process, including an increased sense of safety, improved parenting, children staying in school longer, young people returning to the community to teach, and a reduction in the requirement for substance abuse treatment. A comparison of the resources spent on the CHCH process with the avoided costs of processing these cases through the mainstream justice system and housing these offenders in penitentiaries showed significant savings. The evaluation also found that only 2 of the 107 offenders who had participated in the programme over a period of ten years subsequently re-offended, which is a lower rate of recidivism than generally reported for sex offenders (Hanson, 2001).

Bonta, Wallace-Capretta and Rooney (1998) conducted a meta-analysis, i.e., a quantitative synthesis, of the impact of restorative justice programmes on recidivism. They found 14 evaluations reported in the literature that met their two basic criteria, i.e., the presence of a comparison group and sufficient information to calculate a common statistic or effect size to measure the strength of the relationship between the restorative justice intervention and recidivism. These studies provided 20 effect sizes for the meta-analysis. The overall finding was a reduction of 8% in recidivism attributable to the restorative justice intervention, although the authors noted that some studies reported large decrease while others found *increases* in recidivism. In addition, the authors commented on the methodological weaknesses in the studies, notably the absence of random assignment and the limited use of matched comparison groups.

A more recent meta-analysis examined the impact of restorative justice programmes on four outcome measures of interest: victim satisfaction, offender satisfaction, restitution compliance, and recidivism (Latimer, Dowden and Muise, 2001). The authors reported on the results of 22 studies that examined the impact of 35 restorative justice programmes, yielding a total of 66 effect sizes for the four outcomes. The results showed a significant positive impact of restorative justice programmes on victim satisfaction. Analysis of the impact of restorative justice programmes on offender satisfaction showed no effect; however, as the authors noted, the results were skewed by the findings of one study. Participation in restorative justice programmes had a significant impact on the likelihood of completing a restitution agreement. With regards to recidivism, the results of the meta-analysis showed a reduction of 7% due to restorative justice intervention – similar to the results of the earlier analysis reported by Bonta, Wallace-Capretta and Rooney (1998).

Wemmers and Canuto (2001) have provided a critical review of the literature on victims' experience with and perceptions of restorative justice. They concluded that the research shows that most victims who participate in restorative justice programmes are satisfied with the experience but there is no clear evidence that participation in such programmes enhances satisfaction relative to the traditional justice system. Further, they found that most victims who participate in restorative justice programmes feel that they benefit from them and meeting with the offender can assist in addressing some of the victim's emotional needs. They also noted that there has been little research on the experiences of victims who choose not to participate in restorative justice programmes.

Research has also been conducted in Canada on public attitudes towards restorative justice, and survey results have shown favourable attitudes (Galaway 1994, reported in Shaw and Jané, 1998; Doob, 2000). For example, Doob (2000) found that when respondents were given a scenario describing a family group conference in the case of an offender who stole from a store, 65% indicated that it would be appropriate to handle it that way rather than in court if the offender were an adult, and 75% in the case of a young offender. In his survey research, Doob also found that 55% of adults in Ontario were "very interested" or "somewhat interested" in becoming involved in structures outside the formal justice system that are reparative in nature.

4.4. Public Dialogue: When, Why and How? - 2002

Public Involvement in Policy-Making

A variety of forces are pushing governments to find new ways to involve citizens in the making of policy.

Forces like the speed and complexity of change and the growing diversity of Canadian society demand up-to-date, accurate input from those affected if policies are to be relevant and effective.

As Karen Jackson, Director of CPRN's Public Involvement Program, points out in a recent presentation, governments that seek to involve the public need to refine their approach to suit their target, the depth of involvement, and the stage of the policy process.

The approach will differ depending on whether the target public is citizens, experts or stakeholders. The type of involvement follows a continuum from that of communicating a message, to consultations, to true engagement (deliberative, open-ended and transformative). Finally, the matter of who to involve and how to involve them will also vary depending on the stage of policy-making (whether agenda-setting, problem definition, policy development, implementation or evaluation).

In *Public Dialogue: When, Why and How?*, a presentation she made to the Ready, Set, Go Conference, convened by Human Resources Development Canada, January 30 – February 1, 2002, Jackson draws on CPRN's experience with the deepest form of involvement – citizen engagement – to describe the conditions that make it effective.

You can access or download a Powerpoint version of her remarks by clicking www.cprn.org here:

4.5. Restorative Justice - A program for Nova Scotia - 2001¹⁵

Evaluation¹⁶

An effective monitoring and evaluation system must be established to measure the success of the Initiative in achieving its goals. Outcomes to be monitored will include measures of recidivism, victim satisfaction and cost-effectiveness. It will also be essential to consider the secondary impacts of restorative approaches - strengthening the ability of individuals and communities to take greater responsibility; reconnecting people to positive environments; rebuilding a sense of community; and redressing the underlying causes of crime - all of which will contribute to crime prevention.³⁶

Ongoing assessment of implementation issues will provide the necessary feedback to permit the Initiative to respond to operational concerns which may be identified during program initiation. Any unintended negative impacts (i.e. exclusion of any identifiable group from program participation) will be determined and remedial action taken.

Experience of other jurisdictions has shown that implementation of restorative justice programs can reduce the costs of processing criminal cases.* An important evaluation component of the Initiative will involve an assessment of whether restorative justice programs lead to direct and indirect financial savings. The financial cost of delivering the existing system is rising yearly. An evaluation of the broader financial issues associated with restorative justice is essential for the continued growth of the Initiative.

Indirect savings will also result from restorative justice programs if the primary goal of reducing recidivism is achieved. The savings will be enjoyed generally by a population of potential victims who are not victimized, and the insurance companies that represent them.

As Government and community agencies expand their participation in restorative justice initiatives, these experiences will generate information which can be used to enhance program effectiveness. Given that Nova Scotia has adopted a unique, system-wide restorative approach, our contribution to the knowledge base will be of particular value to other jurisdictions. It is therefore important to establish a rigorous evaluation process.

¹⁵ Restorative Justice - A program for Nova Scotia, Update 2001, <http://www.gov.ns.ca/just/rj/rj-update.htm>

¹⁶ <http://www.gov.ns.ca/just/rj/rj-phase.htm>

4.6. The Effectiveness Of Restorative Justice Practices: A Meta-Analysis – 2001¹⁷

- “The Effectiveness Of Restorative Justice Practices: A Meta-Analysis” uses one of the most comprehensive quantitative research methods - meta-analysis which refers to an analysis of analyses.
 - In other words, it is a statistical analysis of a group of studies to integrate the various and, often times, discrepant findings from a body of literature.
 - This report is an example of efforts to support the Department in its evidence-based decision-making process.
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4.7. Law Commission of Canada - 2001¹⁸

- Pursuant to its legislative mandate, the work of the Commission must observe the following principles:
 - *Inclusiveness*: The Commission canvasses a wide range of people affected by and concerned with law and justice, and seeks to give a voice to those not ordinarily heard.
 - *Multidisciplinary Approach*: To evaluate the law in its societal context, the Commission draws on diverse sources of legal and non-legal experience and expertise.
 - *Innovative Practices*: The Commission employs innovative research and management practices, and uses new technologies for information gathering, evaluation, consultation and communication.
 - *Partnerships and Networks*: This approach avoids duplication of effort and benefits from existing knowledge and capacity in addressing areas of common concern.
 - Partnerships invite multidisciplinary. Inclusiveness fosters innovation as the Commission looks for new ways to reach individuals and groups not typically consulted or not traditionally considered as belonging together. Inviting and analyzing input on the law requires an openness to new ways of thinking about and responding to the effects of laws.
 - The Commission continues to be committed to a better understanding of how law is lived by Canadians, not only of how law is written...
 - A program or a methodology disconnected from the true preoccupations of the people who live the law cannot yield appropriate results.
 - The Commission has maintained a research agenda that is articulated around relationships — personal, social, economic and governance relationships.
 - This choice ensures a reflection beyond traditional legal categories and has proven to stimulate discourse beyond academic and legal circles.
-

4.8. Law, Justice, And The Community - 2001¹⁹

Who is missing? Who will benefit? Who will pay?

- Empirical research attempts to document such possible effects, or at least determine the extent of the problem.
- However, the way in which data collection is framed is not neutral.

¹⁷ Department of Justice Canada, Research and Statistics Division, Jeff Latimer, Craig Dowden Danielle Muise, “The Effectiveness Of Restorative Justice Practices: A Meta-Analysis”, 2001, <http://canada.justice.gc.ca/en/ps/rs/rep/meta-e.pdf>

¹⁸ Law Commission of Canada Performance Report For the period ending March 31, 2001
http://www.tbs-sct.gc.ca/rma/eppi-ibdrp/est-bd/p3dep/dpr_i-m_e.htm#1

¹⁹ Report on the 28th Canadian Congress On Criminal Justice, June 20 - 23, 2001/20 Halifax, Nova Scotia Law, Justice, And The Community, hosted by the Canadian Criminal Justice Association: Law Commission of Canada, Nathalie Des Rosiers, President, A Just Law for All - Equality and Law Reform
<http://home.istar.ca/~ccja/angl/report.html>

- It is trite to say that the way a question is asked often predetermines the answer.
- Therefore, attention must be paid to the manner in which the question is asked and from whom it attempts to elicit answers.
- Who is missing from the data?
 - This is a question which must be examined.
 - Often law reforms have had harmful effects on populations which may not have been anticipated: the extension of recognition to same-sex couples in tax law may mean that women sharing accommodations would lose their GST credits because they are deemed to be a couple, and their incomes are amalgamated for purposes of eligibility for the credit. These women may be poorer than before.
- So, searching for the living law is attempting to unearth the unexpected and the unintended effects of reforms. How can we accurately predict the effects of law on people – particularly the people for whom the reform was not specifically intended? It is certainly a question, which we must constantly have on our mind.
- Very importantly, we must reflect on how our understanding of who will be affected, who will benefit is often stereotypical and ill-informed. We approach research questions with certain predispositions - we may try to think broadly about the affected interests, but may miss the mark. We are, to a certain extent, dependent on the way data has been collected before – our understanding of social problems are often framed by the statistical information which has been collected – by the questions asked before.
- For example, in our restorative justice project, the success of restorative justice programs may have been assessed on the basis of certain criteria:
 - the rate of recidivism or the cost of the program per offender.
 - One must ask who is missing in the picture:
 - has data been collected on the basis of the impact of the program on the community, on witnesses, on victims?

My point is this: the danger in reforming the law is to not know enough about how law is lived and to ask the wrong questions. An equality framework must be particularly sensitive to the question of who is missing because the poor and the vulnerable are not the ones whose stories are well-known, whose voices are heard regularly or whose data is collected. The poor and the vulnerable are often stereotyped. Their views are often ignored and misunderstood. We tend to assume homogeneity of the group. Who is missing in the data? This a very serious question for law reformers concerned with the issue of equality.

How then to develop a methodology which can respond to questions such as: How do we understand the reality of the law as it is lived? How do we reach the missing data?

The LCC's Attempt to respond to these Challenges

The Law Commission defined its mission as “engaging Canadians.” The mission was premised on the view that law reform is not possible unless we talk to the people who will be affected by the reform. They are the people who make it and who will live with it. As stated in the Commission’s first Annual Report, “Those who reform the law in Canada are, above all, the public. They renew the law by living it.”⁸¹

These efforts at consultation are at the core of the reform. It has meant, in our case, that consultations must be done at all stages of law reform: prior, during and after. It has also meant creating a structure which welcomes challenges and seeks out diverse points of view.

Research Methodology

First, the Law Commission statute mandates the establishment of an Advisory Council, consisting of volunteer members from across Canada, who bring a rich variety of experience and perspectives to the advice they offer to the Commission. The Advisory Council meets twice a year to provide strategic guidance to the five commissioners on the projects that the Commission is considering undertaking. Members of the Council serve as an important network for the Commission, connecting it to communities and regions, and points of view to which it might not otherwise have regular access.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

Second, consultation and engagement of Canadians in researching and in describing the problems that they experience is an essential component of our methodology.

One such example was identified in a recent study on financial exploitation of seniors. Financial exploitation is a serious social problem that many people have identified, including both the physical and psychological abuse of seniors that sometimes accompanies financial exploitation.

It is a conditioned reflex for a teacher and a lawyer to look to comparative law to see whether other jurisdictions have something worthwhile to offer us: possibly the laws governing the protection of seniors that exist in some of the provinces and in the United States where some social workers identify as good examples.

An examination of the question shows that it is not so much the formal law that is ailing, but rather the suppositions on which it is based. The Criminal Code is adequate, in its present state, to deal with the financial exploitation of seniors as well as physical abuse, but it is not used. Seniors do not lay charges against members of their families who deprive them of their assets. They do not wish to complain. Perhaps it is the shame of having to admit publicly that their children have taken advantage of them. It may be because of the devastating effect criminal proceedings have on victims. (Who wants to go to court and wait for hours simply to be told that the case has been adjourned to a later date?) It may be because they do not really understand their rights. It may be our concept of the family which makes parents responsible for their children's failures that prevents them from complaining.

It was *La Sagouine*, a fictional character created by Antonine Maillet, who said in one of her monologues, "I don't come out of the confessional until I have finished confessing my sins, the sins of my husband and the sins of my children".

A reform of the law that was limited solely to recommending changes in the provisions of the Criminal Code to eliminate any uncertainty as to its application to the financial exploitation of seniors, or even to make the job of the prosecution easier, would be out of place.

Older adults had to be consulted to get a better appreciation of the way in which the problem was truly lived and to identify possible solutions. Legislative changes, changes in the formal law, cannot be recommended until we have interpreted the situation of seniors properly and until we have consulted the seniors themselves.

Proper research is not possible unless we talk to the people who are affected by the law and who will be affected by the reform. They are the people who must live with such reform.

Our research methodology is therefore built around mechanisms for consultation: we try to form study panels consisting of not only the experts but also the people who will be affected, and the representatives. We conducted community meetings, focus groups and a webcast consultation to hear stories of people dealing with the law on a specific topic. We attended conferences, experimented with the "safe forum" concept, where people can relate their experience on a specific subject. I would like to emphasize how research and researchers cannot avoid consultation in the process of understanding law and its impact. Empirical research is needed and is essential, but it must include the involvement of the subjects. Statistics disembodied from context can be misleading. Referring to the subjects and the citizens to verify whether the research conclusions confirm their reality must be included as an essential step in research.

The research must be accessible to citizens as well. It is partly in this context that we decided to start with relationships as research themes as opposed to legal categories, to facilitate access to the experience of the lived law.

Our Research Projects

Under the theme of Social Relationships, we are concerned about social conflicts and the potential of restorative justice. We want to understand the role of law in building or impinging the development of communities.

Conclusion

Ineffective legislative reforms contribute to the skepticism of citizens.

Law reform is too important not to be undertaken with the goal of equality in mind. It can be too damaging if it not done right.

4.9. Aboriginal Justice Strategy (AJS) Evaluation – 2000 ²⁰

- Information was derived from several sources:
 - Regional Coordinators: reviews of files and reports maintained by Regional coordinators on community justice projects
 - Independent Evaluations: when independent evaluations were available, they were included in the report
 - Interviews: Federal-Territorial representatives and community justice workers

Self Evaluation:

- The Framework for evaluation of the AJS called for a self-evaluation approach, also known **as participatory evaluation or empowerment evaluation**.
 - Each Aboriginal community justice project was to develop their own evaluation framework, collect the appropriate data and report on the results.
 - This approach fosters self-assessment, collective knowledge production and cooperative action.
 - They were expected to participate substantively in the identification of the research/evaluation issues, the shape and direction of the evaluation, the collection and analysis of data and action taken as a result of the study's findings to ensure continuous project improvement.
 - This empowering approach to evaluation contributes to overall community development and creates a base of skills that is transferable to the management of other projects.
 - It is 'empowering' because the community takes ownership of the project.
 - The community is best suited to determine its own needs, what it wants to achieve, and how it would like to achieve the results and therefore the community is also best suited to determine what constitutes progress.
 - Ultimately, the community is the best source of information as to how satisfactory the project has been in meeting its objectives.
- The Evaluation **Framework for the AJS was developed without consultation** with provinces, territories, Aboriginal organizations and Aboriginal communities.
 - Not surprisingly, the Framework was met with varying levels of acceptance.
 - This may have contributed to a number of problems specifically related to the implementation of the self-evaluation approach.
 - The AJS did not strongly encourage provinces/territories to participate in evaluation.
 - In most situations, resources for evaluation were not built into the funding agreements from the outset.
 - The result was the evaluation was generally under-funded and slow to be initiated by AJS.
- **The lack of attention to self-evaluation in the negotiation of agreements also reflects a lack of communication** with the communities around the expectations for data collection and reporting requirements.
 - Many community justice projects were operating for a year, or more, without being aware of the need to provide data and information in a suitable format for analysis at the national level.
 - While communities had varying levels of capacity, many did not have the ability initially to undertake self-evaluations.
 - Although self-evaluation booklets were developed and training undertaken, there was a lack of ongoing training, which meant that new staff were not being trained and projects were losing their capacity to undertake self-evaluation.

²⁰ Department of Justice Canada, Evaluation Division, Final Evaluation Aboriginal Justice Strategy, Technical Report, October 2000

- Initially the AJD intended for the Regional Coordinators to provide ongoing support and resources for the community justice staff, but the **focus of their mandate shifted to establishing new projects**.
 - o Without an increase in AJD staff, the number of projects grew from 26 to 84 over the last four years of the five-year AJS.
 - o The net result was that Regional Coordinators were diverted from on-going attention to the funded projects to work with communities and provincial/territorial governments to establish new projects.
 - o On the other hand, some jurisdictions made a concerted effort to provide follow-up training, but the high turn-over of community staff made it difficult to maintain the capacity and commitment to perform self-evaluation.
 - o Additionally, some projects are run with part-time staff while others have full-time personnel who could better attend to the administrative details needed to collect systematic data for evaluation.
 - In **remote locations it is often difficult to find staff** with necessary skill sets to manage the administrative requirements to support self-evaluation.
 - o In addition, to the immediate needs of the project staff for administrative and self-evaluation training, project start-up can be slow and incremental process of educating the mainstream justice players, and connecting with supporting agencies that will provide programming to clients.
 - o Training for self-evaluations during the start-up phase would need to be maintained to ensure an understanding of the need for proper record keeping and reporting.
 - o All these steps are seen as necessary to the proper evaluation of community justice projects and in keeping with the provincial/territorial commitment to accountability.
 - The consensus of interviewed provincial and territorial officials was that the **staff of community projects should be provided with the necessary skills development and training** from the outset.
 - o Capacity building needs to be built into the design of the projects and financially supported from the outset.
 - o Training during the start-up phase needs to be maintained to ensure that proper record keeping occurs and that reporting obligations are met.
 - There have been recent movements to commit to an **evaluation and accountability framework**.
 - ◆ The community self-evaluation approach has not been well implemented by the AJS and is not conducive to the production of data and information suitable for roll-up and analysis.
 - ◆ Few projects are actually able to conduct self-evaluation at this stage.
 - ◆ **Independent Evaluator:** Ontario has adopted the approach of employing an independent evaluator and over-seeing the evaluation with a federal-provincial-community steering committee.
 - ◆ A common core set of data requirements are stipulated in the agreement reached with each community.
 - ◆ The new approach is based on lessons learned, incorporates an intensive start-up phase with the community and the evaluator to ensure proper record keeping and data collection.
 - ◆ **Common Evaluation Framework:** Justice officials in British Columbia are working with the federal Regional Coordinator and the Evaluation Division of Justice Canada to develop a framework for evaluating all community justice projects with a common framework that would lend itself to a national roll-up. At the same time they will work with some projects to do more in-depth analysis of what aspects of a project are working well, to provide more rigorous information on what works.
 - ◆ There is evidence that the situation has improved over the last two years of the Strategy, with more provinces and territories signing Memoranda of Understanding with Justice Canada, which includes agreement of data collection. More resources will be required during the start-up phase for training self-evaluations in addition to the continuance of on-going training.
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4.10. Aboriginal Justice Strategy (AJS) Trends -2000²¹

- This report highlights the various activities and organizational structures reported by 62 programs funded by AJS and their provincial/territorial partners for the fiscal years 1996-1998 and addresses common challenges and 'best practices' at the community level for community-based justice programs in Aboriginal communities across Canada.
- It speaks to the breadth of activities of these programs are engaging in at all points of entry into the criminal and civil justice system.
 - o Although those represented here are only a fraction of the total number of programs operated by Aboriginal communities and organizations across Canada, we feel it is an informative step in increasing our understanding of the legal and social justice needs of Aboriginal communities.

Objectives of this Report

- Very little information has been collected and maintained on the activities and organizations funded of the AJS funded programs.
 - o This report attempts to highlight what has been going on across the country by providing an overview of the activities and organizations of these community-based Aboriginal Justice programs for fiscal years 1996-1998.
 - o It also highlights some the trends and themes – both qualitative and quantitative – as they have been reported upon the programs in their activity and final reports.
- While there are many similarities between programs across jurisdictions and in different geographic locations, there is also a lot of variety.
 - o This report attempts to illuminate these similarities and differences in a coherent and meaningful way.

Methodology

- Pre-existing data provided the basis for findings contained in the report "The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999"
 - o Qualitative and quantitative data was extracted mainly from Department of Justice Canada files which contained such items as correspondence, proposals, Memorandums of Agreement, and activity reports.
 - o Information was also acquired from the AJS Regional Coordinators as well as from, in some cases, the programs themselves.
- The specific information/data to be collected was not rigid or defined at the outset, but rather flexible throughout the process to ensure that relevant information was included.
- It must be kept in mind that the programs examined in this report are restricted to those that have been or are currently (as of 1998-1999) receiving funds from AJS and their provincial/territorial partners.
 - o There are many community-based Aboriginal justice programs operating across Canada that are not included in this report because they do not have a funding relationship with AJS, operating instead from sources of financial and human resources.
- On page 2 it is indicated "a detailed description of each program was prepared. This document highlighted much of the qualitative information surrounding each of the AJS programs, addressing the challenges they reported, their successes and their particular program structure and activities." Do we have a copy?

4.11. Best Practices and Lessons Learned: Multidisciplinary and Integrated Justice Projects -1999²²

EXECUTIVE SUMMARY

CONTEXT

²¹ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

²² Justice Canada, George Kiefl Research and Statistics Division, March 1999 <http://canada.justice.gc.ca/en/ps/rs/rep/wd99-2a-e.html>

During the June 1996 meetings of Deputy Ministers Responsible for Justice discussions were held concerning the two related topics of multidisciplinary approaches to justice problems and integrated justice, and Deputies asked that work be undertaken in each area. In August 1996, Deputies agreed that the work, and the two groups addressing the work, be merged into what is now known as the Integrated Justice Initiative.

In summary, Deputy Ministers asked officials to undertake the following work:

- produce a compendium of multidisciplinary and integrated justice projects from across the country;
- develop a report on best practices and lessons learned in multidisciplinary and integrated justice;
- explore the possibility of undertaking select evaluations of existing, exemplary multidisciplinary and integrated justice projects;
- explore ways in which non-governmental organizations (NGOs) could be better involved in justice projects; and,
- explore the role of, and potential for, integrated justice in the areas of family, civil and criminal law.

The Multidisciplinary Justice Research Sub-Committee undertook to address elements of three tasks:

- a compendium of multidisciplinary and integrated justice projects;
- a report on best practices and lessons learned; and,
- possible evaluations of promising, exemplary multidisciplinary justice projects.

Initially, the Research Sub-Committee worked in conjunction with the Canadian Centre for Justice Statistics to develop the requested compendium. The Compendium, created using submissions from the jurisdictions on both multidisciplinary and integrated justice projects, was tabled for Deputy Ministers in 1997 and made public by the CCJS as Compendium of Canadian Integrated and Multi-disciplinary Justice Initiatives. The compendium was later up-dated and tabled for Deputy Ministers at their March 1998 meetings in Victoria. Following the completion of the compendium, the Multidisciplinary Justice Research Sub-Committee began developing the requested report on best practices and lessons learned through an analysis of the submitted projects. This report represents the culmination of that effort, and begins exploring the work on evaluations through a discussion of next steps.

MAIN FINDINGS

Through an analysis of the responses to the best practices and lessons learned question, it became clear that a majority of responses addressed necessary aspects of undertaking multidisciplinary and integrated justice projects rather than particularly successful or effective practices in developing successful justice projects. Factors such as 'undertaking consultations,' for instance, or 'involving partnerships,' were listed as best practices for a number of projects. These kinds of activities are necessary elements to developing multidisciplinary and integrated approaches, as opposed to particular practices that lead to effective multidisciplinary and integrated justice projects. As such, it appears that respondents understood the question in terms of providing successful and exemplary projects rather than delineating particularly successful practices. This changed the nature and objectives of the project and this report somewhat; nevertheless, a few projects did provide some information insights into best practices and lessons learned.

1. Best Practices:

Three related elements comprise the best practices (i.e., processes which assist in developing successful multidisciplinary justice projects, as opposed to exemplary projects per se) identified from the submitted projects:

- early consultations play an important role in effectively engaging partners and developing meaningful partnerships where all parties involved assume a degree of ownership over a project;
- in a related manner, partnerships must be genuine in order to be successful. While early consultations will impact a community's likelihood of accepting an invitation to participate in a multidisciplinary or integrated justice project, there is a need to go beyond the formality of consulting by developing genuine partnerships where there is equality amongst partners and openness to allow all partners the opportunity to help determine the role and nature of the project; and,
- the development of successful, genuine partnerships involves effectively engaging communities and partners in the decision making process, and thereby instilling ownership over the project (and justice issues generally). Developing real ownership (or "buy-in") on the part of partners is related to respecting the needs and desires of partners, ensuring that all partners are comfortable with other partners, ensuring that all implicated and involved agencies are seen as credible, and being sensitive to protocols and other related matters that partner agencies may have or may bring to the partnership.

2. Outcomes&Benefits:

Three main kinds of benefits and outcomes emerged from an analysis of the submitted projects:

- multidisciplinary and integrated justice projects have an impact on the community generally, in the form of community development. Community development may be seen as comprising an improved sense of community, an increased community awareness, and increased community interaction;
- a number of multidisciplinary and integrated justice projects reported objectives or results of reduced costs and improved efficiencies in the justice system; and,
- a variety of projects reported outcomes and benefits relating to crime, including reduced crime and fear of crime, and reduced victimization.

3. Partnership Orientations:

As the analysis progressed, it became clear that there were differences in partnership orientation that seemed to be important in further exploring multidisciplinary and integrated justice projects. Based on the apparent primary partner, it was possible to develop a classification system as follows.

- Community Partnership projects represent an initial step in external integration (i.e., integration with non-justice system partners) wherein justice agencies partner with affected and interested communities to address a justice problem.
- Justice System Coordination are projects with an orientation toward internal integration (i.e., integration within the justice system itself) where justice system agencies become more involved with other justice system agencies with the aim cooperating to integrate and coordinate their work.
- Inter-System Cooperation projects, which seek to improve cooperation between the justice system or agencies of the justice system and other public systems (e.g., education), represent a different, perhaps more complex, kind of external integration.
- Holistic Approaches may include elements of community partnerships, justice system coordination and/or inter-system cooperation. They may also have unusual partners such as a very specific community group or may have a very specific target group. However, these projects share a different commonality: they have adopted an orientation toward developing complete and holistic responses to problems rather than adopting an orientation around a particular kind of partnership.

4. Differences Between Multidisciplinary & Integrated Justice Projects:

Looking at the projects within this classification, it is apparent that multidisciplinary projects and integrated projects have different orientations:

- all of the submitted integrated justice projects, except one holistic approach project, were classified under justice system coordination. This finding suggests that integrated justice projects appear to be primarily concerned with internal integration as noted above, internal integration refers to integration within the justice system; and,
- the submitted multidisciplinary justice projects tended to be classified under the categories of community partnership projects or inter-system cooperation projects. Being more likely classified under community partnership and inter-system cooperation, it seems that multidisciplinary justice projects are more oriented toward external integration as developed, external integration refers to integration with non-justice system partners be they the community or agencies of other service systems. However, it is true that multidisciplinary justice projects were classified under all four categories of projects, suggesting that multidisciplinary justice may be more flexible in engaging more varied partners than integrated justice projects.

Aside from these differences in orientation, there were nevertheless clear similarities between multidisciplinary and integrated justice projects in terms of the targets and outcomes of projects:

- both multidisciplinary and integrated justice projects had similar justice-system as well as similar social-community targets and objectives. In terms of specific targets, both multidisciplinary and integrated justice projects tended toward the targets of crime prevention, community development, reduced use of the traditional justice system, as well as assisting victims and traditionally disadvantaged groups;
- both multidisciplinary and integrated justice projects may lead to the benefits of a more focused use of the justice system, and some form of reduced costs or improved efficiencies. Regarding specific outcomes, both multidisciplinary and integrated justice projects achieved similar outcomes and benefits, including improved community ownership over justice issues, reduced offending, and improved efficiencies and cost effectiveness.

IMPLICATIONS

1. Access to Justice

Looking at the overall benefits and impacts of multidisciplinary and integrated justice projects, it is possible to see these projects as all contributing to the advancement of access to justice. Access to justice has a long history and includes efforts such as legal aid, public legal education and information programs, as well as court-based efforts such as the native courtworker program. These kinds of efforts all represent attempts to provide individuals and historically disadvantaged groups with better and more equal access to justice and justice-related services.

Multidisciplinary and integrated justice projects also fall within the continuum of efforts to improve access to justice. However, there's a distinction to be made between multidisciplinary and integrated justice approaches and the previous programmatic approaches such as legal aid or native courtworker. Multidisciplinary and integrated justice projects are not programmatic approaches and the main objective is not to improve access to justice services. The objectives of multidisciplinary and integrated justice projects, beyond the specific project-determined objectives, are to improve access to the development of justice projects and to decision-making in the justice system.

As such, these kinds of projects are engaging citizens in the development of the justice system which is likely to impact a number of factors of interest to the justice system, including:

- people's respect for the law, the justice system and agencies of the justice system;
- citizen's awareness and understanding of the law and the justice system; and,
- people's willingness to participate in the justice system as witnesses and volunteers.

In this light, multidisciplinary and integrated justice projects have great potential for improving access to justice not just in traditional access to justice areas such as legal aid and courtworker problems, but also in other areas such as:

- restorative justice;
- alternative dispute resolution;
- crime prevention;
- community development; and, generally,
- social cohesion.

2. Comprehensive Integrated Justice

If one thinks about what integrated justice means, leaving aside any formal definition for the moment, there are a number of ways one could view integrated justice. For example, one could see any attempt to work with non-justice system partners in a multidisciplinary fashion as integrated justice, at least to a degree. However, simple or strictly multidisciplinary partnerships fall short of a more complete view of integrated justice. A more complete or comprehensive view of integrated justice would not only involve multidisciplinary partnerships, but would also look beyond project or problem oriented attempts to integrate work and look toward the integration of policy development and decision-making across all agencies involved in social policy issues. The idea that integrated justice is a process of developing integrated policy development integrated with community desires and community needs, and integrated with other public service systems such as health, education, social services, et cetera raises other questions. The projects submitted only rarely represented projects which attempted to develop integrated policy development and decision-making. However, this objective was noted and some problems and questions were either raised or implied about what needs to be known to further integrated policy development and integrated decision-making, including:

- it is problematic to determine who should represent the government, for whom government representatives spoke (the Department?, themselves?), and ensuring accountability for all members / partners. If the desire is to develop mechanisms by which integrated justice can develop, there must be some sort of established or accepted determinations of role and of representation;
- there are difficulties surrounding defining a workable meaning for "inclusivity" and, defining partnership criteria. It is not enough to bring people together with good intentions of developing integrated policies, it is necessary to create parameters for inclusion in this kind of decision-making process and ensuring that there is agreement both on who does and does not get included; and,
- there are problems in developing a non-hierarchical structure, and establishing a decision making process and criterion. Implicit in the idea that policy making may be addressed through integrated decision-making is the idea that there is some level of equality of importance across involved institutions such that, for example, the justice issues do not necessarily take precedence over the health issues in any one particular social policy area. As such, a non-hierarchical structure is an important element in developing structures, which promote integrated policy development and integrated decision-making process.

This kind of comprehensive integrated justice is therefore more of a process than a project or initiative as traditionally understood in the public sector. In theory at least, any public policy issue could be addressed using an integrated policy development model and employ a multidisciplinary approach to program delivery. As the above noted questions suggest, however, there needs to be more work done to better understand how to develop and overcome some of the barriers and problems in developing integrated decision-making mechanisms.

4.12. Alternative Measures in Canada -1998

The report, which represents the first phase of a special study commissioned by the National Justice Statistics Initiative, is intended as a reference document on administrative and operational policies with respect to alternative measures for both youth and adults in Canada. The study focussed on the collection of national descriptive information on the organization and delivery of youth and adult alternative measures established pursuant to the Young Offenders Act (Canada) (1984) and the Sentencing Reform Act (1996). Topics covered include the philosophy of the alternative measures, responsibility for program delivery, referral agent, the role of the police, the Crown, and the victim, the right to legal counsel. Eligibility criteria, a flowchart outlining the alternative measures process, a description of the alternative measures agreement, the range of alternative measures, the supervision of and completion of the agreement, and information regarding record keeping requirements. Where available, appendices have been attached that provide samples of forms currently in use in the jurisdiction as well as any currently available alternative measures data. It is important to note that data contained in the jurisdictional appendices are provided as a sample only. No analysis has been performed on the data nor has any inter-jurisdictional comparisons been made as there has been no attempt to ensure standard definition or time frames for the data.

4.13. Planning/Evaluating Community Projects -1998²³

- Ideally an evaluation should be planned *before* the program begins.
- This will ensure that implementation will be monitored from the beginning and that information will be collected to do an impact evaluation.
- Without sufficient data about the implementation of each component of the program, it will be difficult to (in some cases impossible) to learn the reasons for its success or failure.
- A properly-designed evaluation does a number of important things:

First, monitoring the program as it goes into operation will help ensure that it has been properly implemented.
Monitoring should be a routine activity that ensures it is carrying out the activities as planned.
Second, it will show whether things have changed as a result of the program.
One can determine the reasons for the success or failure of part or all of a program, its effectiveness compared to other types of programs, and any intended or unintended side effects.
Evaluation is crucial to the development of sound justice programs, because it allows

²³ Solicitor General Canada, Rick Linden University of Manitoba and Don Clairmont, Dalhousie University, Making It Work: Planning And Evaluating Community Corrections & Healing Projects In Aboriginal Communities, 1998
<http://www.sgc.gc.ca/epub/Abocor/e199805b/e199805b.htm>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

planners to learn from successes and failures.
Third, evaluation introduces an element of accountability into the program. The information an evaluation provides can be very important to the survival of a program. While funds and personnel can sometimes be obtained in the short term to get a project going, rarely will it be supported indefinitely by funding agencies, supporting organizations, or the community if its effectiveness cannot be demonstrated.

Monitoring Program's Implementation

- Monitoring each step to ensure your program has been properly implemented will often tell you why it succeeded or failed.
- Earlier in the planning process, you established goals and set objectives.
 - These objectives are targets you must meet as the program is implemented.
 - In the work plan, you specified the dates by which these objectives must be met.
 - Monitoring tells you how you are doing and may help you to make changes during implementation if some parts of the process are having problems.
 - This is much preferable to simply doing a post-mortem after a program has failed.
- It is particularly important that program staff monitor all dispositions to ensure that offenders fulfill their obligations.
 - Some programs have failed to even collect information concerning whether or not a disposition had been completed and nobody ensures that offenders complete the service they have agreed to perform.
 - The victim, the offender, and the community all lose if offenders are not adequately supervised and held accountable for their obligations.

Evaluating Your Program's Impact

Evaluation helps you to answer some of the questions you and others will have about your program. Some of these questions are:

What happened?

Have we done what we set out to do?

Did we do things the way we originally planned to do them?

Should we have done some things differently?

Should we continue this project?

Do we need to make some changes in the way we are doing things now?

(Federal-Provincial-Territorial Working Group, 1997)²⁴

Data for Evaluation

²⁴ Federal-Provincial-Territorial Working Group on Community Safety and Crime Prevention. 1997. Step by Step: Evaluating Your Community Crime Prevention Efforts. Ottawa: Justice Canada.

- Evaluation involves a logical series of steps aimed at providing measures of how well your program is achieving its goals and objectives.
 - Once your goals and objectives have been determined, some measurable indicators of success should be identified – for instance,
 - the number of parolees who have secured employment since their release,
 - the number of victims who have participated in victim-offender reconciliation,
 - the level of satisfaction of victims with the reconciliation process, and
 - the percentage of victims who have been compensated by the offender for their losses.
 - These success indicators will closely parallel the goals and objectives set in the planning stage, and will form the basis of your evaluation.
- Next, you need to decide what numerical factors will constitute success
 - – 40 percent of parolees with full-time employment,
 - 60 percent of minor property offenders dealt with through reconciliation,
 - 75 percent of victims are satisfied with the process, and
 - 80 percent of victims have received compensation for their losses.
 - These four measures can be easily documented, but in other cases results may be more difficult to determine.
 - For example, if a project is designed to restore community harmony or to apply traditional principles and teachings to justice issues it may be difficult to find precise indicators of success or failure.
 - If these are among your goals, it is important for you to find ways of measuring them.
 - You may wish to consider reporting community ethnographies or case studies that describe situations in which you feel your program was particularly successful or unsuccessful.
- Your records should be as detailed as possible.
 - If one objective of your program is to handle 60 percent of your community's minor property offenders through victim-offender reconciliation, you need to keep records on the
 - total number of cases in which the police make arrests, and
 - the number of cases that are dealt with by the program and through other dispositions such as prison.
 - You might also wish to monitor the costs of dealing with cases through reconciliation and through traditional means.
- It is also useful to record some basic demographic data that will allow you to compare participants and non-participants.

Community Justice - Review Methodology

- In your evaluation, it will be important to know if those who participated in your program are different from those who did not.
- Also, if you find that some types of victims or offenders in the community are reluctant to participate, special techniques or programs can be designed to reach these target audiences.
- The purpose of your impact evaluation is to see if your program has made a difference.
 - It is sometimes argued that we cannot measure what does not happen and in fields such as crime prevention and offender rehabilitation, we are trying to ensure that crimes do not happen.
 - How, then, can we measure what is prevented?
 - In order to measure the impact of a program, you must have a standard against which to compare your post-program measures.
 - The data that you collected in order to identify and to describe your community's problems can be used as the basis of this comparison.
 - The police crime statistics, community surveys, and other data collected before you established your program can be compared with similar data collected after the program has been in operation for a period of time.
 - You must ensure that sufficient time has elapsed between the beginning of your program and your final evaluation.
 - If impact evaluations are done too soon, the program will not have had a chance to show any effect. If done too late, the effects may have begun to diminish.

Ruling Out Alternative Explanations

- It is also important to have a way of ruling out alternative explanations for changes that might have occurred.
- These alternative explanations include such factors as
 - changes in the operation of the justice system not related to the program,
 - economic changes, and
 - pre-existing differences between those who participate in the program and those who do not.
 - For example, your data may have indicated that a pre-arrest diversion program for young people has been successful because it has reduced the number of juvenile arrests.
 - However, if police budgets have been cut and services reduced, the reduction in arrests may have been due to less effective policing and not to your program.
- In order to rule out alternate explanations such as this you need to know as much as you can about how the justice system operates in your community and then collect data that will enable you to make comparisons over time and between different communities.
- One of the most basic steps to take is to collect data for a period of time before the program begins.

- Many programs do not begin collecting data until after the program has been in operation for some time.
 - This means that organizers will not be able to compare conditions before and after the program and will be very limited in the claims they can make about the impact of their program.
 - If statistical information is available, you should try to go back and collect data covering several years.
 - This is because a comparison with only the year preceding the program may be misleading if that year did not follow the long-term trend for that particular type of event.
 - Collection of data over a long time period can be relatively easy for activities such as crime prevention programs where police statistics are normally available covering several years.
- Similarly, for diversion programs you should be able to find enough data to show trends in caseload and cost statistics.
- In addition the more comparisons you can make with other communities in which similar programs have not been implemented, the more confidence you can have that any effects you have observed are due to the program and not to other changes in the broader environment.

Evaluation Criteria for Restorative Justice Programs

- If evaluating the impact of the program, it is important to select the right outcome measures.
- Early in the planning process ideally the goals of the project would have been decided upon. These goals can then be used as a standard against which the project results could be measured.

Do Victims Receive Justice?

Do victims receive satisfaction from the process?

Do victims have a major role to play in the process?

Do victims receive appropriate compensation or restitution?

Do victims have an adequate chance to tell their stories?

Do victims receive answers to their questions and a better understanding of why they were victimized?

Do victims receive proper apologies for the injustice against them?

Do victims receive protection against further harm?

Is adequate support provided to victims and their families?

Do victims receive adequate information about the crime, the offender, and the justice process?

Is there an opportunity for victims and offenders to meet to discuss the offense, if appropriate?

Do victims feel they have been treated fairly?

Do victims become less fearful?

Are offenders made aware of harm?

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

Do offenders experience remorse?

How many reparative settlement agreements are negotiated and enforced?

How many community service hours were worked?

How promptly are restorative requirements completed?

What is the quality of the community service work?

Does the outcome adequately reflect the severity of the offense?

Is the process a public one?

Do Offenders Receive Justice?

Are offenders less likely to be imprisoned?

Are offenders given the opportunity to participate in the justice process?

Are offenders encouraged to change their behaviour?

Are offenders encouraged to understand what they have done and to take responsibility for their actions?

Does the process help offenders to understand the human costs of their behaviour?

Are offenders given encouragement and opportunities to make things right?

Are offenders' needs being addressed?

Do offenders receive support in the community?

Are placements avoided that might embarrass or stigmatize the offender?

Is there measurable change in offenders' behaviour (e.g. school achievement, employment, lower recidivism)?

Do offenders show improvements in attitude and social behaviour? For example, are they punctual, do they see things from the victim's perspective, and have they become less attached to a deviant lifestyle?

Do offenders think they have been dealt with fairly?

Are offenders satisfied with the program?

Are offenders encouraged and helped to complete their assigned tasks?

Is there a mechanism for monitoring or verifying changes?

Do offenders' families receive support and assistance?

Does the Community Receive Justice?

Are there fewer repeat offenders?

Is the community safer because of the program? Have crime rates dropped and do people feel safer since the program began?

Is the community represented in some way in the legal process?

Has interpersonal conflict in the community been reduced?

Do citizens' feelings of safety and confidence in the justice system increase?

Is the preventive capacity of families, and community agencies improved?

Does the community have a better understanding of the justice system?

Are criminal justice caseloads reduced?

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

- Have the costs of the criminal justice system been reduced?
- Is offender bonding and reintegration increased?
- Is the role of elders enhanced?
- Are Aboriginal cultural traditions strengthened?
- Has participation in the program increased community empowerment?
- Are the process and the outcome sufficiently public?
- Is community protection being addressed?
- Does the new process help solve the problems that led to this event?
- Are there provisions for monitoring and verifying outcomes and for problem solving?

Has the Community Played its Role in Providing Justice?

- Are the victim and other community members protected from further harm by the offender?
- Is the offender protected from vengeance?
- Did the community provide the resources necessary to carry out the healing process?
- Did the community provide public education and serve as a model for peaceful resolution processes?
- Did the community create those conditions most favourable to the complete restoration of both the victim and the offender?
- Did the community determine the causes of recurring conflicts and try to resolve these underlying problems (McCold, 1996)?

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Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

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Dealing With Objections To Evaluation

Evaluation is not always welcomed by those involved with the program. There are several reasons for this reluctance to carry out evaluation research:

People do not enjoy having their activities watched and assessed.
People assume that good ideas will work. If you feel you have a good program it seems unnecessary to evaluate it.
People may resent the fact that the evaluation uses resources which they feel should go into the program.

Many organizers prefer to spend their limited time and money operating their programs rather than conducting evaluations.

Evaluation cannot measure the changes in relationships and the personal growth that are outcomes of healing programs.

- Some of the objections to evaluation can be minimized by involving those affected by the program including staff and clients.
- The evaluator should have clear agreement with these stakeholders concerning the scope and methodology of the evaluation and should identify their concerns and issues prior to beginning the evaluation.
 - Regular consultation throughout the evaluation will help to ensure their cooperation.
- Evaluators must always remember that they are dealing with peoples' lives.
 - Program staff will have concerns about their jobs and careers and clients will be concerned that importance services may change as a result of the evaluation.
- Openness and consultation can help to minimize these concerns.
- Also, everyone involved should understand that it is projects that are being evaluated, not individuals, groups, or organizations.
 - The aim is to ensure that communities have the best justice system they can and evaluation should be viewed as a means of improving that system.
- Even a negative evaluation can help your community as well as other communities learn from experience in order to improve future programs.
- Community members must realize the advantages of evaluation.
 - Just as a business benefits from concern for its bottom line (normally profits and losses) so will justice be more achievable if we know that our programs are effective and efficient.
 - Social change can be very difficult and there is certainly no guarantee that good ideas will work or that the best intentions will lead to proper program implementation.
 - Only proper evaluations will allow us to learn how we can best deal with justice problems in our communities.
 - We must also recognize the fact that our programs are unlikely to survive without evidence showing they are effective.
 - Governments are trying to reduce costs, and are increasingly requiring that programs demonstrate their usefulness in order to receive continued funding.
 - Programs that have not been evaluated may not be funded.
 - Therefore, if the program is a good one, a small expenditure of time and money for an evaluation may mean that in the long-run many more people will receive its benefits.
 - Finally, evaluation need not be limited to criteria that are easily measured.
 - Some of the important outcomes of the healing process are stronger communities, reduced interpersonal conflict, and enhanced personal growth.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

- These are among the evaluation criteria we have outlined earlier and can be assessed through measures such as case studies and personal accounts of community members.

Reporting Evaluation

1. Evaluations normally result in a technical report sent to those responsible for running the program and to the agencies sponsoring the program.
2. An executive summary of the report's highlights will allow readers to focus on a description of the program followed by conclusions and recommendations.
3. Finally, it is very important that you meet with all the stakeholders to discuss your findings.
 - This may be done in an evaluation forum with all those concerned with the project, or in small meetings with different groups such as staff, clients, funders, and community volunteers.

Summary

4. The product of this stage of the process is the information necessary to determine whether the program has been properly implemented, if the program should continue, and how it should change. This should involve the following steps:

monitored program's implementation.

evaluated program's impact.

reported the results of evaluation to community and to those who funded program.

EVALUATION GUIDELINES

1. Each of the partners in the justice program should be involved at all stages of the evaluation.
 - It is important that program staff and community members not only know about but are involved in the evaluation.
 - Staff should be prepared to critically examine their own ideas and practices in order to be able to make changes to the program if the monitoring shows problems.
 - The involvement of the community in the planning and evaluation will help to make them feel part of the program and should help the rest of the community understand the program and its effects.
 - Including everyone will strengthen the partnership and increase the likelihood that the evaluation will help to build a better community justice initiative.
2. Evaluation should not be seen as a kind of 'report card' to be given after the project has been implemented.
 - Rather, evaluators should help to identify strengths and weaknesses during the project's implementation in order to improve it.
3. Evaluations should assess the extent to which projects are culturally sensitive, community-based, equitable, efficient, and effective.

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

4. Involving community members in the evaluation help to leave a legacy of skills in the community. In this way evaluation research can contribute to community development.
5. Evaluations should be sensitive to secondary impacts of restorative justice programs.
 - For example, many evaluations over-emphasize the issue of reducing offender recidivism and neglect the increased level of community participation, reduced interpersonal conflict, and enhanced personal growth that some programs have yielded.
 - However, if you do not measure these effects, you and others will not know they have been achieved.

Sources: Stuart (1997); Solicitor General (1995) ^{25 26}

4.14. Developing/Evaluating Justice/Community Projects -1998 ²⁷

This working bibliography assembles written materials – books, monographs, reports, articles, and papers – that are of value for policy makers, practitioners, academics, and citizens who are concerned with justice issues and projects in Canada's Aboriginal communities. The field of justice is defined in the broad sense to include laws, justice practices and processes, policing, and corrections. The objective has been to provide readers, where possible, with a short description of each work, emphasizing its key themes and the issues dealt with. For readers' convenience, the review of literature is divided into two parts: Part A, Contextual and Academic Bibliography, and Part B, Evaluations, Manuals and Programs. Additional sections provide a short background or context for locating or placing Aboriginal justice initiatives and, from the author's perspective, a short compilation of chief "lessons learned" from the previous justice initiatives.

There has been a proliferation of Aboriginal justice initiatives in recent years, and all signs indicate that there is much more to come. The main push factor has been a wide-spread view, common among both Aboriginal people, and officials and key players in the justice system, that the conventional criminal justice system has not worked well for Aboriginal peoples. The main pull factor has been the congruence of Aboriginal wishes and governmental policy concerning the desirability of greater Aboriginal self-government and autonomy. There is widespread enthusiasm about the prospect of Aboriginal justice moving beyond the state or condition where the legacy has been over-representation (as regards victims, offenders, and inmates), minimal Aboriginal participation in the determination of justice, and general Aboriginal estrangement. A future state is envisaged where Aboriginal justice furthers other Aboriginal collective objectives, incorporates appropriate traditions and experiences, manifests Aboriginal control, and deals effectively with the harm that crime and social disorder have wrought for all parties (i.e. the victim, the offender, and the community). If this transition is to be successful, resources, Aboriginal and non-Aboriginal co-operation, and well-developed, implemented, and evaluated justice projects will be required. Thus far, there has been little quality assessment of the projects that have been implemented; accordingly, there is much uncertainty about the extent of projects' implementation, the nature and efficacy of the programs and treatments called for, and the impacts on the various parties. It is hoped that this working bibliography can assist in improving that situation.

²⁵ Stuart, Barry. 1997. Building Community Justice Partnerships: Community Peacemaking Circles. Ottawa: Aboriginal Justice Learning Network, Department of Justice.

²⁶ Aboriginal Corrections Policy Unit (eds.). 1995. Community Development and Research. Ottawa: Solicitor General Canada, Aboriginal Peoples Collection.

²⁷ Ministry of the Solicitor General of Canada, Don Clairmont, Dalhousie University and Rick Linden, University of Manitoba, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, 1998
<http://www.sgc.gc.ca/epub/Abocor/e199805/e199805.htm>

4.15. First Nation Self-Evaluation Of Community Programs - 1998²⁸

- This guidebook is about First Nations developing our own approaches to evaluating how well community programs are achieving community goals.
 - o The guidebook presents ideas and options for First Nations to consider in developing self-evaluation tools that reflect our unique communities, traditions and priorities.
 - In presenting this guidebook, we are building upon the experience of First Nations that have conducted self-evaluations of education and other programs.
 - o In our experience, evaluations can provide useful feedback to the membership, to the leadership and to program administrators to help design and deliver programs that address community priorities.
 - Self-evaluation is about measuring the real impacts of community policies and programs.
 - o This information can be used to continually improve policies and programs to effectively and efficiently achieve community objectives.
 - Five First Nations and one Indian Regional Council are driving the process to develop tools that meet their requirements, in partnership with the Department of Indian Affairs and Northern Development (DIAND) which is providing technical and financial support.
 - **Purpose of this Guidebook:** This guidebook serves to:
 - o Present the benefits of using performance measurement as an internal program management and accountability tool;
 - o Identify the key elements of a framework for measuring and reporting on the performance of community programs; and
 - o Provide ideas, alternatives, and practical tools to support First Nations that want to develop their internal framework for measuring performance and accounting for results.
 - **Who Should Use this Guidebook?:** This guidebook is intended to assist:
 - o Chiefs and Councils who want to direct the development of a community program performance framework for their First Nation;
 - o Program administrators who are tasked with evaluating the performance of the programs and services which they deliver;
 - o A steering committee and project coordinator who would manage the process to develop the First Nation's community performance framework; and
 - o First Nation members who are interested in participating in the project.
-

4.16. Restorative/Criminal Justice—Identifying Some Preliminary Questions, Issues/Concerns – 1998 ²⁹

- There is another way in which the ‘use of existing resources’ mantra raises concerns.
 - o Given the by and large, ‘uncharted’ territory the government is entering in terms of ‘restorative justice’ initiatives, there would seem to be a requirement for substantial resources to be dedicated to research, analysis and evaluation.
 - o At a minimum, the experience of other jurisdictions should be subjected to scrutiny with particular attention paid to the implications of similar initiatives for all victims but especially for women and children who experience male violence and abuse and other victims of violent crime.
 - o While top level government bureaucrats have visited other jurisdictions on information-gathering trips, it is unclear the extent to which the focus of these trips was on ascertaining the effects of these programs on women, children and other marginalized groups.

²⁸ First Nations Working Group on Performance Measurement and Departmental Audit and Evaluation Branch, Department of Indian Affairs and Northern Development, First Nation Self-Evaluation Of Community Programs A Guidebook On Performance Measurement, October 1998 pdf

²⁹ Goundry, Sandra A., Legal Consulting and Research Services, Restorative Justice and Criminal Justice, Reform in British Columbia – Identifying Some Preliminary Questions, Issues and Concerns, Prepared for: BC Association of Specialized Victim Assistance & Counseling Programs, 30 April, 1998

- In addition to the apparent information gaps identified in this paper, as of June 1997, the federal Department of Justice had identified a “Top Twelve” list of research questions on restorative justice in addition to the key research questions.
 - The three key research questions in restorative justice are the same as those which attach to any justice initiative generally; they are:
 - Does the initiative work (however, defined, because different initiatives will have different aims)?
 - Why does it work or not work?
 - Does it have any significant side-effects which must be considered?
 - The ‘top twelve’ research questions are more specific to restorative justice; a sample includes:
 - What kinds of cases are more likely to ‘work’ within restorative justice, and for whom?
 - What are the limits to the state’s willingness to accept solutions by and from the parties/communities involved?
 - What is the proper interface and mix between elements of the criminal justice system and the elements of restorative justice?
 - To what extent does the victim have greater or lesser influence on the process and outcomes under a restorative justice initiative?
 - What is the variance of opinion among parties/community members about the restorative justice process and outcomes?
 - When is an agency and/or community ready to take on cases in a restorative justice initiative?
 - What is the quality of the consent given by the victim, offender and community to the creation of the restorative justice initiative and to the decision to enter into a restorative justice process in a particular process?
 - Is the restorative justice option more or less intrusive than the option which would be available under the usual course of business in the mainstream system?
 - It is not clear what criteria are used to measure what ‘works’.
 - Is it victim satisfaction?
 - Decreased recidivism?
 - Community satisfaction?
 - There are of course a host of other questions which also need answers with respect particular types of offenses and offenders.
 - Once the results of the research and analysis into these questions are made available and key stakeholders have had an opportunity do their own research and consultation, everyone will be in a better position to assess the relative merits of restorative justice initiatives.
 - Ministry of Attorney General (MAG) is in the process of developing a comprehensive framework for the evaluation of community accountability programs (CAP).
 - As a pilot project, MAG recognizes the need to do a great deal of evaluative work over the next two or three years.
 - This evaluation process will inform the decision-making process regarding whether and how CAP would be implemented throughout the province.
-

4.17. Meaningful Consultation: A Contradiction in Terms? -1997³⁰

USE "DELIBERATIVE DEMOCRACY" TO CONSULT, SAYS CANADA WEST REPORT

September 24, 1997, CALGARY, ALBERTA: Canada West Foundation released today the results of its research on the most effective method to consult citizens on issues of public policy. The report, Meaningful Consultation: A Contradiction in Terms? is the result of extensive research and testing of a new method of public consultation called deliberative democracy.

³⁰ Meaningful Consultation: A Contradiction in Terms? -1997
<http://www.cwf.ca/abcalcwf/doc.nsf/Publications?ReadForm&id=4EEF79027424864887256BD30002D75E>

The Canada West report follows on the heels of a recent meeting between the premiers of Canada's English-speaking provinces and territories. At that meeting, the premiers agreed to consult with their citizens on Canadian unity. According to the authors of the report (CWF Research Analyst Casey Vander Ploeg, CWF Research Associate and U of L political science professor Dr. Peter McCormick and CWF President David Elton) deliberative democracy is an excellent fit with the consultative guidelines agreed to by the premiers.

"The premiers said they wanted a creative and innovative process that would be open to all citizens and would allow governments to act as a catalyst for consultation," says CWF Research Analyst Casey Vander Ploeg. "They also agreed that each province should choose a method they felt would be appropriate. Well, deliberative democracy fulfills all of those guidelines. It is a superior way to obtain thoughtfully refined grassroots input."

Deliberative democracy is the latest innovation to which governments can turn when consulting citizens. Based on an index of eight specific "effectiveness" criteria, deliberative democracy emerges at the top, better than legislative hearings, referendums, policy conferences, roundtables and even elections. It achieves such high marks because it combines the best features of three traditional methods of consultation – the public opinion poll, the policy conference and the roundtable.

Like a public opinion poll, all participants in the process are selected at random to ensure that the group will closely mirror the community being consulted. Like a policy conference, participants then hear from "expert witnesses" who give testimony on the background, circumstances and consequences of the issues. Like a policy roundtable, participants discuss the issues in light of the evidence they have heard and move on to formulate options for dealing with them.

"In this process you have a highly inclusive group of people who will hear a wide variety of opinion and then have sufficient time to think the matters through," says Canada West President David Elton. "Combine that with time spent discussing the issues with others, and you end up with a process that can powerfully communicate to government a reasoned and thoughtful set of opinions and ideas instead of the typical knee-jerk reactions of a poll or the comments of a select group of people."

"In the unique case of the premiers and their recent commitment to consult, the report coming from this process could be used as the basis of a discussion paper that could be fine-tuned by a legislative committee, or better yet, a Reconfederation Council composed of legislators and prominent citizens from a number of provinces," added Elton.

Full report available on line.

4.18. Satisfying Justice, Safe Community Options – 1996 ³¹

This book is a story-based compendium of some 100 justice initiatives that, for the authors, represent credible alternatives to prison and convey the spirit of restorative justice. Throughout, the emphasis is on successful initiatives that have promoted to varying degrees, the goals of reparation, victim and community involvement, reduced recourse to incarceration, and the de-professionalization of justice. Especially highlighted are recent developments, and successful alternatives to mainstream justice, in the Aboriginal community (e.g. circle sentencing, community healing programs, creative sentencing). In particular, there is a good, brief discussion of the Hollow Water project and of the emergence of circle sentencing 'north of sixty'. Also considered (via discussion and brief stories / examples) are 'family conferencing' models, diversion programs, mediation programs and other programs that effect reparation and/or reduce incarceration. Contact persons are given for virtually all projects discussed. Relevant initiatives from other societies are also presented. This is a well-written book that conveys effectively the possibilities of the restorative justice movement as well as the demands it

³¹ The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

makes on community resources. Justice initiatives are grouped by theme (e.g. Aboriginal people, youth, sexual offences) in the appendix.³²

Yet, the truth is that effective community measures do exist in Canada and elsewhere. Some jurisdictions around the world have succeeded in reducing their use of prisons.

Therefore, we set out to track down and describe a range of the best examples we could find. We wanted to illustrate to victims of crime, to justice decision-makers, to members of the public what can be done that would bring about satisfying justice while reducing our country's reliance on incarceration, wherever the evidence shows this to be ill-founded and counter-productive.

How the Compendium Is Organized

Accordingly, the sample initiatives listed have been organized into four sections, for which they have been selected on the basis of the following guidelines:

1. A selection of initiatives that attempt to repair harm from crime, attend to related needs and avoid or significantly reduce the use of custody.
2. A selection of initiatives that attempt to repair harm from crime and attend to related needs, with some implications for the reduced use or length of custody.
3. A selection of initiatives that attempt to avoid the use of custody, with or without some reparative elements.
4. A selection of initiatives that attempt to reduce the length of custody by alleviating the enforcement of imprisonment.

As well, we thought it would be helpful for readers looking for programs, initiatives and cases relevant to their field of work or interest to provide an appendix in the compendium where we group many entries according to type of offence or group served by a program.

Section One: Satisfying Justice

A selection of initiatives that attempt to repair harm from crime, attend to related needs and avoid or significantly reduce the use of custody

Introduction	1
The Windsor Case of Kevin Hollinsky	2
Restorative Resolutions, Winnipeg	5
Kwanlin Dun Community Justice - Circle Sentencing, Yukon Territory	7
Mediation Services, Winnipeg	10
Community Holistic Circle Healing Program - Hollow Water First Nation, Manitoba	14
Mike from Rosemary, Alberta - A Community Takes on the Justice System	17
Pro-Services, Québec	20
Atoskata - Victim Compensation Project for Youth, Regina	21
Mediation for Reparation in Cases of Serious Crime, Belgium	22
Community Response to Crime - A More Creative Use of Probation, Minnesota	24
Post-Conviction Mediation Program Reduces Sentences, Oklahoma	26
Family Group Conferences - Doing What Prisons Fail To Do, United States	28
Circles of Support and Accountability for a Released Sex Offender, Ontario	31

Section Two: Satisfying Justice

A selection of initiatives that attempt to repair harm from crime and attend to related needs, with some implications for the reduced use or length of custody

Introduction	36
1. Victim and Offender Mediation: Canada's Gift to the World	39
Introduction	39
A Post-Charge Mediation Model, Canada	42

³² Church Council on Justice and Corrections. *Satisfying Justice*. Ottawa: Church Council On Justice and Corrections, 1996 cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, *Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature*, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

Program Descriptions:

- (i) Dispute Resolution Centre for Ottawa-Carleton 44
- (ii) The Edmonton Victim-Offender Mediation Program 44
- (iii) Pre-Sentencing Mediation Pilot Project - MOVE, Moncton, N.B. 45
- Genesee County Victim-Offender Program, Genesee, New York 46
- Victim-Offender Mediation Services for Violent and Non-Violent Crimes 47
- Community Justice Initiatives, Langley, B.C.
MOVE, Moncton
- 2. Circle Sentencing 50**
- Introduction 50
- Cumberland House, Saskatchewan 53
- Urban Circles - Armed Robbery in Saskatoon 54
- Serving on Sentencing Circle Attitude-Changing Experience, Prince Albert, Sask. 58
- Manslaughter Case in Fort St. John, B.C. 59
- 3. Family Group Conferencing 62**
- Introduction 62
- Family Group Conferences, New Zealand 65
- Family Group Conferences, Wagga Wagga, Australia 68
- Family Group Conferences - Aboriginal Youth, Regina 71
- Family Group Conferences, United States 72
- Family Group Decision-Making Project, Newfoundland and Labrador 74
- 4. Community Sentencing Panels and Youth Justice Committees 75**
- Introduction 75
- Teslin Tribal Justice Project - Sentencing Panel, Yukon 75
- Wabasca Justice Committee, Alberta 79
- Slave Lake Sentencing Panel, Alberta 79
- Youth Justice Committees 79
- Elders' Justice Committee, Fort Resolution, Northwest Territory 81
- Russell Heights Community Justice Committee, Ottawa 81
- Section Three: Satisfying Justice**
- A selection of initiatives that attempt to avoid the use of custody, with or without some reparative elements**
- Introduction 86
- 1. Diversion 88**
- Introduction 88
- Nova Scotia Adult Diversion Project, Dartmouth and North Sydney 89
- Community Council Diversion Project - Aboriginal Legal Services, Toronto 91
- The Court Outreach Project: Helping the Mentally Ill Offender, Ottawa 92
- A Community Alternative to Jail for Sexual Offences, Canim Lake, B.C. 94
- The Micmac Diversion Council of Lennox Island, Prince Edward Island 95
- E.V.E. (Entraide vol à l'étalage - Stoplifting), Montréal 96
- Youth Mediation Diversion Project, Shaunavon, Sask. 99
- Alternative Measures Programs 100
- 2. Curative Discharge Program - Yukon Territories 103**
- 3. Community Service Orders 106**
- Community Service in Nova Scotia - Some Success Stories 106
- Youth Alternative Society, Halifax 106
- Travaux communautaires (Community Service Orders), Québec 107
- Community Service Orders - An International Perspective
- Sentencing to Service, Minnesota 110
- Community Service, Norway 111
- Community Service for Adults and Juveniles in the Netherlands 111
- Community Service, Zimbabwe and Swaziland 112
- 4. Intensive Supervision Probation 113**
- Legal Aid Youth Office Project, Edmonton and Calgary 113
- Community Reparative Probation Program, Vermont 115
- The Dos Pasos Project for Pregnant and Addicted Women, Arizona 116

Alternative to Custody Program for Youth, Kitchener-Waterloo, Ont.	117
Second Chance - Restitution, Lloydminster, Alberta and Saskatchewan	118
Intensive Intervention Program, St. John's, Nfld.	119
Eastwood Outreach Program, Edmonton, Alta.	120
Rideau Street Youth Enterprises, Ottawa, Ont.	121
Sober Streets, Kitchener-Waterloo, Ont.	123
Repeat Impaired Driving Project, Prince Edward Island	123
Adolescent Addictions Program, Prince Edward Island	124
Multi-Agency Preventative Program (MAPP) for High-Risk Youth, Brandon, Man.	125
Assessment, Intervention, Monitoring Program (A.I.M.), Brandon	126
5. Family Preservation Model	126
Family Preservation Program, La Ronge, Sask.	127
Community Support Services, St. Lawrence Youth Association, Kingston	128
U.S. Family Preservation Programs	
The Simpsonville South Carolina Family Preservation Project	129
The Family Ties Program, New York City	130
6. Alternative Placement/Residential Programs	130
Opportunities for Independence: The Developmentally Disabled, Winnipeg	130
Community Homes Program, Saskatchewan	133
Expansion-Femmes de Québec, Québec City	134
Maison Thérèse-Casgrain, Montréal	135
Residential Program for Adolescent Sexual Offenders, Ottawa	136
Maple Star Foster Care, Colorado	137
Youth Futures Residential and Day Attendance Program, Lower Fraser Valley, B.C.	139
El'dad Ranch for Mentally Handicapped Adult Men, Steinbach, Man.	140
7. Bail Option Programs and Administrative Sanctions	141
Judicial Interim Release for Youth, Saskatchewan	142
Ma Ma Wi Wi Chi Itata Centre , Winnipeg	143
Fine Option Program, Yukon Territory	143
Administrative Sanctions, Yukon Territory	144
8. Client Specific Planning	145
Sentencing Advocacy Services - U.S. National Centre on Institutions and Alternatives	146
Client Specific Planning, North Carolina	146
Client Specific Planning, New Mexico	146
Section Four:	
Satisfying Justice	
A selection of initiatives that attempt to reduce the length of custody by alleviating the enforcement of imprisonment	
Introduction	150
1. Community-Based Supervision Programs	152
Introduction	152
Sexual Assault - One Congregation's Story of Healing, Ontario	154
Keeping Kids Safe - Children and Sexual Abuse, Yukon	155
Coverdale Courtwork Services, Halifax	156
Community-Based Supervision for Sentenced Offenders - New Brunswick	158
Community Service - Intermittent Offenders, Barrie, Ont.	159
Stop and Think Program - Temporary Absence Program for Youth, Halifax	159
Other Variations	160
Some Judges' Perceptions on Sentencing and Community-Based Programs	161
2. Release Preparation for Successful Community Re-Integration	162
Aboriginal Elder-Assisted Parole Board Hearings, Prairie Region	162
Entraide Détenue Anonyme - Early Release Program, Québec	166
Groupes sentences-vie, Montréal	167
Life Line, Windsor	167
Project Another Chance, Kingston	168
Post-Release Offender Project - Aboriginal Legal Services, Toronto.	169
Respect Program, Brandon	169

3. Wilderness Camps	170
4. House Arrest	172
5. A Note about Electronic Monitoring	173

Appendix A: We thought it would be helpful for readers looking for programs, initiatives and cases relevant to their field of work or interest to provide the following general indices according to subject.

Entries Related to the Mentally Handicapped Offender

The Court Outreach Project - Ottawa, Ontario	92
Opportunities for Independence - The Developmentally Disabled , Winnipeg	130
El' dad Ranch - Steinbach, Manitoba	140

Entries Related to Drinking or to Drinking and Driving

The Windsor Case of Kevin Hollinsky (Community Service Order) .	2
Curative Discharge Program - Yukon Territory	103
Sober Streets - Kitchener-Waterloo, Ontario	123
Repeat Impaired Driving Project - Prince Edward Island	123
Adolescent Addictions Program - Prince Edward Island	124

Entries Related to Sexual Offences

Circles of Support and Accountability for a Released Sex Offender - One Community's Story	31
A Community Alternative for Sexual Assault and Related Offences - Canim Lake, B.C.	94
Residential Program for Adolescent Sexual Offenders - Ottawa, Ontario	136
Sexual Assault - One Congregation's Story of Healing	154
Keeping Kids Safe - Children and Sexual Abuse, Yukon Territory ...	155

Entries Related to Native People

(only those entries with a strong native focus are included here; many other entries would also impact on native populations)

Kwanlin Dun Community Justice - Circle Sentencing, Yukon	7
Community Holistic Circle Healing Program - Hollow Water, Manitoba	14
Atoskata - Victim Compensation Project for Youth, Regina	21
Circle Sentencing	50
Urban Circles - Armed Robbery in Saskatoon	54
Serving on Sentencing Circle Attitude-Changing Experience	58
Manslaughter Case in Fort St. John, British Columbia	59
Kwêskohtë - Family Group Conferences, Regina	71
Teslin Tribal Justice Project - Sentencing Panel, Yukon	75
Wabasca Justice Committee - Alberta	79
Slave Lake Sentencing Panel - Alberta	79
Elders' Justice Committee - Fort Resolution, Northwest Territory ...	81
Community Council Diversion Project - Aboriginal Legal Services, (Toronto)	91
Micmac Diversion Council of Lennox Island - Prince Edward Island	95
Aboriginal Elder-Assisted Parole Board Hearings - Prairie Region ..	162
Post-Release Offender Project - Aboriginal Legal Services, Toronto ..	169

Entries Related to Youth

Pro-Services, Québec City, Québec	20
Atoskata - Victim Compensation Project for Youth, Regina	21
Family Group Conferences - New Zealand	65
Family Group Conferences - Wagga Wagga, Australia	68

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

Family Group Conferences - Aboriginal Youth, Regina, Saskatchewan	71
Family Group Conferences - United States	72
Youth Justice Committees	79
Legal Aid Youth Project	113
Alternative to Custody Program - Kitchener-Waterloo, Ontario	117
Intensive Intervention Program - St. John's, Newfoundland	119
Second Chance, Lloydminster, Alberta (Restitution)	118
Eastwood Outreach Program - Edmonton, Alberta	120
Rideau Street Youth Enterprises - Ottawa, Ontario	121
Adolescent Addictions Program - Prince Edward Island	124
Multi-Agency Prevention Program (MAPP) - Brandon, Manitoba	125
Assessment, Intervention, Monitoring Program (A.I.M.) - Brandon, Manitoba	126
Family Preservation Model - La Ronge, Saskatchewan	126
Community Support Services, St. Lawrence Youth Association -Kingston, Ontario	127
The Simpsonville South Carolina Family Preservation Project	129
The Family Ties Program - New York City	130
Community Homes Program - Saskatchewan	133
Residential Program for Adolescent Sexual Offenders - Ottawa, Ontario	136
Maple Star Foster Care - Colorado	137
Youth Futures Residential and Day Attendance Program - Lower Fraser Valley, British Columbia	139
Alternative Measures Programs	100
Judicial Interim Release for Youth	142
Ma Ma Wi Wi Chi Itata Centre - Winnipeg, Manitoba	143
Stop and Think Program - Halifax, Nova Scotia	159
Youth Mediation Diversion Program - Shaunavon, Saskatchewan	99

Entries Related Exclusively to Women

(only those entries whose work is exclusively with women are listed here; almost all compendium entries apply to women, with the few exceptions that have a male population only)

Expansion-Femmes de Québec - Quebec City	134
Maison Thérèse Casgrain - Montréal	135
Coverdale Courtwork Services - Halifax, Nova Scotia	156
E.V.E.. (Entraide vol à l'étalage - Stop Shoplifters) - Montreal, Québec	96
Dos Pasos Project for Pregnant and Addicted Women - Tuscon, Arizona	116
Project Another Chance - Kingston, Ontario	168

Conclusion

- We were astounded to discover that the many initiatives described in this compendium have not reduced the overall use of imprisonment in Canada.
- Despite many good intentions, they too often end up, in the words of Irvin Waller, as “long-term wolves in short-term sheep’s clothing”.
 - o Nearly all European countries have also introduced some of the “alternative sanctions” to a greater or smaller extent, and results there have been similar: these have not, by and large, replaced sentences of unconditional imprisonment, which have themselves increased in length, and there has thus been no declining effect on the demand for prison capacity as seen in relation to the crime level (Council of Europe, 1991)³³.

³³ Council of Europe, Alternative Measures to Imprisonment, Committee For Co-operation in Prison Affairs, European Committee on Crime Problems, Strasbourg, 1991. *cited in* The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice,

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- Moreover, the situation is expected to worsen here unless other administrative, legislative and educational policies are also introduced.
 - o (Some jurisdictions have begun to do this with greater success than we have had to date, as will be discussed in the **What Can Be Done** section of this **Conclusion**)

Signals of a Worsening Situation

- The demand for increased prison capacity in Canada can be expected to multiply partly because
 - o the dramatically rising number of youths being criminalized at present will put additional pressure on the adult system;
 - o it is well known that punitive imprisonment often increases the risk of recidivism and that “even a short spell in custody is likely to confirm them as criminals” (Council of Europe, 1991).³⁴
- In addition, it is anticipated that changes to legislation and related initiatives will further burden the system, i.e. Young Offenders Act, Task Force on Violent Offenders, Firearms Control, Corrections and Conditional Release Act amendments, Sentencing, and Immigration Act amendments (Government of Canada, 1995).³⁵
 - o Such government action also reinforces the belief among Canadians that incarceration is the appropriate and effective response to crime.

Why do we persist in using unconditional imprisonment?

- Yet this escalation in the use of imprisonment is not warranted by any of the evidence about its impact on community safety, the overall crime rate or the particular requirements of its use strictly to contain violent behaviour.
- The majority of crimes are still property crimes. More than half of violent crimes are non-sexual assault and do not involve a weapon or serious physical injury. Canadians tend to significantly over-estimate the extent of crime and particularly violent crime. There has been virtually no change between 1988 and 1993 in the proportion of Canadians who reported being a victim of crime. (Government of Canada, 1995).³⁶
- It would appear that, as has been said of their use in Europe, the vitality of custodial sanctions is due, among other factors, to the emphasis laid on the symbolic or expressive function of punishment (Council of Europe, 1991).³⁷
- Yet it is a costly symbol indeed when one considers its true effects in practice.
- Research has shown, for example, that money spent on the very ambitious and expensive prison construction program that California embarked on in the 1980s purchased nothing when it came to curbing the rate of violent crime (Ekland-Olsen et al., 1992);³⁸ in fact, the rate began to go up in 1986 and has continued going up since (Doob, 1995; Guardian Weekly, April 10, 1994).³⁹

Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996
<http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

³⁴ Council of Europe, Alternative Measures to Imprisonment, Committee For Co-operation in Prison Affairs, European Committee on Crime Problems, Strasbourg, 1991. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996
<http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

³⁵ Government of Canada, 1995, Rethinking Corrections, A Discussion Paper Prepared by the Corrections Review Group, obtained through the Access to Information Act.

Hudson, Joe, An Interview with Jerome Miller, Community Alternatives, International Journal of Family Care, Vol. 5, No. 1, Spring 1993. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

³⁶ Government of Canada, 1995, Rethinking Corrections, A Discussion Paper Prepared by the Corrections Review Group, obtained through the Access to Information Act. Hudson, Joe, An Interview with Jerome Miller, Community Alternatives, International Journal of Family Care, Vol. 5, No. 1, Spring 1993. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996
<http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

³⁷ Council of Europe, Alternative Measures to Imprisonment, Committee For Co-operation in Prison Affairs, European Committee on Crime Problems, Strasbourg, 1991. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996
<http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

³⁸ Ekland-Olsen, S., Kelly, W.R., Eisenberg, M., Crime and Incarceration –Some Comparative Findings from the 1980’s, Crime and Delinquency, Vol. 38, No. 3, July 1992, 392-416. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

³⁹ Doob, Anthony N., Criminal Justice Reform in a Hostile Climate, Centre of Criminology, University of Toronto. Prepared for the Canadian Institute For the Administration of Justice conference on “Public Perceptions of the Administration of Justice”, Banff, Alberta,

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

- This is consistent with previous findings elsewhere on the effect of incapacitation on offenders convicted of murder, rape, robbery, and aggravated assault.
 - o “Many of these individuals must have committed their offences as impulsive responses to the situation confronting them, some-times under the distortions of alcohol or drugs, sometimes by a transitory loss of control in a condition of fear or anger. No incapacitation policy is going to prevent many crimes committed under these circumstances. It is likely that our cohort is fairly representative of experiences else-where, and that a large number of the violent crimes cleared by the police are of this character –first offences committed under stresses and influences inaccessible to the preventive processes of the law.” (Van Dine et al., 1979)⁴⁰
- This is by no means to deny that these offenders must still be held accountable, and the safety, justice, reparative and healing issues must be addressed.
 - o But the use of the expensive tool of punitive imprisonment cannot be justified by any evidence that it will deter others from such violent crime.
 - o Of course, as Doob has pointed out, while they themselves are in prison, they aren’t on the street committing crime. “The question, then, is not whether ‘one crime would be avoided’ by some incapacitation strategy. The questions are ‘What is the cost’ and ‘Would some other strategy for the use of scarce resources be *more* effective in saving lives?’”(Doob, 1995).⁴¹
- Studies have concluded that the current strategy, while having little impact on the overall crime rate, has the additional disadvantage of carrying with it a high degree of inaccuracy:
 - o many offenders who would not have offended after release will nevertheless be detained longer, (Roberts, 1995), at a high financial and social price.
 - o Between 1982 and 1993, California spent \$14 billion on prison construction; the prison population rose by 500 per cent and the overall crime rate increased by 75 per cent (“Real Answer to Stopping Crime”, Guardian Weekly, April 10, 1994).
 - o In 1992, a comparison was done with Texas, which had dealt very differently with the pressures on its own prison system in the 1980s; constrained by a state economy in recession, it had opted for less prison construction and more reliance on parole. The only difference found between the two crime rates was some increase in repetitious property offending patterns, but with some indications that this could also be attributed to the heightened unemployment rates that Texas was also experiencing during those same years (Ekland-Olsen, 1992).⁴²
 - o There is simply no conclusive evidence, based on the best available knowledge, that the use or varying length of incarceration serves as a greater deterrent than do other options, even for property offences (Song, 1993⁴³; Ekland-Olsen, 1992⁴⁴; Roberts, 1995⁴⁵; Doob, 1995⁴⁶).

1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴⁰ Van Dine, S., Conrad, John P., Dinitz, S., Restraining the Wicked – The Incapacitation of the Dangerous Criminal, Lexington, MA, Heath, 1979. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴¹ Doob, Anthony N., Criminal Justice Reform in a Hostile Climate, Centre of Criminology, University of Toronto. Prepared for the Canadian Institute For the Administration of Justice conference on “Public Perceptions of the Administration of Justice”, Banff, Alberta, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴² Ekland-Olsen, S., Kelly, W.R., Eisenberg, M., Crime and Incarceration –Some Comparative Findings from the 1980’s, Crime and Delinquency, Vol. 38, No. 3, July 1992, 392-416. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴³ Song, Lin with Lieb, Roxanne, Recidivism, The Effect of Incarceration and Length of Time Served, Washington State Institute For Public Policy, September, 1993. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴⁴ Ekland-Olsen, S., Kelly, W.R., Eisenberg, M., Crime and Incarceration –Some Comparative Findings from the 1980’s, Crime and Delinquency, Vol. 38, No. 3, July 1992, 392-416. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴⁵ Roberts, Julian V, The Effects of Imprisonment, A Summary of the Literature, Report for the National Crime Prevention Council, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

- As stated earlier, there is some reason to believe the opposite:
 - o recidivism rates of offenders sent to prison are higher than those of individuals who receive non-custodial effects (Roberts, 1995⁴⁷) and
 - o harsh penalties may in fact increase crime rates (Lilles, 1995⁴⁸).

So what happened to deterrence?

- This evidence about deterrence is of course highly contrary to popular public belief and, as such, it deserves considerable public clarification.
 - o While deterrence may “work” with some people when there is a certainty of apprehension for parking tickets and a fine, for example, the strict conditions that are required for deterrence to “work” cannot be met in the area of crime.
 - o Doob explains this as follows:
 - “The idea behind deterrence...assumes that people will examine the probability that they will be caught for what they are about to do, and determine that there is a reasonably high likelihood of being caught. It assumes that they know what the likely penalty would be and it assumes that they believe that if they are caught they will receive the penalty. Finally, when one looks to increased penalties to deter people, it assumes that people would be willing to commit the offence and receive the penalties currently being handed out, but they would not commit the offence if the penalty were harsher. But people are not thinking about being caught.... They may be thinking about how not to be caught, but few people commit offences assuming there is a high likelihood of being apprehended” (Doob, 1995)⁴⁹.
- A further problem is that for many crimes, if offenders were to calculate coldly and rationally what the probable penalty would be, they would realize that they have a very low likelihood of being apprehended, let alone convicted - for robbery, for example, about 10 percent.
 - o The research shows that those who are convicted are in fact sentenced much more severely than most Canadians estimate (almost always a prison term, often two to three years in penitentiary).
 - There is no evidence that potential offenders go through a process of deciding that the crime is worth it for the present penalty, but would not be worth the risk if the penalty were four or five years, for instance (Doob, 1995)⁵⁰.
- Another explanation is given by Mathiesen for the reason punitive imprisonment does not have a “deterrent” or “general prevention” effect on most crime.
 - o He points to communications research to suggest that deterrence, if it works at all, probably impacts on those who did not need it to begin with because they already shared values and allegiances with the rest of society’s dominant group.
 - o But for those on whom imprisonment is most likely to be imposed – often the impoverished and the already marginalized - the attempt to send out a preventive “message” through the punitive

⁴⁶ Doob, Anthony N., Criminal Justice Reform in a Hostile Climate, Centre of Criminology, University of Toronto. Prepared for the Canadian Institute For the Administration of Justice conference on “Public Perceptions of the Administration of Justice”, Banff, Alberta, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴⁷ Roberts, Julian V, The Effects of Imprisonment, A Summary of the Literature, Report for the National Crime Prevention Council, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴⁸ Lilles, Judge Heino, Territorial Court of the Yukon, (on sabbatical), The Young Offenders Act; Some International Perspectives for Reform, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁴⁹ Doob, Anthony N., Criminal Justice Reform in a Hostile Climate, Centre of Criminology, University of Toronto. Prepared for the Canadian Institute For the Administration of Justice conference on “Public Perceptions of the Administration of Justice”, Banff, Alberta, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁵⁰ Doob, Anthony N., Criminal Justice Reform in a Hostile Climate, Centre of Criminology, University of Toronto. Prepared for the Canadian Institute For the Administration of Justice conference on “Public Perceptions of the Administration of Justice”, Banff, Alberta, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

- element of the sentence is distorted by a number of well documented social, psychological and economic factors, including how the punishment itself is experienced.
- **Some** social pressure or threat may make people conform but, beyond a certain point, the severity of the punishment in relation to the context is experienced as an injustice, a rejection, a scapegoating (all the experts say that this point beyond which the message is ineffective is well below the sentences commonly handed out in Canada).
 - Labelling and separating people, we now know, leads to the emergence of counterculture, as opposed to increased conformity to the dominant culture: people who are imprisoned the most tend to come from social groups who know very well that even if they don't break the law they still won't "make it" in our society (Mathiesen, 1990).⁵¹
- Even if there were a little deterrent effect, some serious questions must be asked.
 - Not only are the monetary costs no longer sustainable, but the enormous injustice and social harm done by prisons to a disproportionate number of Blacks and Aboriginals, for example, far out-weigh any other consideration at this point, especially when any benefit would be negligible and remains speculative.
 - **If Canadians knew the facts, wouldn't they prefer this money to be spent on programs that are essential such as health and education, and, as Galaway found in Alberta and Manitoba, on directing resources towards job training, and community programs rather than prisons?** (Galaway, 1994)⁵²
 - It is not necessary, of course, to give up on deterring people from committing crime, or on denouncing behaviour that violates members of our society and community standards.
 - Nor is it necessary to give up on protecting ourselves, or on seeking justice and healing when we have been harmed.
 - The point is that imprisonment is rarely an effective tool for these purposes.
 - They can be pursued more successfully with other means, that can be less harmful and usually less expensive.
 - There are a myriad number of other ways of approaching the kinds of problematic situations that currently get criminalized and often result in imprisonment.
 - And problematic situations can be handled in a wide variety of much more human and civilized ways than exclusively through adversarial courts and punitive incarceration, making room for more responses that are specifically appropriate to unique circumstances and needs in each situation.
 - This compendium has presented a number of examples of this.

Why haven't these alternatives reduced imprisonment?

- The short answer to why these alternatives have not reduced imprisonment is because "prison" is still the norm people associate with "justice".
- In addition to this, these "alternatives" do not all provide an experience of "satisfying justice".
- Prison, of course, is also often found lacking in this regard.
 - But prison has been allowed to coast along, partly because, until recently, there have been no other options for victims or communities; and partly because many assumptions have gone unquestioned, about the effectiveness of the symbolic value of a prison sentence as an utterly destructive moral condemnation, which carries a quality of doom that has not yet been matched by any "alternative" no matter how hard it has tried.
 - We are now seeing how it is the very strength of the "negative stranglehold" of this sentencing measure that has been society's downfall and will ultimately bring about the demise of punitive imprisonment as a rationally defensible or justifiable response to crime.

⁵¹ Mathiesen, Thomas, Driving Forces Behind Prison Growth: The Mass Media. Panel Statement at the International Conference on Prison Growth, Oslo, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

⁵² Galaway, Burt, Alberta Public Views About Restorative Justice, University of Manitoba, 1994; Manitoba Public Views About Restorative Justice, University of Manitoba, 1994. cited in The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

- This should be a warning to us about the orientation we choose to give to other options if we want to avoid repeating a similarly destructive and self-destructive pattern.
- Another important factor is the fact that billions of dollars have remained invested in the prison industry and there has been no effort yet to move those resources out of prison maintenance in order to redeploy them in the areas of more positive endeavour.
 - This has created the very counter-productive dynamic of **vested interests** in keeping all existing prison bed space filled to “cost-effective” capacity: it is better to use what is already being paid for than to spend “additional” money on alternatives while some beds are “wasted”.
- **Criminal policy, it appears, is at a deadlock.**
- The problem seems to be, as we have cautioned at various points in presenting the different initiatives, that many alternatives have been introduced most extensively to relieve prison overcrowding in places where prison sentences are also extensively applied and, because of this, they have tended to be given a much more punitive character than would be required for their actual effectiveness.
 - All kinds of “intermediate sanctions” contain different formulas of coercion and control in order to give them a more punitive appeal that increases the level of suffering or hardship associated with them by the public, regardless of any content meaningfully related to the nature of the offence, or to the problems or needs of victim, offender or their surrounding communities.
- Almost every type of punishment is inevitably linked to imprisonment; the waiving of imprisonment, in part or in full, is made so conditional upon so many factors that breaches for reasons other than a further criminal offence can often result in incarceration anyway.
 - New provisions for “conditional sentencing” in Canada may actually further increase the prison population for these reasons, even though the opposite is intended: the symbolic message of its “hammer” will be tempting to add where there is thought to be little likelihood of it being implemented, resulting in the eventual incarceration of people who would previously have been given a non-custodial sentence.
- **With conditional sentencing, we will thus have come “full vicious circle”: a prison sentence will be the add-on to the alternative, in the same way that alternatives are currently used as add-ons to the prison sentence.**
- This is the infamous “widening of the net” phenomenon, which is by now well recognized and documented, but not overcome.
 - It creeps insidiously into most, (but not all), of our best initiatives.
 - As Peters and Aertsen have pointed out, most alternative sentences have been unable to separate themselves from the prison sentence.
 - Anyone who is not directly sentenced to imprisonment will at least be put in the prison waiting room.
- **The current application of alternative sanctions facilitates access to incarceration: they lower the structural threshold of imprisonment.**
- This will not change unless communities become more attentive, proactive and better resourced and unless governments initiate administrative, legislative and educational policies that shape distinctly new directions, positive messages and community-building values for the work of justice in Canada.
 - What can we learn from other jurisdictions who have also been attempting to reduce their use of incarceration?

What Can Be Done

- A review of international initiatives to reduce prison populations indicates that a few countries have introduced new national policies that are meeting with some success, the most notable of which, by far, are **Finland** and the former **West Germany**.
- **Finland** has successfully accomplished a deliberate reduction of its prison population, which had reached 250 per 100,000 during the peak years (Canada’s is currently 154 per 100,000).
 - Since the mid-1960s, a number of factors have led to a consistent 30-year decrease down to its present level of about 60 per 100,000.
 - According to Matti Joutsen, Director of the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), “few of the essential factors could be described as a ‘program, project or initiative’ in the strict sense of the word”.
 - The strategy was enhanced by conditions that are more easily facilitated in a smaller jurisdiction, for example a close association between research and policy, and the building of close collaborative relationships between the key persons in policy-making, research and practice.

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- But most importantly, “above all criminal policy has remained non-politicized.” “However, the fundamental factor could be created in any country: the realization that a high prison population is not a solution, is in fact a problem. The key persons must reach agreement on two tenets (1) prison rarely rehabilitates, rarely deters, and often increases the risk of recidivism, and (2) a strongly punitive and law-and-order approach to complex criminal justice problems in general brutalizes prisoners, prison staff and society at large.
- **Without broad agreement on this, attempts to reform criminal justice will very likely lead to a twisting of the purpose of new non-custodial sanctions, of new attempts at mediation, of new attempts to shorten sentences, and so on.” (Joutsen)**
- The Finnish used a **comprehensive strategy** of legislative and policy changes decriminalizing certain offences (such as public drunkenness), thereby decreasing the number of fine default prisoners; and de-emphasizing imprisonment, including reductions in penalties for theft, other property offences and drunk driving, lowering the minimum time served before eligibility for parole, and increasing the use of suspended sentences, and the use of community service to replace prison sentences of up to 8 months.
 - They also relaxed the earlier strict conditions related to the use of “conditional” sentences; for adults there is no supervision, only the threat of having to serve the penalty if the offender **commits a new offence** during the probationary period which can last up to three years.
- **Finnish officials believe that the decisive factor in accomplishing this goal was the “attitudinal readiness of the civil servants, the judiciary, and the prison authorities to use all available means in order to bring down the number of prisoners”. Regardless of what happens in the future one important lesson has been learned. It proved possible to significantly reduce the use of imprisonment without repercussions in other parts of the system. The scarcity of other sanctions available and the pressures related to rising crime rates weighed less than the express will to create a more civilized sanction system.” (Törnudd, 1993)⁵³**
- The former **West Germany** has also shown that the prison population can be significantly reduced without any apparent increase in the risk to the public.
 - The largest proportionate reduction in the use of custody has been for young offenders.
 - **The most compelling explanation for the decrease is changing behaviour of prosecutors and judges.**
 - Fewer charged persons are remanded in custody.
 - Prosecutions decreased as prosecutors acquired broad discretion to dismiss cases and even to impose sanctions on their own.
 - **As in Finland, it is believed these changes have been achieved not so much through legislative measures but through close collaboration and cooperation among lawyers, the judiciary and prosecutors.**
- Many other jurisdictions are recognizing the pressing need to reduce their prison population.
 - Some are taking more radical steps in their use of existing measures.
 - The following are just a few examples of the initiatives that are being taken:
 - introducing administrative sanctions, such as
 - confiscation of drivers’ licenses, gun permits or passports instead of jail sentences (Italy); or
 - applying outstanding amounts owed on fines to income tax returns instead of jailing the defaulters (Québec);
 - reducing the restrictions on the seriousness of the offences that are eligible for alternatives to imprisonment (Austria, Scotland, Ireland);
 - discontinuing proceedings or postponing them to allow for other social or health solutions to be put in place (The Netherlands, Portugal, Japan);
 - establishing a system of informal and formal “cautioning” of offenders instead of a court proceeding, to address social and health causes, and sometimes involve the victim (United Kingdom, New Zealand);

⁵³ Törnudd, Patrik, Fifteen Years of Decreasing Prison Rates in Finland, National Research Institute of Legal Policy, Research, Communications, Helsinki, 1993. cited in The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-ccc.gc.ca/text/pblct/satisfy/juste.pdf>

- closing prisons and putting “caps” on the prison sentences that can be handed down (Québec, some American jurisdictions) or insisting that for every jail cell there are an equal number of community measures (Ohio); Others are shifting their understanding of what is needed for justice and therefore introducing new approaches and measures.
 - directing the justice process to take a forward-looking approach offering social alternatives and recognizing the need for “integration” rather than “re-integration” because so many offenders already led such a marginal existence to begin with (France); and recognizing that social services are the cornerstone of the implementation of crime policy (Portugal);
 - giving new social and family-oriented dimensions to existing measures (Belgium, New Zealand, Scotland);
 - giving a more reparative orientation to the justice response, by relating community service orders more meaningfully to the offence (Sweden, France) or encouraging mediation processes (Norway, Belgium, Portugal, Austria); **Belgium has structurally reinforced a pro-victim policy by hiring social workers, criminologists and mediators to work right in the prosecutors’ offices;**
 - developing an “integrated justice service delivery model” to rethink justice in a social policy context (New Brunswick);
 - its aim is to work more collaboratively with other agencies and sectors of society on the broader social policy implications regarding the provision of justice services in four key areas of delivery:
 - preemptive ser-vices,
 - monitoring services,
 - resolution services, and
 - enforcement services;
 - replacing the retributive justice correctional model with a two-track system for “Risk Management Services” and “Reparative Services” (Vermont).
 - The Reparative Services Track focuses on a “Restorative” theme that provides opportunities for offenders to atone for their behaviour and repair the harm caused to both victims of crime and communities where those crimes are committed.
 - Members of the community negotiate the details and activities of how the offender will make redress to the victim and the community.
 - **Professional staff roles are redefined, from being casework supervisors to being community resource specialists, organizers and facilitators;**
 - establishing the position of “Restorative Justice Planner” to implement state-wide use of reparative sanctions (Vermont, Minnesota).
- It is too early to know the results of many of these initiatives in terms of long-term reduction of the use of imprisonment, or community satisfaction with the experience of “justice”; we think the two will be ultimately linked.
- But there is clearly sufficient evidence that a country **can** substantially reduce the level of imprisonment and more effectively manage higher risk offenders ***if the will is there to do so.***
- **One of the biggest barriers to overcome is the false belief among the public, politicians and even some criminal justice officials that tinkering with penalty levels or other parts of the system will improve community safety in Canada.**
- **Accurate information which contradicts this view must be made known, without discounting people’s legitimate concerns.**
- Clearly, members of the Canadian public are not content with sentencing, as they presently know it.
- But as the research of Doob, Galaway, Mathiesen and others, has pointed out, it is just as clear that they would be more content *with individual sentences* if they had better information from the judges about how individual sentences were determined and what the nature of the case was.
 - Policy decision-makers collectively may be poorly informed regarding citizen support of criminal justice reforms.
 - Much of the information we give to ordinary members of the public does not allow them to evaluate the nature of crime in our society or the operation of the criminal justice system.

- At the same time, many views expressed by members of the public on the operation of the criminal justice system are likely to come from various “opinion leaders” (political leaders, criminal justice officials, spokespeople from various groups) (Doob, 1995).⁵⁴
- Hopefully, more communities themselves will begin to insist on more satisfying justice and better value for their money, forming councils like the **Abbotsford Community Sentencing Project** in British Columbia, or the **Miramichi Community Corrections Council** in New Brunswick.
 - The day may not be too far off when, as in the health field where there is a growing demand for “evidence-based treatment”, in the criminal justice area we will see a growing community pressure for “**evidence-based sentencing**”, that is the requirement to justify the expense or intrusiveness of sentencing measures meted out with scientific support for their necessity or anticipated benefits.
- Criminal justice officials have a particular responsibility to serve the public with accurate information about the impact of the present system, what it can and can-not do in the community’s interest.
 - **Members of the judiciary** are in a particularly good position to **use their judgments** to raise important questions, and to foster better community awareness of the problems that the community must address.
 - **Judges** can insist on getting better information before sentencing, they can request that some kind of good healing process of communication take place to gather it; they can ask to consult with the community in this way, or ask that some-one consult the community on their behalf and have the community bring some recommendations before them.
 - They can speak out in their judgments about positive purposes and healing needs related to their cases, and about deficiencies in local community resources or opportunities to help address these deficiencies.
 - They can draw the attention of the community to certain economic or social problems related to the situations they have to rule on; they can tell it how their observations lead them to believe it needs to make more resources available for certain interventions.
 - They can use the opportunity of their judgments to extricate from the label “punishment” some of the positive benefits people are seeking when they use that word and include in their disposition elements that seek to meet these positive aims without assuming that only punitive imprisonment can do so (such aims as holding offenders to account, denunciation, reparation and support for victims, assistance with fears in the community, a re-integrative opportunity in the shaming, etc.).
- As for **Governments** who wish to reduce their jurisdiction’s spending on prisons, it would appear to be important to move on several levels:
 - move money away from prison bed space into community-based alternatives;
 - increase the availability and awareness of resources for alternatives that are effective and satisfying;
 - provide legislative and policy measures that enforce their use as alternatives;
 - encourage individual initiatives by community members, agencies and justice officials to use these alternatives every time possible;
 - be ever-questioning each time jail is a component of a sentence: is it really needed, even as a hammer hanging over-head? Is the purpose for which it is being used really justifiable, or could a better option be found?
 - examine and evaluate the whole variety of different uses and functions which sentences to imprisonment are currently serving in the society (**see side-bar**);
 - **The many uses and functions of sentences to imprisonment...**
 - *the protection of people in the outside community from serious violent behaviour by those in prison, while they remain in prison;*
 - *the limiting of freedom to protect from less serious behaviour;*
 - *the punishment of low-risk non-violent property offenders;*

⁵⁴ Doob, Anthony N., Criminal Justice Reform in a Hostile Climate, Centre of Criminology, University of Toronto. Prepared for the Canadian Institute For the Administration of Justice conference on “Public Perceptions of the Administration of Justice”, Banff, Alberta, 1995. cited in The Church Council on Justice and Corrections, Correctional Service Canada , Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

Research Framework for a Review of Community Justice in Yukon

Community Justice - Review Methodology

- a “wake-up call” to alert certain minor offenders to the fact that a serious change in direction is required in their lifestyle;
 - a symbolic message (of punishment, denunciation, deterrence) to ease public anxiety about crime, and the more deep-seated fear of “the evil that lurks in the hearts of all humankind”, including one’s own;
 - a symbolic message of vindication for the victim;
 - a place to provide programs or mental health services where they are still funded, or where it is believed that the “coercive” element will make compliance more likely;
 - a place for some destitute people to secure a roof and “three square meals” a day;
 - a subculture that gives a sense of belonging to some of the marginalized of society;
 - employment of many citizens in a billion-dollar industry...
 - each must be addressed if it is not to insidiously work against an official strategy to reduce prison populations.
- As we have seen, however, in seeking and promoting new options, tremendous vigilance will always be required if we are not to repeat past tragedies.
- “The modern prison, born just over two centuries ago as an alternative to corporal and capital punishment contains an important lesson for those of us who advocate social change. The Quakers and others who championed the first modern prisons did so with the best of motives but, in reality, created a monster. This history warns us that no matter how lofty our motives and theories, **alternative processes** intended as reforms may be co-opted and diverted from their original purposes.
 - Only a grounding in **alternative values - indeed an alter-native understanding of justice** - can reduce such co-optation.
 - Change advocates must be aware that their reforms may go astray and should be careful about imposing their visions and values on others.” (Howard Zehr, 1995)
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4.19. Community Development and Research - 1996⁵⁵

- Discussion at the workshop centred around questions such as:
- ‘what community development is’,
 - ‘how government can assist in community development,’ as well as
 - some of the issues regarding research and Aboriginal peoples, and
 - the specific needs underlying community development and community development projects.
- The goal was to shed light on the opportunities and roadblocks that affect community development and community research, generally, and make suggestions for overcoming them.
- Important considerations that have come out of past experiences were the focus, not specific strategies. Included in this document is a comprehensive list of funding sources and resource people.
- Themes
- There is a relationship between community development and research.
 - Effective community development requires quality research into a number of areas.
 - Research is a valuable tool.
 - Quality research investigates and uncovers the unknown, highlights problems and concerns, and shows the way some solutions may be developed.
 - **Views on Research:** The participants concluded that although research is a valuable tool, there has to be a shift in how it is done.
 - There was a shared concern about the lack of community involvement in developing research projects and they concluded that communities need

⁵⁵ Canada. *Community Development and Research*. Ottawa: Solicitor General, Aboriginal Peoples Collection, 1996 cited in Department of Justice Canada, Research and Statistics Division, by Naomi Giff, Nunavut Justice Issues: An Annotated Bibliography, March 31, 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-7a-e.pdf>

Community Justice - Review Methodology

to be more involved in all stages of the process if real community development is to come out of the process.

- The objectives and methods that have been used in the past are also problematic.
 - In other words, Western models do not capture the Aboriginal specific needs in relation to research.
 - They want to capture a holistic perspective, not just the views of a few members. Community members must be leaders in the project and what they have identified as their needs must drive the research.
- **Undertaking a research project:**
 - Participants held that
 - communities must identify what is being researched and why,
 - they must ensure that the type of research chosen will meet the needs or objectives of the project, and
 - there must be committees to answer these questions and oversee the process.
 - This will ensure that the community is not left out.
 - The participants also addressed the challenge presented by
 - the apathy of community members,
 - their general lack of interest to get involved, and
 - discussed how this too must be incorporated into the process.
 - Finally, they discussed the role of consultants and how and where to apply for funding.

4.20. Evaluating Aboriginal Justice Projects - 1994⁵⁶

- LaPrairie discusses the context for evaluation, including what she perceives as the overemphasis on Aboriginal culture at the expense of socio-economic status and heterogeneity, the dominance of funding definitions in communities' redefinition of their problems, the type of justice problems typically extant (e.g. interpersonal violence, a small group of chronic offenders), and the lack of a knowledge basis to properly guide funding decisions.
- In particular she stresses the under-funding of off-reserve justice strategies and the limitation of isolating an Aboriginal strategy in a multicultural urban context.
- She dwells on the relation between justice structures and community development, and while aware that the former could be part of the latter's emergence, she cautions against an emphasis on new complex justice structures.
- In her view emphasis should be on whether new justice approaches stimulate institution-building or an environment conducive to community development and, correlatively, whether there is a building of bridges with mainstream institutions and regional Aboriginal structures.
- She recognizes that many initiatives have an important symbolic function, but holds that that value must be transcended if Aboriginal justice concerns are to be met.
- Turning to substantive areas, LaPrairie found, based on interviews with representatives from those largely governmental bodies with Aboriginal justice functions, that these officials could articulate the most serious criminal justice system problems facing Aboriginal people and communities and could indicate their policy priorities and how these are reflected in programs and projects.
- At the same time, they had little systematic information on the actual programs and projects, depending basically upon informal "lessons learned".
 - As regards these lessons, LaPrairie listed the following:
 - the need to consult with a representative sample of community members and not just a select elite (i.e. Community Consultation);

⁵⁶ LaPrairie Carol. Evaluating Aboriginal Justice Projects. Ottawa: Department of Justice, 1994 cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

Community Justice - Review Methodology

- the need for community justice structures such as sentencing circles, diversion, and community courts, and evaluating whether these achieved their objectives,
- the type of offenders and offences they are suited for, and their impact on recidivism and rehabilitation, on victims, cost effectiveness, political independence, and equity (i.e. Community Justice Structures);
- the need to evaluate treatments in terms of cultural sensitivity, effectiveness, and efficiency (i.e. Community Treatments);
- the need to assess access to justice, and the role of culture in Corrections (e.g. does getting in touch with Aboriginal traditions make a difference, and, if so, how?);
- the need to evaluate first nations policing arrangements;
- the need to determine community readiness for projects, including how people are selected and trained to deliver new services (i.e. Community Capacity).

5. Relevant Documents, Studies and Practices – USA

5.1. S-O-F-T Analysis⁵⁷

“S-O-F-T” is an acronym which represents “Strengths,” “Opportunities,” “Flaws,” and “Threats.” To undertake a S-O-F-T analysis, ideally, the first step is to make a long list of every factor that defines the company’s situation. If you have a detailed one-sentence description of the company, this is a great place to start. If the company already has a Business Plan, page through and start “circling” the various factors that are descriptors of the company and its situation.

The next move is to triage this long list in order to sort the entries into legitimate “planning issues” (List A) and true “problems” (List B).

Take List B and determine which of the “problems” are likely “just to go away.” Put the issues that are likely “just to go away” off to the side and focus on List A (true “planning” issues) *plus* the balance of List B (problems that are not likely just to go away).

Then assign the issues to the specific categories of the “S-O-F-T analysis” – which ones are “Strengths,” which ones are “Opportunities,” which ones are “Flaws,” and which ones are “Threats?”

Note that a company’s “Strengths” and its “Flaws” (its “weaknesses”) are obviously *internal* considerations. Note that a company’s “Opportunities” and any “Threats” in a company’s operating environment are clearly *external* considerations.

Equally obvious is the fact that “Strengths” and “Opportunities” are both *positive* considerations. “Flaws” and “Threats” are both *negative* considerations. To express these relationships, it can be helpful to think of these factors in a 2 x 2 matrix (see reverse).

In order to do effective strategic planning, there are specific ways that this information can be used by the company. In general, it is clear that the company should attempt

- to build on its Strengths
- to maximize the response to its Opportunities
- to reverse (or disguise) its Flaws, and
- to overcome its Threats.

5.2. A Comparison of Four Restorative Conferencing Models - 2001⁵⁸

Evaluating Success and Gauging Progress

Despite the proliferation of restorative justice programs, there is a significant lack of evaluation research to provide an empirical basis for determining whether new initiatives are achieving their stated objectives. The

⁵⁷ [BLUE ROCK Capital](http://www.bluerockcapital.com)
www.bluerockcapital.com

⁵⁸ Gordon Bazemore and Mark Umbreit “A Comparison of Four Restorative Conferencing Models” in [Juvenile Justice Bulletin](http://www.ncjrs.org/html/ojdp/2001_2_1/contents.html) February 2001 http://www.ncjrs.org/html/ojdp/2001_2_1/contents.html

exception is victim-offender mediation, which has been the subject of numerous studies in North America and Europe (Coates and Gehm, 1989; Dignan, 1990; Marshal and Merry, 1990; Umbreit, 1994, 1995; Umbreit and Coates, 1993; Umbreit, Coates, and Roberts, 1997; Umbreit and Roberts, 1997).

Perhaps the most critical concern for evaluators and juvenile justice professionals is that many of the new restorative justice initiatives have objectives that are far more holistic than those of traditional crime control responses. Whereas traditional crime control efforts typically have used recidivism rates as a primary outcome measure, an evaluative framework for these new approaches needs to include criteria for measuring outcomes of community empowerment and solidarity, victim interests, and crime prevention. The framework should also take into account intermediate and process outcomes such as community and victim involvement, reintegrative shaming, reparation to victims, dispute resolution, and healing. As new and more appropriate standards emerge for evaluating restorative justice models, it is essential that the basis for comparison be the reality of the current system rather than an idealized version of its performance. It is also essential that any comparisons between restorative justice models and the current system use similar indicators to measure performance.

Another important consideration for any new restorative justice process is its integrity, i.e., its consistency with restorative justice principles. With 25 years of experience to draw upon, victim-offender mediation offers the following basic guidelines that can serve to inform any new restorative conferencing initiative and its implementation:

- If public agencies such as police or probation initiate a restorative conferencing process, actual sessions should be cofacilitated by trained community volunteers. This increases citizen participation and reduces the likelihood of an imbalance of power among parties involved in the sessions. Community involvement and volunteer participation are essential to the success of restorative conferencing but do not preclude the need for public support (e.g., funding to cover the costs of systems development, referrals, training, etc.) to sustain high-quality programs.
- If a local victim-offender mediation or dialog program already exists, other restorative conferencing initiatives should be developed in collaboration with the existing program. For example, volunteer mediators could also serve as cofacilitators.
- Session facilitators should be trained in mediation and conflict resolution skills, approaches to understanding the experiences and needs of crime victims and young offenders, and cultural and ethical issues that are likely to affect the process and participants.
- Victims should be able to make informed decisions about their participation. They should be told about potential benefits and risks and should never be pressured to participate or told to “just trust” the facilitator’s judgment. Victims should also be allowed to choose when and where the session is held and should have the opportunity to present their story first if they wish.
- In-person preparation of primary participants (victims, offenders, and their immediate families) should take place whenever possible. It is important for facilitators to connect with the parties, provide information, encourage participation, and build rapport, trust, and a sense of safety.

Regardless of what model or combination of models a local community or juvenile court might choose, ongoing monitoring and evaluation will be needed to ensure that conferencing processes adhere to restorative justice principles. No model or process is perfect. In practice, therefore, adherence to these principles may be viewed as a continuum within which new approaches can be assessed and continuously improved ([table 3](#)).

Table 3: Restorative Community Justice: Least- to Most-Restorative Impact

5.3. What We Are Learning From Research⁵⁹

⁵⁹ What We Are Learning From Research: The Impact of Restorative Justice Centre for Restorative Justice and Peacemaking
<http://ssw.che.umn.edu/rip>

Fact Sheet:

The Impact of Restorative Justice

“What We Are Learning from Research”

Restorative justice represents a promising new practice theory that is receiving an increasing amount of attention in North America, Europe, Australia and New Zealand. It provides an entirely new framework for understanding and responding to crime and victimization within American society. Restorative justice emphasizes the importance of elevating the role of crime victims and community members through more active involvement in the justice process, holding offenders directly accountable to the people and communities they have violated, restoring the emotional and material losses of victims, and providing a range of opportunities for dialogue, negotiation, and problem solving, whenever possible, which can lead to a greater sense of community safety, social harmony, and peace for all involved.

What We Are Learning

1. Most restorative justice interventions, such as victim offender mediation and family group conferencing, operate in the juvenile justice system, even though such programs have also been found to be effective in the adult criminal justice system.
2. While there are a range of other interventions and policies (such as Restorative Probation Community Boards in Vermont or circle sentencing and talking circles in Native American and Canadian First Nation communities or victim offender dialogue groups in prisons) that are creatively broadening the application of restorative justice for both juveniles and adults, little empirical data is available. Focusing on the empirically grounded restorative justice impact of primarily victim offender mediation over many years, and the more recent experience of family group conferencing, is not meant to suggest that these are the only restorative justice interventions. They are simply the most developed and empirically documented expressions of the restorative justice movement at this point in time.
3. Restorative justice, as expressed through victim offender mediation and family group conferencing, offers a more demanding, active, and clear opportunity for offenders to be held directly accountable to the person(s) and communities they have harmed. Rather than being “soft on crime”, these interventions require far more responsible behavior through making amends to crime victims than most current correctional interventions. The direct human consequences of unlawful behavior are dealt with more directly through restorative justice. Offenders are far more likely to successfully complete their restitution obligation when participating in mediation.
4. Through a process of facilitated or mediated dialogue, these restorative interventions have been found to provide many benefits to those victims of primarily property crimes and minor assaults that choose to participate in them. Victims are able to receive information about the crime, express the impact of the offense to the person responsible for the crime, and gain a greater sense of closure, including some form of restitution in most cases. Crime victims are far more likely to have experienced the justice system as fair and helpful when they are able to participate in a restorative justice intervention such as victim offender mediation. Victim participation must, however, always be voluntary. These interventions are not meant for all crime victims and offenders, and highly victim sensitive procedures are required.
5. Preliminary data suggests that restorative justice holds a great deal of potential for diverting a large number of property offenses and minor assaults from the formal justice system, working effectively with offenders once they have entered the correctional system following conviction, reducing the frequency and severity of further criminal behavior (although this data is not yet conclusive), and ultimately redefining and restructuring our justice systems in order to more actively involve and serve crime victims, victimized communities and offenders.

Public Support for Restorative Justice

There is a growing body of evidence to suggest that the general public is far less vindictive than often portrayed and far more supportive of the basic principles of restorative justice than many might think, particularly when applied to property offenders. Studies in Alabama, Delaware, Maryland, Michigan, Minnesota, North Carolina, Oregon and Vermont have consistently found a public deeply concerned with holding offenders accountable while being quite supportive of community-based sanctions which allow for more restorative outcomes.

Victim Offender Mediation & Dialogue

The largest multi-site study of victim offender mediation conducted (Umbreit, 1994), with juvenile offenders in programs in four cities (Albuquerque; Austin, TX; Oakland, CA; and Minneapolis) led to the following findings. These findings are consistent with 14 other studies of VOM in Canada, England, and the U.S. with both juveniles and adult offenders.

1. A total of 3,142 cases were referred to the four programs during a two year period with 95% of the mediation sessions resulting in a successfully negotiated restitution agreement to restore the victim's losses.
2. Victims of crime who met with their offender, in the presence of a trained mediator, to discuss the impact of the crime on their lives and to develop a plan for restoring their losses were far more likely to be satisfied (79%) with the justice system response to their case than similar victims who go through the normal court process (57%).
3. After meeting the offender, victims were significantly less fearful of being revictimized.
4. Offenders who met their victim were far more likely to successfully complete their restitution obligation to the victim (81%), than similar offenders who did not participate in a victim offender mediation session (58%).
5. Considerably fewer and less serious crimes were committed by offenders who participated in victim offender mediation (18%) when compared to similar offenders who did not meet with their victim (27%).

Family Group Conferencing

Two studies have been conducted to assess the impact of family group conferencing with young offenders. The largest study was conducted by Maxwell and Morris (1993) to assess the impact of a new law in New Zealand that requires broad use of family group conferencing for young offenders. A second and very preliminary study was conducted by Wundersitz and Hetzel (1996). This study examined the initial impact of family group conferencing for young offenders in South Australia.

1. Far more frequent and active involvement of families in the justice process has occurred. Young offenders and victims, as well as their families and support people indicate that the conferencing process had been helpful.
2. As a result of the Children, Young Person and Their Families Act that was enacted in New Zealand in 1989 and which requires broad national use of family group conferencing, far fewer young offenders appeared in court and received convictions compared to before the Act was introduced. There were between 10,000 to 13,000 court cases each year compared to 2,587 in 1990. Commitments of young people to correctional institutions was cut by over 50% following the Act; in 1988, 262 young offenders were imprisoned compared to only 112 in 1990. This represents the largest systemic impact of a single restorative justice intervention anywhere in the world. While not leading yet to change in the entire criminal justice system, the broad use of family group conferencing in New Zealand bodes well for further system-wide restorative initiatives.
3. An 86% offender compliance rate with the decision of the family group conference was found in the Australian study (Wundersitz & Hetzel, 1996).
4. In the Australian study (Wundersitz & Hetzel, 1996), preliminary evidence indicates that 75-80% of those conferences in which a victim-based crime occurred had at least one victim present.

Circle Sentencing

Research by Judge Barry Stuntt (1996) in Canada has found an 80% reduction in further criminal behavior by those offenders who participated in the circle sentencing process. Offenders involved in circle sentencing had lengthy prior criminal records.

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Fact Sheet:

The Impact of Restorative Justice “What We Are Learning from Research”

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5.4. Evaluating ADR - 2000⁶⁰

This article, written by ADR specialist Lee Scharf is included in the Federal ADR Program Managers Resource Manual and focuses on assisting ADR managers in the planning, and design stages of an evaluation as well as on the presentation, dissemination, and use of evaluation results. An evaluation checklist is also included.⁶¹

Key questions that should be asked when planning an ADR program evaluation include the following:

1. What are the ADR program goals and objectives?

⁶⁰ Scharf, Lee, Evaluating ADR, October 4, 2000, Lee Scharf, ADR Specialist at the Environmental Protection Agency, and draws from the work of Cathy Costantino and Christine Sickles-Merchant http://www.usdoj.gov/adr/manual/Part2_Chap8.pdf

⁶¹ <http://www.epa.gov/evaluate/toolbox/summary4.htm>

2. How will you pay for your ADR evaluation?
3. Who will conduct the evaluation?
4. Who will be the audience for your evaluation?
5. What will be your evaluation design strategy? and
6. What will be your measures of success?

5.5. Resolving Disputes Locally: Alternatives for Rural Alaska - 1992⁶²

Executive Summary

C. Findings, Conclusions and Recommendations

The purpose of this project was to describe and evaluate three organizations in rural Alaska, other than the state court system, that resolve disputes. After reviewing all of the case files from the Minto and Sitka tribal courts and the Barrow PACT conciliation organization, comparing those case files with similar cases in the state courts, interviewing nearly 100 attorneys, judges, decision-makers, conciliators, and other persons interested in the organizations, reviewing Native law and current alternative dispute resolution processes, and assessing a wide range of other information about each organization, the Judicial Council makes the following findings.

1. Findings

Rural Alaskans in Barrow, Minto and Sitka have found ways to solve their disputes locally. They have adapted three methods of dispute resolution to their unique circumstances. Barrow's PACT blends the urban, apolitical Community Boards and the rural Indian Peacemakers in the Arctic environment. Sitka's tribal court harmonizes federal, state, and traditional Tlingit law in its decisions and process. The Minto Tribal Court embodies Athabaskan justice, modern and ancient. These three organizations indicate that many Alaska communities could create equally unique and effective dispute resolution organizations. The evaluation found that the organizations shared the following characteristics.

Reliance on Volunteer Effort. Each organization was founded by individuals strongly committed to an idea, whether the idea was a vision of community harmony or well-being, or of collective responsibility. This initial commitment has translated over the years into a willingness to work long hours, for little or no pay. However, this reliance on volunteer support has left all three organizations susceptible, in varying degrees, to burnout and turnover among decision-makers/conciliators and support staff.

Absence of Outside Funding. None of the three organizations relies on outside funding sources; in fact, none of the three has any significant material support. PACT owns an answering machine, Minto owns case files alone, and Sitka owns only a file cabinet. That these organizations have accomplished so much with so little is testimony to the integrity of the ideas that inspired them and the commitment necessary to bring those ideas to life.

⁶² Alaska Judicial Council, Resolving Disputes Locally: Alternatives for Rural Alaska, August 1992, <http://www.aic.state.ak.us/Reports/rjrepframe.htm>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

Resolving Disputes Locally: Alternatives for Rural Alaska

Community Support and Acceptance. Each organization has been continuously active in varying degrees, for a number of years. This continuity is tied to broad-based community support and acceptance. In Minto, every member of the village had the opportunity to assist in drafting village ordinances. Public participation in law-making has given the tribal court heightened credibility and visibility within the community. In Minto and Sitka, community support and awareness of the court's work serves to attract participants and to be a factor in their compliance with the courts' decisions. In a few instances, non-Native members of the community voluntarily used or cooperated with the tribal courts in the resolution of children's and family matters, and in civil regulatory cases. Community support is also key in Barrow, since PACT hears cases only when both disputants consent.

State and Governmental Agency Support and Acceptance. Each of the organizations interacts with one or more state or other governmental agencies. The Sitka tribal court works with the state's social workers and the state courts. Minto relies heavily on the VPSO program that is funded through the state Department of Public Safety. PACT, in Barrow, interacts least routinely with state agencies, but the state court does distribute information about PACT to everyone inquiring about small claims litigation.

Referral Systems. A strong system for referring cases to the organization is critical to its effectiveness, judging by the experiences of these three organizations. The strongest and most reliable referral sources are those tied to governmental structures, such as the VPSO in Minto and the Sitka tribal and state social workers. The tribal courts also draw on ICWA referrals, and referrals from state agencies. PACT lacks a consistent referral source, and has the smallest caseload of the three organizations.

Case Screening. Decision-makers/conciliators select the cases they will take and reject those that do not meet criteria they set. PACT formally expresses these criteria in writing. The Sitka Tribal Court judge screens cases based on past experience, and the Minto Tribal Court relies on discussions among its members about which cases to accept or reject. As a practical matter (given the unsettled legal status of tribal courts in Alaska), the Minto and Sitka tribal courts attempt to avoid cases that might directly challenge their authority or jurisdiction. PACT's case screening focuses more on the organization's philosophical beliefs about the types of cases appropriate for conciliation than on concerns about challenges to its jurisdiction.

Caseload Characteristics. The three organizations differ in the types of cases that they hear. Minto's tribal court attempts to police the community, not so much to punish offenders as to "help" villagers solve problems. The court also handles some traditional adoptions in addition to the civil regulatory cases that make up the bulk of its work. The Sitka Tribal Court's cases consist almost entirely of child custody proceedings, some of which are involuntary proceedings under ICWA and some of which are guardianships. A few have been formally transferred to the tribal court from state or county courts in other states. PACT handles mostly civil matters such as landlord-tenant matters and small business cases. PACT, to date, has not handled any criminal or domestic matters.

Importance of Dispute Resolution Style. Participants in each organization believed strongly that the opportunity to resolve disputes in a certain way (e.g., with equal participation, in a conciliatory manner, or in "the traditional Athabascan way") was one of the most important reasons for, and benefits of, an alternative dispute resolution process.

Separation of Tribal Court Activities from Sovereignty Issues. Tribal courts were able to handle many types of disputes satisfactorily without resolution of sovereignty issues. Rather surprisingly, the presence of those unsettled issues did not interfere significantly with the tribal courts' ability to resolve disputes productively.

Cultural Cohesiveness. The three organizations studied differ in the degree of cultural cohesiveness within their communities and their participants. Sitka's tribal court operates in the fourth-largest Alaska community and serves not only Tlingit, but also other Alaska Natives and Indians from other states. Indianness predominates among Sitka Tribal Court disputants, although some are non-Indians related through marriage or joint parenthood to Indian disputants. In Minto, participants are more alike, ethnically and culturally, than they are different. In contrast to these two, PACT offers conciliation services in Barrow to a wide range of cultures. Cultural or ethnic cohesiveness of the community may be helpful, but does not appear to be at all necessary.

2. Conclusions

Effective Dispute Resolution. Each of the organizations has demonstrated the ability to effectively and fairly resolve disputes within its community

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

Resolving Disputes Locally: Alternatives for Rural Alaska

to the satisfaction of the great majority of participants, and it seems, to the satisfaction of parties whose cases were handled by the organization. They also have operated continuously for a substantial period of time.

Interaction with State Courts. The organizations interact with state courts to varying degrees; each has demonstrated the potential for increased interaction to the benefit of the state courts.

Interaction with Other State Agencies. The organizations interact with other state agencies to varying degrees. In particular, DFYS social workers and VPSOs are important sources of case referrals for the tribal courts. In general, these interactions appear to be beneficial for all parties. For example, the Minto Tribal Court appears to ease the workload of state prosecutors.

Characteristics. The characteristics of effective rural dispute resolution organizations, based on this evaluation, appear to include committed volunteers to run the organization; voluntary acceptance by disputants of the organization's resolution of disputes whether through conciliation methods or other techniques; one or more reliable sources of case referrals; and acceptance, at least informally, by state courts and governmental agencies of the organization's activities.

Resources Needed. Remarkably few resources were needed for the operation of each organization. Increased resources would permit better training of decision-makers/conciliators, less turnover and burnout among decision-makers/conciliators, and more effective service to the communities, among other benefits. However, the organizations' fiscal resources were not the most important aspect of their operations.

Resolution of Sovereignty Issues. In the long run, the tribal courts' ability to work with the state courts and other agencies will be improved by the resolution of sovereignty issues because the ambiguity of those issues will not act as a barrier to cooperation on the resolution of cases.

Use of Tribal Courts by Non-Natives. Non-Natives voluntarily used or cooperated with tribal courts in the resolution of children's and family matters, and civil regulatory cases. This indicates that the tribal courts can serve citizens of all races in the state in their capacity as local dispute resolution organizations.

Wide Range of Disputes Resolved. All three organizations evaluated appeared to have the potential to handle a very wide range of dispute types that are presently filed in state courts, including typical civil matters, family and children's matters (this was less clearly demonstrated in the case of PACT), and quasi-criminal matters. They also were able to deal with personal disputes that normally would not be handled by the state courts.

Homogeneity of Community. Homogeneity of a community's population did not appear to be related to the ability of the organization to resolve disputes.

Replication. To the extent that other communities can replicate the conditions that appear to be essential (i.e., committed volunteers, strong referral sources, willingness of community members to submit their disputes to the particular process chosen), they should be able to establish local organizations to resolve disputes within the community. Effective local organizations will serve somewhat different needs in each community and it is not recommended that a community attempt to duplicate exactly any one of the three organizations evaluated.

3. Recommendations

Cooperative attitude towards legitimate work of tribal courts. Issues of Native sovereignty and the authority of tribal courts have been in dispute in Alaska for many years and will likely continue to be so. The Judicial Council takes no position on the resolution of these issues, which are beyond the scope of this study. None of the following recommendations should be taken as supporting or opposing Native sovereignty or the authority of tribal courts to compel compliance with their proceedings or orders. They should, however, be taken as supporting a cooperative attitude on the part of the State and the Tribes toward the legitimate work of tribal courts. To the extent that local communities voluntarily submit to the authority of dispute resolution organizations, the State has every reason to support this effort, including cooperation with organizations identified as tribal courts.

Further discussion of remaining issues in the ICWA state/tribal agreement. The Judicial Council recommends that in an attempt to foster cooperation between the state and its Native population, the Department of Health and Social Services considers beginning discussions on the issues that were reserved for subsequent negotiation in the

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

Resolving Disputes Locally: Alternatives for Rural Alaska

1989 ICWA State-Tribal Agreement. Those issues were tribal courts, jurisdiction, and state funding for social services and for children placed in foster homes by a tribe. Included in negotiations on state funding of social services should be discussion of a tribal guardian ad litem program modeled after the state's.

Continued voluntary cooperation among rural dispute resolution organizations and state personnel. The Judicial Council recommends that state agencies and employees continue to cooperate voluntarily with rural organizations to further local justice in both civil and criminal matters, in order to meet the legitimate expectations of rural communities for justice in their communities.

Increased voluntary development of local alternative dispute resolution organizations in interested communities. The Judicial Council supports greater development of voluntary local dispute resolution organizations in interested communities. The State does not provide law enforcement and prosecution services to all villages for minor criminal matters, and it is appropriate for village governments to assert control over these matters and to seek local solutions. The Council recommends that the Department of Public Safety establish clear policy encouraging the referral by Troopers and VPSOs of appropriate criminal matters to local dispute resolution organizations, including tribal courts. The Department also should include discussions of local dispute resolution options in VPSO training.

Continued mutual education between state and tribal courts. The Judicial Council recommends that the state and tribal court judges make continuing efforts to communicate with each other. Current efforts at mutual education include the Tribal/State Court Working Group, composed of ten lawyers and judges who work with state and tribal courts in Alaska. A second important step toward mutual understanding was the half-day tribal court session at the 1992 Alaska Judges Conference. The Judicial Council recognizes the very important steps these activities represent and praises the coordinators of and participants at this year's judicial conference for their efforts at opening communication between state and tribal court judges.

Also welcome are other efforts by the tribal courts to invite state court judges and court personnel to visit their locations (Metlakatla, for example, recently invited the Chief Justice and state court judges in its area to visit). Further discussions should take place in a series of meetings at which work groups organized by both state and regional levels conduct research and carry out specific tasks. Work groups should reconvene at the meetings to report on progress achieved.

ES-12 ◀◀◀ Alaska Judicial Council 1992

Executive Summary

Support for court-referred victim/offender mediation by PACT. The Council recommends that the State support any efforts by PACT to commence agency or court-referred victim-offender mediation. PACT can provide a valuable service to Barrow by providing the service, and in turn, can benefit from the institutional connection with the referring agency or court system.

6. Relevant Documents, Studies and Practices – International

6.1. An Exploratory Evaluation of Restorative Justice Schemes -2001⁶³

An Exploratory Evaluation of Restorative Justice Schemes relays the findings of a 15-month research study of seven restorative justice schemes across England. Two of these programs dealt with adult offenders and the rest with juveniles. The two main goals were to

- Identify the best practices of schemes to be mainstreamed
- Evaluate the cost effectiveness of the elements that are most effective at lowering recidivism and crime.

Mixed conclusions resulted from this evaluation. The seven programs displayed diversity in

- the understanding of restorative justice
- degree of focus on victims or offenders
- the process used.

Questions about satisfaction also returned mixed results. Victims varied on their statement of satisfaction with the system. The most frequent complaint was time needed to complete the process. Two-thirds of victims believed that the intervention did have a positive impact on the offender, while others expressed skepticism of the offender's motives. On the other hand, offenders showed more satisfaction, although many of them found it very difficult to face their victim.

Effectiveness of the schemes also showed mixed results. In the West Yorkshire adult offender scheme, the findings revealed a significant impact on reoffending despite the high probability of reoffending and serious original offences. However, the West Midlands scheme for adult offenders did not show a significant difference between the control and the test groups.

The researchers concluded that the schemes could benefit from clearer, more systematic, and more developed understandings of a number of key areas of their design and delivery:

- Aims, organization, staffing, and training
- Referral criteria
- Victim and offender protocols
- Interventions
- Closure, follow up and evaluation.

⁶³ Miers, David, et al. September 2001. "An exploratory Evaluation of Restorative Justice Schemes." Crime Reduction Research Series Paper 9. London: Home Office.
<http://www.homeoffice.gov.uk/rds/prgpdfs/crrs09.pdf>

6.2. An International Review of Restorative Justice -2001⁶⁴

An International Review of Restorative Justice provides an overview of the legal base, scope, implementation, and evaluation of restorative justice programmes in several European Jurisdictions: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Netherlands, Norway, Poland, Slovenia, Poland and Spain.

There is also a section examining programs in the United States, New Zealand, Canada, and Australia. The study offers both a detailed descriptions of the implementation of restorative justice in these jurisdictions and an evaluative summary to draw out the similarities and differences between jurisdictions and lessons about best practices.

The report shows a wide variety of programme characteristics in the different jurisdictions. Differences included the legal base, ideological orientations, and extent of development of programmes for dealing with different offender groups. Almost all of the jurisdictions addressed the needs of both adult and juvenile offenders with a difference in the diversionary effect of the programmes. In some jurisdictions (Belgium) the diversion could take place in all stages of the justice process. In others (France, the Netherlands, and Denmark), diversion could only take place at one certain point in the process. The most common points of diversion were pre-trial and sentencing stages.

In implementing programmes, the most common gatekeeper for the justice system was the public prosecutor. Financial support was split between central and local government with some dependence on charitable giving. Mediation was found to be the preferred form of encounter, including both direct and indirect mediation. The most common programme goals were to produce an apology by the offender and to gain some form of material reparation for the victim.

6.3. Evaluating Restorative Justice Programs -2000⁶⁵

Introduction

My intention in this paper is to add a cautionary note to the way in which the 'success' of restorative justice is currently measured. My basic argument is this:

1. There are certain restorative processes which, for various reasons, we don't (or don't know how to) measure that are *essential* to a restorative outcome.
2. Evaluation reports of restorative justice programs which do not acknowledge this limitation are therefore likely to have a distorting effect on the way such programs are designed and operated: specifically, those restorative processes which are not (or cannot yet be) measured are likely to be neglected or downplayed, leading to an outcome which is either not fully restorative or counter-restorative.

I will begin the paper by trying to encapsulate, in very general terms, the three processes which are essential to restorative justice, what must happen for restorative justice to occur. I will then look at how victims and offenders are affected when a restorative justice program neglects or downplays just one of these processes,

⁶⁴ Miers, David. September 2001. "An International Review of Restorative Justice." Crime Reduction Research Series Paper 10. London: Home Office. <http://www.homeoffice.gov.uk/rds/prgpdfs/crrs10.pdf>

⁶⁵ Brookes, Derek R., Evaluating Restorative Justice Programs, United Nations Crime Congress: Ancillary Meeting Vienna, Austria, 2000, http://www.restorativejustice.org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/RJ_UN_DBrookes.htm

and then go on to suggest that this phenomenon may have a great deal to do with the way in which programs are currently evaluated.

1. What is essential to restorative justice?

The primary site of restorative justice is not an adversarial court of law, a prison cell, a boot-camp, or an execution chamber. It involves *a mediated encounter between those directly involved in or affected by the crime: the victim, the offender, family members, and community representatives.*

The principal aim of these encounters is to facilitate the following three processes.

- *Reconciliation:* where the victim and offender—in the social rituals of apology and forgiveness—(i) offer and receive the value and respect owed in virtue of their intrinsic human dignity and worth, and (ii) engage in a mutual condemnation of the criminal act, whilst ceremonially ‘casting off’ or decertifying the offender’s deviant or blameworthy moral status.
- *Reparation:* where the offender takes due responsibility for the crime by ‘making good’ the material harm done to the victim: that is, by agreeing to provide a fair and mutually acceptable form of restitution and/or compensation.

And, as an ongoing consequence of reconciliation and reparation:

- *Transformation:* where the individuals and communities concerned experience some degree of liberation from the conditions that perpetuate the cycle of violence, aggression and domination exemplified in criminal behaviour: for example, by overcoming the negative emotions of humiliation, fear and hatred, and by advancing the alleviation of degradation, oppression and stigmatization which characterize existing socio-political structures and relations.

2. What happens when there is reparation without remorse?

Let me say first of all that I do not want to deny the essential role of reparation in restorative justice: victims are entitled to have “the value of property stolen or destroyed returned to them”.^{66[1]} Nor do I want to deny that the act of restitution can, in some cases, serve as a symbolic gesture of reconciliation. However, I do want to suggest that programs which emphasize restitution settlements—to the *neglect* of reconciliation—can give rise to several counter-restorative outcomes.^{67[2]}

The first example of this is where the lack of remorse in the offender ends up re-victimizing the victim, even when reparation has taken place. Mark Umbreit, for example, has found that, where the offender remained unrepentant, victims tended to view their restitution agreement with resentment, dissatisfaction, and a sense of arbitrariness (e.g. ‘I felt he wasn’t owning up to it.’; ‘He just slouched all the way down and just sat and half-heartedly gave answers’.^{68[3]}). As Marshall has put it:

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

“It is not possible to carry out fruitful mediation without dealing with underlying feelings. A material agreement without this will be superficial and of little meaning to the parties. Mediators should be prepared to gain the skills necessary for ventilation and expression of grievances, not merely for their direct therapeutic benefits, but also because the ultimate settlement will have more content and value.” 69[4]

A second example is where an offender does not think of the reparation agreement as an expression of their genuine remorse, or of their desire to ‘make things right’. As far as they are concerned, it is all about the victim having a say in what kind of punishment they receive.70[5] The result is just what we have come to expect from retributive institutions: offenders fake their way through the program, all the while reinforcing their sub-cultural identity as a ‘victim’ of the system. Blagg’s 1985 study, for instance, found that offenders who were merely expected to make restitution to the victim and were given no encouragement or opportunity to express genuine remorse, reported their perception of the encounter in this way:

“they were punished by an authority figure; they were powerless to prevent the process; they acquiesced; they then, in order to retain peer-group status and keep their egos intact, retrospectively recreated the encounter as one in which sullen obeisance was transformed into heroic resistance”71[6]

3. Why have researchers focused on reparation agreements?

One explanation for the concentration on reparation, might be found in the methodologies typically used to evaluate restorative programs. The majority of published (and unpublished) evaluative research has focused almost exclusively on the *social service* features of victim-offender encounters.72[7] In other words, the evaluative criteria of this research has typically been restricted to *delivery efficiency* (e.g. costs per case), *effort* (e.g. caseloads per mediator), and *outcome* (e.g. percentage of agreements, satisfaction of disputants, restitution compliance rates).73[8]

There are several reasons for this restriction. First, to justify their existence and funding, restorative justice programs have had to appeal to the persuasive power of utilitarian or economic rationalism:74[9] victim-offender encounters are advanced as preferable alternatives to the traditional criminal justice process on the grounds that (i) they will decrease court caseloads, the prisoner population, and recidivism rates; and (ii) they will increase the percentage of restitution settlements and victim/offender satisfaction.

Second, most of the data relevant to service-delivery criteria is comparatively easy to collect: minimal requirements for program management will involve keeping records of costs per case, caseloads, referral sources, types of cases, percentage of settlements reached, and, with a little more effort, percentage of restitution compliance and participant satisfaction. Third, it is, as a consequence, relatively cheaper to produce program evaluations using service-delivery data. Finally, the audience for which these evaluations are primarily

designed—funding agencies, policy makers, and criminal justice professionals—do not generally require, and would not necessarily appreciate or acknowledge more qualitative or substantive data.⁷⁵[10]

. What does service-delivery data tell us about restorative processes?

The problem is that, even if the service-delivery criteria were shown to be satisfied, such an evaluation would tell us almost nothing about the more substantive claims made for victim-offender encounters:⁷⁶[11] how would we know, on the basis of service-delivery data, whether a particular encounter has, indeed, ‘given participants access to a higher quality of justice’, ‘evoked genuine remorse in the offender’, ‘enabled the victim to overcome her resentment, fear and negative self-identity’, ‘repaired the social bonds’, ‘shamed the offender within a continuum of love and respect’, ‘decertified his deviant status’, and so on? But until such information is forthcoming—that is, in non-anecdotal form—there remains little basis for the claim that victim-offender encounters are theoretically grounded in the social and experiential reality of its participants. As Umbreit has put it:

“The ultimate strength of any social theory is to be found in how accurately it captures the reality of people who are subject to it. Restorative justice theory makes bold claims about the needs of people affected by crime within community structures. Its validity as a new social theory must be grounded in empirical evidence offered by those most affected by crime—victims and offenders.”⁷⁷[12]

To illustrate this problem, take the criterion of restitution agreement percentages. This is perhaps the most widely used source of evidence for the success of victim-offender encounters. But what does the fact of an agreement tell us about the more substantive issues?

First, if the parties have agreed to participate in a mediation session, they will already be sufficiently motivated to achieve *some* kind of settlement. Second, an agreement may vary to an enormous degree in terms of its significance for the participants; and this may be impossible to determine by reference either to the fact of an agreement or to its content. For example, the ‘settlement’ may involve a simple apology, substantial monetary restitution, a signed pledge to perform community service, an agreement ‘to have nothing to do with each another from this point on’, and so forth.

The problem is that any one of these forms of reparation may represent a substantial breakthrough in terms of reconciliation. On the other hand, the agreements may be token offerings to ‘get the thing over with’, lacking any reconciliatory purpose. In sum, an encounter might be classified as ‘a success’ on service-delivery grounds, and yet fail entirely to accomplish what should be one of the primary goals of Restorative Justice, reconciliation. Alternatively, it may be classed as a ‘failure’ due to the lack of any significant reparation settlement, and yet the participants may have nevertheless experienced reconciliation.⁷⁸[13]

5. What is the effect of focusing on reparation as a criterion of ‘success’?

There is growing evidence that restorative justice is a powerful alternative to the traditional criminal justice system: where everything else is failing, restorative justice programs somehow seem to be ‘working’. For those

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

of us who have observed mediation, conferencing or circles first-hand, we *know* that the claims of restorative justice ring true: for the most part, these encounters really do give participants access to ‘a higher quality of justice’, they do somehow manage to ‘shame the offender within a continuum of love and respect’, they do ‘enable victims to experience forgiveness’.

The problem is that we do not yet know how to test these sorts of claims. We don’t really know what kind of data would show that ‘a victim experienced a sense of forgiveness during an encounter with his or her offender’. But our suspicion is that—whatever data *is* relevant—it would be far too difficult and expensive to collect and analyse on a large scale; and the results would, in any case, be far too complex for most stakeholders to digest. Fortunately, there are certain things we can measure which do not have these sorts of obstacles, such as recidivism rates, victim satisfaction and restitution payments. And if we can persuade those who matter, that restorative justice programs are highly successful using such criteria . . . why not leave it at that?

Well, there is a very good reason why we ought to reject this approach. As I hope to have shown, what we are leaving out in our research—what we don’t (or don’t know how to) measure—is *essential* to a truly restorative outcome. And we should *acknowledge* this limitation. Otherwise, stakeholders may look at the research and walk away with a profoundly distorted understanding of what counts as a successful restorative justice program. For instance, they may think that restorative justice is primarily a means of addressing minor property crimes, simply because our research has focused on the fact that restorative programs are more likely than the court system to achieve restitution settlements. Again, they might, for similar reasons, think that restorative justice can be achieved *merely* by (a) including victim statements in court decisions, or (b) getting prisoners to contribute to a victim-reparation fund, or (c) setting up a ‘truth commission’, where the offender is only required to give a full disclosure of their crime in return for amnesty, or even (d) holding a victim-offender encounter where the sole purpose is to extract a restitution agreement from the offender. These may indeed serve as *part* of a restorative process; but they are not *explicitly* designed to facilitate reconciliation. If reconciliation happens to occur, as it sometimes does, it is quite inadvertent and unexpected. In other words, because of what they leave out *by design*, these programs, on their own, are not likely to result in a truly restorative outcome. As we have seen, some may even be counter-restorative.

6. Conclusion

Restorative justice is rich, complex and multi-dimensional: it must, at some point, involve reconciliation as much as it involves both reparation and the slow but steady transformation of individuals and communities. I have tried to show that how we measure these restorative processes *does* make a difference. As Gordon Bazemore has put it, ‘You get what you measure’. And this is my fear. But I am also optimistic. My hope is that, someday, we will be able to measure what we get.

79[1] “[E]xperimental schemes may have gone too far in stressing the emotional and being overly ready to dismiss the material side of reparation. This shift of emphasis was needed to combat the general bias of criminal justice towards the material and its neglect of victims’ real needs, but it should not be taken so far that it effectively denies a victim’s basic right to have the value of property stolen or destroyed returned to them. If this right is to be waived, it must be at the discretion of the victim and no one else.” (Marshall 1990, 100); “[V]ictims might be interested in material reparation, but because mediators were preoccupied with resolution through talking (and symbolic gestures of reconciliation), victims’ preference for getting their money back might remain unvoiced and unrecognized.” (Davis et.al.1992, 457).

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

80[2] This is not a rare phenomenon: “Programs’ personnel tend to characterize success in relation to rates of contract completion” (Gehm 1990, 179); See also Van Ness & Strong 1997, 71; Retzinger & Scheff 1996, 317.

81[3] Umbreit 1990, 56

82[4] Marshall 1990, 98.

83[5] “[R]eparation can be a highly complex process requiring skill and sensitive handling and . . . its value as a lesson for juveniles may well be lost if it merely replicates the punishment paradigm, albeit by a more insidious route” (Blagg 1985); “discussion of material things . . . tended to appear more like victims determining the offender’s degree of *punishment*, rather than the determination of what was merely the victim’s due.” (Marshall 1990, 99).

84[6] Blagg 1985, quoted in Davis et.al.1992, 143.

85[7] A good example of the service-delivery evaluative framework is Mark Umbreit’s “two-and-one-half-year study of victim-offender mediation programs in California, Minnesota, New Mexico and Texas.” (p. xi) Without wishing to deny its value, the study’s research questions were evidently designed to evaluate the satisfaction of one of more of the three types of social service criteria (Umbreit 1994, 31-32). I select Umbreit largely because his research methodology is both well-known and representative of the majority of research on victim-offender mediation.

86[8] Lowry 1993, 117.

87[9] “For the sake of maintaining the confidence of [funding or government] agencies or of the general public, practitioners (even if there are no doubts in their own minds) will . . . need to supply some evidence that worthwhile progress towards ultimate goals is being made. . . . Questions of economy and cost-effectiveness, or efficiency, are . . . prominent at this stage.” (Marshall & Merry 1990, 16-17).

88[10] Lowry 1993, 119. “Sentencers . . . may be more easily persuaded to take account of material outcomes—compensation paid, reparative work carried out—than the metaphysic of empathy and forgiveness. . . and may lead a scheme to place undue emphasis on the material agreement.” (Marshall & Merry 1990, 31); “where [mediation] schemes are dependent on the goodwill of other agencies—as those court-based reparation schemes that seek to influence sentencing decisions may be, when material commitments by the offender to make reparation seem more persuasive to judges than mere expressions of regret, even if the victim may not really desire the first and may find more genuine meaning in the second, or in the encounter itself.” (Marshall & Merry 1990, 25).

89[11] “It is easy to add up the amount of compensation paid or the number of hours of community service worked, but these figures, although they may be useful in impressing the providers of funding, do not necessarily mean very much.” (Wright 1991, 537).

90[12] Umbreit 1994, 6.

91[13] “The essence of mediation, according to most who engage in it, is the achievement of understanding, sympathy, catharsis, and the exchange of atonement, on the one side, and forgiveness, on the other. . . . as against a more or less commercial transaction (which may be no more significant than a fine or compensation order imposed by the court).” (Marshall & Merry 1990, 30).

6.4. Restorative Justice The Public Submissions-1998⁹²

Research

Several submissions believed that there was inadequate information available regarding restorative initiatives. Twelve submissions called for more research in the New Zealand context on family group conferences, the police diversion scheme, and other existing processes similar to restorative justice. A particular concern in eight submissions was that the youth justice system had not been fully evaluated.

⁹² Ministry of Justice – New Zealand - Restorative Justice The Public Submissions First published in June 1998, © Crown Copyright http://www.justice.govt.nz/pubs/reports/1998/restorative_justice/ex_summary.html

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

It is tragic that so little money has been put into research of the Youth Court system and this mistake should not be made with any future RJ initiatives. (McElrea, 31)

Other areas where research was called for included:

- Victim satisfaction;
- Community based programmes for serious offenders;
- Recidivism after involvement in restorative programmes;
- The under-utilisation of the existing sentences of reparation, community service, and community care;
- A comparison of the fiscal and social costs and benefits of traditional and restorative approaches.

6.5. Restorative Justice - 1996 ⁹³

The Ministry (formerly the Department) of Justice has been given the task of providing advice to the Government on the options and implications of a system of restorative justice in New Zealand. The new Ministry's role is to lead the development of an integrated and co-ordinated response to crime across government, and to provide advice on the range of appropriate responses to crime beginning with prevention. Consultation will be a central element in the way the Ministry does business. Accordingly, we are committed to seeking and taking account of the views of others in developing advice for the Government on restorative justice.

The criminal justice system is influenced by a diverse range of interests.

The judiciary, state agencies, professional and community groups and individuals all have views of value to contribute to the debate and the consultation exercise is intended to draw these out. Given the very nature of restorative justice with its focus on the direct involvement of the victim and community participation in the administration of justice, there must be the opportunity for views from these groups and particularly victims to be heard.

There has been some general liaison with groups and individuals interested in restorative justice. This has complemented research into New Zealand and international approaches. While restorative justice has generated considerable interest in New Zealand, it is a very broad concept encompassing a wide, potentially conflicting, range of objectives. This paper has been developed to clarify the objectives associated with restorative justice and to identify the wide range of issues and options to be addressed in assessing the implications of restorative justice in New Zealand.

The consultation phase will enable people and groups to comment on the issues raised. It will also enable the Ministry to develop policy advice about whether any changes should be considered following this consultation and, if so, what changes may be most effective.

Four major questions will need to be addressed in considering public comments and in the subsequent analysis:

- To what extent are the objectives of restorative justice consistent with each other and the way New Zealand should best respond to offending?;
- What is the evidence or potential for the effectiveness of restorative justice in achieving those objectives?;
- In what ways might restorative justice enhance the cultural responsiveness of the criminal justice system?;

⁹³ New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996,
<http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

· What are the cost implications of any such approach taking account of any savings that might be created and any benefits that might be realised?

Introduction

The Minister of Justice has asked for advice on the options and implications of a system of restorative justice for adult offenders in New Zealand.

The purpose of this paper has been to outline the issues that arise and invite comment, so that policy advice tendered to the Government reflects a range of opinions and informed debate becomes part of the policy development process. We are aware that there may be other ways of achieving restorative justice objectives and that the options canvassed in this paper may not be definitive. However, they represent a sound starting point. We welcome submissions from all individuals and organizations with an interest in this area.

Purpose of the Paper

The Minister of Justice has asked the Ministry of Justice to provide advice on the options and implications of a system of restorative justice in New Zealand.

Various groups have indicated an interest in the concept and their desire to contribute to any debate. The adoption of a restorative focus in the adult jurisdiction could constitute major new public policy and it is important that a wide range of views feed into the consideration of this issue. This paper endeavours to set out the main options that the ministry has identified as a result of its investigations without reaching a conclusion, so that those who wish to participate in the consultation know the issues on which the ministry is particularly seeking input. As is stated later in the paper, the options are not regarded as mutually exclusive and nor are they necessarily the only options. Different proposals may well emerge in the course of the consultations.

Two qualifications to the paper need to be noted. First, the issue of whether or not restoration should be a major focus in the sentencing process has not been explored. This is because the rationales, goals and guiding principles of sentencing will be addressed in a paper on sentencing policy which is currently being prepared for public consultation later in the year.

Secondly, restorative practices have their roots in many traditional societies, including Maori and Pacific Island cultures. While there have been discussions with representatives of some groups and reference has been made to cultural issues in the paper, this aspect has not been addressed in detail. It was considered more appropriate for cultural perspectives to be further explored as part of the consultation process.

Overview of the Paper

The first chapter provides the necessary background material. It describes how the discussion paper came about and defines some of the terms that are commonly used in the paper.

Chapter 2 focuses on restorative justice, describes how the concept is commonly translated into practice in some overseas jurisdictions and seeks to arrive at a common understanding of the key elements it incorporates.

Chapter 3 discusses the New Zealand situation. The system of family group conferences in the juvenile jurisdiction is often described as a restorative system although it was not designed as such and may not always operate with such a focus. This is considered. Additionally, components of the criminal justice system which have a restorative element, and which are currently being applied to adult offenders are also described, and the extent of their use is considered.

Chapter 4 considers public opinion on restorative justice. The Department of Justice has undertaken research both to gauge public opinion on the concept of restorative justice generally, and also to obtain feedback on specific elements. The results of this research are reported, and other studies of public attitudes to reparation and restoration are considered.

Chapter 5 considers some of the advantages and disadvantages of restorative programmes, and assesses available evidence about their efficacy. It draws on the results of research on victim-offender reconciliation

Research Framework for a Review of Community Justice in Yukon
Community Justice - Review Methodology

programmes in the United States and victim-offender mediation programmes in the United Kingdom. Reference is also made to the implications of research on the New Zealand youth justice system.

Chapter 6 presents and discusses the options identified for New Zealand, and on which comments and submissions are invited.

6.6. Putting Aboriginal Justice Devolution into Practice - 1995⁹⁴

- A number of case studies referred to consultation with Aboriginal communities.
 - o Central to the consultation issue are: who is consulted? whose voice is heard? and what is said?
 - o A not-so-incredulous story tells of United States Senators consulting only Western-educated young Native Alaskans from Fairbanks and Juneau.
 - o This example only reinforces a point made in one of the presentations, that governments and those who work in them prefer to deal with organizations and people just like them.
 - It is instructive that the Quebec consultation process resulted in a report with a special section devoted to women, children and the family with a recommendation that any model adopted should have a balance of men and women.
 - A point repeatedly made in the discussion is that there is currently insufficient knowledge of the dynamics in Aboriginal communities.
 - Those accustomed to dealing with the political "elite" of the communities are impressed by their "vision", while those working at the grass root level see many who have suffered much, continue to experience powerlessness, and have difficulties articulating a path to a different future.
- In order to construct a "better justice" and to achieve healing and harmony, one must constantly be reminded that communities are made up of living, breathing people with diverse interests rather than prototypes and that each community is unique in its history, needs and aspirations.

The **transferability** issue in an "international" workshop is a natural and inevitable question. The Australian community healing initiatives freely acknowledge their ties to the Canadian Native sobriety movement. For years, Canadian northern communities have seen as a model the Greenlandic use of lay people in the administration of justice. The indigenous peoples of the six countries mentioned in the Workshop experienced a common history of colonization resulting in similar social disintegration patterns. Yet more than one presenter cautioned against the wholesale transportation of programs to other communities. The uniqueness of Aboriginal communities should not be easily glossed over, and the importance of mobilizing the community in the planning and in involvement in devolution initiatives cannot be over-emphasized. The general opinion of the Workshop participants is that communities need to progress to their own pace and according their own agenda in the resumption of responsibility and control.

⁹⁴ The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>