

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Net Widening

<b>1. Relevant Documents, Practices and Studies – Other Canadian .....</b>	<b>3</b>
1.1. The Incorporation of Dispute Resolution into the Criminal Justice System: Playing Devil's Advocate -1998 .....	3
1.2. Restorative Justice and Criminal Justice – Identifying Some Preliminary Questions, Issues and Concerns - 1998.....	4
1.3. Making It Work: Planning And Evaluating Community Corrections & Healing Projects In Aboriginal Communities, 1998 .....	4
<b>2. Relevant Documents, Practices and Studies – International.....</b>	<b>6</b>
2.1. Restorative Justice, A Discussion Paper, 1996 .....	6

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Net Widening

<b>Research Questions</b>
Is it possible to determine if the referrals, but for the existence of the diversion, would have received attention from the mainstream justice system? <ul style="list-style-type: none"><li>- might never have been arrested</li><li>- fully prosecuted</li><li>- given significant sanction</li><li>- widen the net</li></ul>

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Net Widening

## 1. Relevant Documents, Practices and Studies – Other Canadian

### 1.1. The Incorporation of Dispute Resolution into the Criminal Justice System: Playing Devil's Advocate -1998 <sup>1</sup>

#### Net Broadening

- Net broadening, in the context of *restorative justice* and other ADR forums for criminal justice, refers to the phenomenon of increasing, however inadvertently, the reach of the criminal justice system, to draw in individuals who would not normally be charged with a criminal offence or be brought within the sphere of the criminal justice process.
- The phenomenon has been studied in a number of jurisdictions including, for examples, Nova Scotia<sup>2</sup>, New Zealand<sup>3</sup> and the United States<sup>89</sup>.
- In theory, diversion programs such as *alternative measures* or *restorative justice*, are designed as alternatives to the conventional justice system and not as additional forms of sanction.
- Anecdotal evidence gathered by Montgomery (1997) through interviews with police, indicated that youth have been referred to the *alternative measures* program in Nova Scotia, on occasion, even where there was insufficient evidence to support the prosecution of any offence.<sup>4</sup> 90
- In the United States, Schiff (1998) suggests:
  - "Research must also examine the extent to which restorative programs may empower governments to systematically over control large segments of the youth population. It should identify if restorative sanctions are imposed, in addition to other, more traditional sanctions, or if offenders who would not otherwise be sanctioned are ending up in so-called restorative programs. "91
- Although net broadening may be "*an unplanned outcome of a policy initiative with benevolent intentions*"<sup>92</sup> the danger appears in the use of the criminal justice system to achieve socio-behavioural reform amongst a far broader segment of the population than would normally be considered "criminal".
- Strong arguments have been advanced in the literature against the use of the criminal justice system for any reasons other than dealing with offences as defined by legislation<sup>93</sup>.

---

<sup>1</sup> Montgomery, Andrew N. Restorative, Justice Canadian Forum on Civil Justice, The Incorporation of Dispute Resolution into the Criminal Justice System: Playing Devil's Advocate, 1998 <http://www.law.ualberta.ca/centres/civilj/full-text/montgomery.htm>

<sup>2</sup> Ibid, footnote 86 at p. 39.

<sup>3</sup> Belgrave, John. 1996. Restorative Justice: A Discussion Paper, New Zealand Ministry of Justice, located on the internet at <http://www.justice.govt.nz/ipubs/reports/1996/restorative/chapter5.html> at p. 13.

<sup>4</sup> Ibid, footnote 86 at p. 40.

<sup>5</sup> Loc. cit. footnote 89. See for example; Riley, Paul. 1994. Proportionality as a Guiding Principle in Young Offender Dispositions, Dalhousie Law Journal, vol. 17, no.2, Fall 1994.

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Net Widening

- The demise of the *Juvenile Delinquents Act*<sup>94</sup> in Canada in the early 1980s was due, at least in part, to the degree to which the Act inappropriately confused criminal and child welfare issues.
- The intent of the *Young Offenders Act*<sup>95</sup> was to draw a clear distinction between child welfare issues and criminal justice issues and to ensure that the criminal justice system was invoked exclusively to deal with a defined offence. If *restorative justice* and other ADR forums are used, in effect, to expand the reach of the criminal justice system to address socio-behavioural problems that go beyond what is *criminal* then we will, in essence, be returning to the days of the *Juvenile Delinquents Act* where children could be apprehended and removed from the home for non-criminal activities such as smoking, truancy and other perceived misdemeanors.

**1.2. Restorative Justice and Criminal Justice – Identifying Some Preliminary Questions, Issues and Concerns - 1998<sup>8</sup>**

- A series of National Crime Prevention Council cross-country consultations pointed to ‘net-widening’ as one of the weaknesses in the implementation of alternative measures.
  - In practice, alternative measures are seen to be widening the ambit of the criminal justice system rather than restricting it the more serious, high risk, repeat violent offenders.
- Key stakeholders are seeing alternative measures being used against mainly young offenders who would not even have brought into the justice system under the previous regime.
  - For example, some of the young offenders who participate in alternative measures programs would likely receive only a warning or caution from police if the alternative measures program did not exist.<sup>9</sup>

---

**1.3. Making It Work: Planning And Evaluating Community Corrections & Healing Projects In Aboriginal Communities, 1998<sup>10</sup>**

- In the past, alternative measures programs have sometimes had the unanticipated consequence of drawing into the justice system minor offenders who would otherwise have been dealt with informally.
  - For example, offenders who might have simply been counselled or warned may be seen as good candidates for alternative programs.
    - This may not be a bad thing as an expanded range of dispositions allows for a more individualized justice system.
    - Also, the victims of these offenses may prefer the opportunity of participating in a restorative justice program.

---

<sup>6</sup> 94. *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3.

<sup>7</sup> 95 *Young Offenders Act*, R.S.C. 1985, c. Y-1.

<sup>8</sup> 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

<sup>9</sup> Satisfying Justice....

<sup>10</sup> 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 – Net Widening

- However, program organizers should be aware that in some cases an informal response may be the best way of responding to minor offenses, particularly those involving first-time offenders.
- Even more seriously, restorative justice programs may be used as add-ons to prison sentences rather than as alternatives to prison or means of reducing time spent in prison.

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Net Widening

## 2. Relevant Documents, Practices and Studies – International

### 2.1. Restorative Justice, A Discussion Paper, 1996 <sup>11</sup>

- **Definition:** Net-widening is a term used to describe the impact of measures which draw more offenders into the criminal justice system or which result in the greater involvement of those already in the system.
- Net-widening may be an unplanned outcome of a policy initiative with benevolent intentions, and it is a factor in the consideration of restorative justice programmes, as in most other initiatives.

#### Pre-Charge

- Currently, a system of cautions and warnings and the police adult pre-trial diversion scheme (see paragraph 3.3.1) keep a large number of offenders out of the formal criminal justice system completely, or take them out at an early point.
  - During 1994, there were 4,129 cautions and 30,943 warnings given by the New Zealand Police. In the same year, 2,637 adult offenders were diverted through the police diversion scheme (New Zealand Police, 1995).
- If restorative programmes were implemented as part of the criminal justice system and the police saw value in offenders' participating in such processes, this might result in more cases being drawn into the system.
  - For instance, if victim-offender meetings were introduced as part of the police adult pre-trial diversion scheme, and individual police officers thought that particular offenders might benefit from such a meeting, they might be less inclined to give cautions and warnings and more inclined to proceed with formal charges so that the offenders could be diverted subsequently through the police scheme.
  - Young and Cameron (1992) concluded that the police diversion scheme itself had resulted in net-widening because offenders who were prosecuted, taken to court and then diverted would previously not have been prosecuted.
  - However Spier and Norris (1993) cast doubt on the conclusion that net-widening had resulted after examining data on cleared offences, number of cases prosecuted and case outcomes.

#### Post-Charge

- Alternatively, if restorative processes applied at the post-conviction/pre-sentence stage, there might be fewer cautions, warnings and diversions, and more cases proceeding through the formal system.
  - This could result in a more complex criminal justice process for minor offenders who might never previously have entered the formal criminal justice system.
  - Consequently more people would be involved to a greater extent in the justice system.
  - Quite aside from the possibly unmerited intrusion on individual liberties, there are consequential implications for the cost of administering the justice system.
- Even when offenders would have previously gone to court, the implementation of restorative processes might result in more complex and intrusive outcomes than they would have otherwise received.
  - There has been some indication of this in the youth justice system (see paragraph 5.5).
  - The cost implications of this are discussed in paragraph 5.9.
- The risk that restorative programmes which are integrated with the formal criminal justice system might contribute to net-widening depends to a large extent on the stage at which those processes apply, the attitudes of gate-keepers to the programme and the extent of discretion which can be applied in referrals.
  - These issues are considered further in chapter 6.

---

<sup>11</sup> 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 – Net Widening

---

Phyne, John. "A Critique of the Panoptican Thesis", International Journal of Sociology and Social Policy, 12, 1992<sup>12</sup>

- **Conclusion:** *Here there is the argument and evidence against the theory that alternative justice programs contribute to increased state surveillance (e.g. net-widening).*

---

<sup>12</sup> 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>