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**1. Key Themes (to be explored)**

## **2. Research Questions**

To be developed in collaboration with Court and Teslin Peacemaker Court.

### 3. Relevant Documents, Studies and Practices – Yukon

#### 3.1. Yukon Sentencing Circles and Elder Panels- 2001 <sup>1</sup>

- **Elder panels** Fourteen years ago, the court docket in the Yukon town of Teslin was indicative of a fairly dysfunctional community.
  - Many of the cases on the docket involved violence, and a disproportionate number of accused were young people.
  - Alcohol was a factor in nearly all of the cases and few offenders were willing to accept responsibility for what they had done.
  - Courts were not having a positive impact on crime rates and the community viewed them as an outside institution: the court came into town, sent a number of people to jail and then left the next day.
  - The court was viewed as punitive, not rehabilitative, and this was inconsistent with the community's culture.
- After a number of meetings with leaders in the aboriginal community, it became apparent that the aboriginal community wanted to renew its traditional clan structure.
  - Everyone belonged to one of five clans, which functioned like large extended families.
  - A respected elder presided over each clan.
  - Clan leaders had considerable authority over their members, including responsibility for discipline within the clan and also for resolving problems between clans.
  - The community was convinced that by renewing their traditional clan structure and by revisiting their original cultural values, their families and community could become healthy again: "in order to go forward, one needed to understand where one had been". It was agreed that the clan leaders would sit with the judge on the bench and that the judge would defer to their on sentence.
- Involving the clan leaders in the court process, and giving them both the authority and responsibility for recommending sentencing plans to the court, was of mutual benefit.
  - This process empowered the clan leaders and had a considerable impact on young people under 30 years of age, who had less knowledge of and commitment to the old traditions.
  - At the beginning, it was very unusual to find a young person who knew who his clan leader was.
  - Today, it would be an exceptional case if a young person could not identify his clan leader.
  - The court benefited as well.
  - Offenders are much more willing to accept responsibility in a rehabilitative, non- punitive justice system and, as a result, lengthy trials were avoided.
  - The offender, the victim and the community more readily accepted the dispositions made on the recommendation of the clan leaders.
  - After the circuit court left the community, the clan leaders and the clan retained ownership of the disposition and assumed responsibility for supervising it and the offender.
  - And when the court returned to Teslin two months later, the court received a report on the offender's progress.
  - When the offender's plan was successfully completed, it was not unusual for the offender and his or her spouse and children to be present in the courtroom to receive congratulations from the clan leaders and the court.
- The Teslin Elder Panel is both restorative and community based.

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<sup>1</sup> Heino Lilles was a visiting fellow at the Institute for 2 months earlier this year during which time he explored his interest in restorative Justice processes He is a judge from Canada with considerable experience of sentencing circles. The following article provides some insight into indigenous restorative practices in the Yukon. Yukon Sentencing Circles and Elder Panels, Article originally appeared in the Criminology Aotearoa/NewZealand. A Newsletter from the Institute of Criminology, Victoria University of Wellington. September 2001, No. 16. Used by permission. <http://www.restorativejustice.org/rj3/Full-text/>

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- It is restorative in that it addresses victims' needs and offenders' rehabilitation.
- By successfully following through on the clan leader recommendations, offenders reintegrate themselves into their community.
- The clan leaders always reinforce the fact that the offender has great potential and is a good person but that what he or she did was wrong.
- By making recommendations that were accepted by the court, the community is empowered.
- But just as importantly, this process permits the community to learn about the causes of crime and about the impact of crime within their community.
- The community is then in a better position to take remedial action, to reduce those factors causing crime, and to make their community safer.
- Ten years later there are substantial differences in the Teslin community.
  - Teslin has developed as a healing Center where trained counselors deal with alcohol, family, and emotional problems in ways that combine traditional approaches with modern ones.
  - The community has developed a youth program and has hired a recreation director. The community has an ice rink and the local police are actively involved in running a hockey program.
  - Court dockets have reduced dramatically as have the number of serious offences on the docket.
  - Court lasts for half of one day, and most of the time is utilized, not in dealing with new cases but in reviewing the performance of offenders who have been previously sentenced.
  - There are now very few denials of responsibility, due to the participation of clan leaders.
  - Because the offender knows that the dispositions will be restorative and rehabilitative rather than punitive, they enter guilty pleas at a very early stage of the proceedings.
- As a direct result of the elder panels, the community established a peacemaker court in 1996.
  - With the cooperation of both the police and the prosecutor, many cases are now referred directly to the peacemaker court where the clan leaders dispose of them without any conventional court involvement.
  - Moreover, the peacemaker court can be proactive and preventative by dealing with issues before they become criminal charges: for example, it can deal with objectionable behaviour by young people or alcohol problems in a family.
  - Today it is very unusual to have a youth appear on the Teslin docket.

#### **4. Relevant Documents, Studies and Practices – Other Northern Territories**

##### **Alternative Measures - 1998**

Once a Committee is established, they may determine how they would like to be involved in community justice. There are several ways this may occur in the NWT and a committee may choose one or more of these:

**Advice to the Court: Sometimes** a Judge or a Justice of the Peace will ask a panel of elders or others from the community to sit with them and provide advice on sentencing.

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

### 5.1. The New Justice: Some Implications for Aboriginal Communities - 1997<sup>2</sup><sup>3</sup>

#### Findings

**Community involvement can take place at one or both of two levels:** Involvement can take place through the greater participation of community members in the adjudication process (such as Sentencing Circles, local Justices of the Peace, sentencing panels or Elder panels) or in the alternative approaches to formal judicial processing (i.e., mediation and diversion).

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### 5.2. Safe Community Options -1996<sup>4</sup>

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<sup>2</sup> LaPrairie, Carol. *The New Justice: Some Implications for Aboriginal Communities*. Ottawa: Department of Justice, 1997. 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>

<sup>3</sup> LaPrairie, Carol. *The New Justice: Some Implications For Aboriginal Communities*. Ottawa: Department of Justice, 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>

<sup>4</sup> 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>

## 4. Community Sentencing Panels and Youth Justice Committees

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### **Introduction**

There are quite a number of “community sentencing” initiatives happening in our country that have considerable potential for a more “satisfying justice”. They take many forms, including Community or Youth Justice Committees, accountability committees, corrections committees, sentencing panels etc. Whatever form they take, most involve citizen volunteers or elders who often rely on such restorative measures as restitution, reparation, mediation and victim involvement. They can also deal with the social conditions contributing to the crime. These community justice initiatives are operating in both aboriginal and non-aboriginal communities, serving adults as well as youth depending on their mandate.

A Manitoba report on the development of youth justice committees in that province summarizes the evolution and potential for these various initiatives. “Justice committees typically evolve slowly, gaining momentum with experience and time. A common beginning involves one or sometimes a few individuals recognizing that the capacity to solve problems in the community exists within the community itself..... People get involved. They take

on responsibilities. Issues get examined and thought through with the benefit of local knowledge. Things happen in ways that surpass those of the traditional Justice System. Behaviours change. Reconciliation with the community occurs. Community sense of security is enhanced. Clearly, Justice Committees are a method of enabling the people of a community to become engaged in the belief that they have something to contribute. Arguably, that is the foundation of individual, family and community health.” (Roger Bates, **Manitoba Justice Committees**)

### **Teslin Tribal Justice Project - Sentencing Panel, Yukon**

#### **A Story**

*In 1991, a 42-year-old man pleaded guilty to the sexual assault of his 13-year-old daughter, indecent assault of another daughter and having sexual intercourse with a 13-year-old foster child. He would have expected to receive a prison sentence. After this plea, the man took treatment for his alcohol problems, joined educational sessions on sexual abuse as far away as Winnipeg, as well as attending a weekly “teaching circle” run by the community. When the*



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time came for sentencing, the Crown was the only party that requested punishment, while the sentencing panel recommended a community disposition. Judge Heino Lilles was sitting at Circuit Court at this time. The man's wife was a victim of sexual abuse and initially felt anger, betrayal and guilt at her husband's behaviour but took a different position at the time of sentencing. According to Judge Lilles:

*"Mrs. P. gave evidence of how the disclosure affected her, but also her observations of the changes in her husband during the past year. They have talked openly about the problem, including the need for both of them to get alcohol treatment. They went to treatment together and both of them, along with the eldest daughter, attend the 'healing circle' on a weekly basis. She described the positive changes in their relationship since the disclosure, including open communication, honesty and truth in their relationship and the courage to stand up and admit that he is an offender. Both mother and daughter support the clan recommendation for a community disposition, feeling that 'jail will stop the healing that has been going on', and that the father is an 'integral part of the healing process for herself'."*

The community itself, and the sentencing panel also favoured a community disposition, as reported by Judge Lilles:

*"Chief Keenan emphasized that the Tlingit attitude towards the sexual abuse of children is that it is not condoned or tolerated. He stated that there is no room in their society for this kind of activity. He testified that the Tlingit focus is not on the removal of the offender from the community but on the healing of both victims and wrongdoer within the community... The offender, victims and the rest of the family must be brought together in the 'healing circle' in order to 'break the cycle of abuse' which would otherwise tend to repeat itself from one generation to another."*

After learning of the community's approach to this kind of offence, Judge Lilles said in his judgment:

*"It is of interest that it has been only relatively recently that professional psychologists and social workers have begun to fully appreciate the devastating impact of this cycle of abuse. Tlingit custom and tradition have apparently recognized it for centuries. Moreover, as our criminal law focuses primarily on the offender, it is unable to effectively deal with victims, family or the community of the offender.... They have asked for a culturally relevant disposition which would be supportive of family healing, which would*

*denounce abuse of children within the community, and which would encourage other victims and offenders to come forward for treatment and rehabilitation.” (Please refer to commentary on circle sentencing on page 89 for relevant cautions about this process vis-à-vis women who risk further victimization in these community-based justice processes unless adequate safeguards are put in place.)*

When passing sentence, Judge Lilles agreed with the panel’s recommendations and commented:

*“In this case I have heard evidence about the humiliation which accompanies disclosure of an offence like this in a community the size of Teslin. First, one must deal with the shock and then the dismay on your neighbours’ faces. One must live with the daily humiliation, and at the same time seek forgiveness not just from the victims, but from the community as a whole.’ For, in a native culture, a real harm has been done to everyone. A community disposition continues that humiliation, at least until full forgiveness has been achieved. A jail sentence removes the offender from this daily accountability, may not do anything towards rehabilitation, and for many will actually be an easier disposition than staying in the community.”*

## **Project Description**

The Teslin Justice Project began in 1991 in the community of Teslin located in the southern area of the Yukon along the Alaska highway. The population is primarily aboriginal with the Teslin Tlingit Band having approximately 700 members. An Elder from each of the five Tlingit bands sits with the Territorial Court Judge and advises on dispositions that directly affect members of the community. In addition to participating in the court proceedings, the Elders play an important role in developing community based justice and alternative dispositions for the court to use. According to one community leader, “our tribal justice system allows our Elders, who know the offender well, to delve more deeply into the underlying issues of the offender’s behavioral problems and then reflect their concerns in the sentence imposed.” This project allows people to re-identify with their traditional ways and helps to develop a more effective justice system that is sensitive to the needs and aspirations of their community.

Through this project, the Court is seen as being a part of a community process and the offender is held accountable before the Court and the community as a whole. A Band Council member explains that “out of it, the offender gets the feeling that he’s part of the community and is responsible and has an obligation to the community.”

The Teslin tribal justice project is available to all residents in the community and does not exclude any kind of offence. The Elders know the offender well and are able to discuss with the members of their clan what types of dispositions would be recommended to the court; as a result, most everyone in the community is aware of the offender's behaviour in the community. After hearing the final comments of the Judge, the Elders retire to discuss their recommendations, which must be arrived at by consensus. This process allows the Elders to re-assume their traditional role of dispute resolution in the community and demonstrate the wisdom and guidance they possess to the community, thereby helping to rebuild the respect for traditional ways.

Dispositions recommended by the Clan leaders are intended to reflect the concerns and cultural values of the community and be rehabilitative in nature, generally being a probation order with recommended conditions attached. This reflects the aboriginal view of a wrongdoing being like an illness in the community that must be healed in the community as part of a holistic healing process. According to one Band Council member, "there is no such thing as a dispensable Tlingit person" and the potential value of every person, including offenders, is recognized.

The Teslin Tribal Justice Project also includes the Healing Circle, a community initiative developed to bring residents together on a voluntary basis to discuss their problems. Victims, offenders, their families and other community members participate by sitting in a circle and discussing openly their concerns and feelings, in a way similar to group therapy. These circles operate on an informal basis with the only resources being the people themselves, and tend to be spontaneous events advertised by word of mouth.

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## **Wabasca Justice Committee, Alberta**

### ***A Story***

*The hearing started with a prayer and was carried out in Cree, the first language of all present, except the police officer who read out a police report on the offence. The offence was drinking and driving related and the officer remained for the rest of the hearing. Information from probation services was read out by the court worker, who also took notes and provided various kinds of legal information. The sentencing panel members, who knew the offender and his family quite well, commented on efforts of other family members to remain sober, the important financial role the young man played in the family, his past misbehaviours and told him that his driving frightened many community members. His respect for the sentencing panel members was evident throughout the hearing. He was asked various questions and eventually asked how he felt about the recommended sentence. He seemed very relieved and said he agreed with it. At the end of the hearing, each panel member gave the offender a hug. It was easy to see that the young man was moved.*

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## **Slave Lake Sentencing Panel, Alberta**

### ***A Story***

*The young offender was non-native and the proceedings were in English. There were three sentencing panel members, one of whom was Native. The other two were non-Native. Each member introduced themselves to the young offender who was charged with a property offence and a personal offence. Information was presented by an RCMP officer (who promptly left), and received by fax from probation services (and read by the court worker). The young offender was asked his version of the event and questioned about certain things in the police report. His father was then called in and asked about the boy's upbringing. Both the young offender and his father got severe tongue-lashings from one of the sentencing panel members. After discussion with the boy and his father, consensus was reached. The young offender was sentenced to make restitution, to apologize to the victim, and to attend school regularly or to find a job. His father thanked the sentencing panel and said his boy would be okay, thanks to their help.*

## **Youth Justice Committees**

Youth Justice Committees have been in operation in Manitoba since 1975 and in Alberta since 1990 and are also being developed in other provinces. For example, they are responsible for

the alternative measures program in Newfoundland.

They are a reminder that many communities still take responsibility for straightening out their own members who have problems. Manitoba officials report they have been effective in reconnecting offenders with family, school, peers or the community itself. It is community members who can keep an eye on others during everyday routine, help them with their problems and put pressure on wrong-doers to change their behaviour. Many of these communities believe jail is not the answer for these youth in conflict with the law. They would learn further criminal behaviour there. The community would rather keep the youth at home and in their midst, believing they are less inclined to commit crimes if they have to answer to members of their own community.

Youth Justice Committees are a group of anywhere from eight to fifteen volunteers who meet together to look at social and justice issues within the community. Typically, committee members include teachers, police, parents, youth, seniors, other professionals, business people, trades people, members of various cultural or ethnic groups, and other interested citizens. For the most part, they form around a particular geographic community, e.g. reserves, small rural communities or a city district.

Youth Justice Committees are mandated by the Young Offenders Act at s. 69 which states that they may assist “in any aspect of the administration of this Act or in any programs or services for young offenders”. The two most common models for these committees focus on either sentencing or pre-court diversion. As a sentencing panel, the committee interviews those relevant to the offender and the incident and then makes a recommendation to the court judge. One disadvantage is that the youth still gets a criminal record. The pre-court diversion option, on the other hand, bypasses the judge and avoids a record. Youth Justice Committees may also get involved in monitoring the progress of offenders and undertaking community education in crime prevention.

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### **Elders' Justice Committee Fort Resolution, Northwest Territory**

The community of Fort Resolution under the direction of Sub-Chief Danny Beaulieu formed a six member Elders' Justice Committee in January, 1995. The committee attends all Justice of the Peace sittings in the community and advises the court. Beaulieu is a local Justice of the Peace as well. This is working out quite well and they hope to form a Youth Justice Committee in the future.

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### **Russell Heights Community Justice Committee Ottawa, Ontario**

An Ottawa neighbourhood has formed a community justice committee to promote more meaningful, effective, speedier and community-based responses to crime, starting with youth in conflict with the law. The Russell Heights Community Justice Committee is founded on the principles of restoration, not retribution. Still in its initial implementation stage, the committee hopes to receive referrals from police or Crown and is open eventually to dealing with adults as well. The committee consists of seven members, including three residents, one from South Ottawa Community Legal Services, one from South-East Ottawa Centre for a Healthy Community, a Crown Attorney representative and a Probation Services (Youth) official.

The committee wants to involve in its sentencing process people with some degree of connection to an offender, so that collectively they can make a decision recommending the most suitable expression of justice for the person. Depending on the recommended sentence, this committee would then also be involved in supervising the sentence and supporting the offender.

The Russell Heights community is a subsidized, low-income family housing project for some 700 residents, including 500 young persons under the age of 21. Without exception, all residents are either receiving social assistance or are working poor. The majority of families are sole-parent households usually headed by women, with over half the residents being new Canadians who have immigrated within the past ten years.

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### 5.3. Native Canadian Community Sentencing Panels - 1994<sup>5</sup>

Noting that new Aboriginal criminal justice initiatives are linked to self-determination and founded on the principles of community-level control and the incorporation of traditional Aboriginal justice practices, Nielsen focuses on one such initiative namely youth justice committees (and their constituent sentencing panels), about 40 of which have been established in Alberta beginning in 1990. She used some participant observation, and both in-person and telephone interviewing of justice committee members, police, and Justice officials. Nielsen described the sentencing panels as "a committee of community members who assist a judge by making sentencing recommendations". The goals, according to her interviews, include increased community involvement, healing for all parties concerned, and reducing recidivism. Youth justice committees operating in this fashion are well within the rules and guidelines of the Young Offenders' Act. In 1994 the Alberta Department of Justice issued guidelines for such sentencing panels for both Aboriginal and non-Aboriginal communities. A limited number of communities have committees that have been formally sanctioned by the province, and where that is the case (i.e. formal provincial sanction) the province and police offer some developmental assistance.

Membership and recruitment vary, ranging from exclusively elders (i.e. members of the grandparent generation) to mixed ethnic, age, and gender groupings. All members are expected to be good role models, knowledgeable about community resources, comfortable with a consensus / mediation approach and, where Aboriginal, informed about traditional ways. Offender eligibility criteria vary but in all cases the offence cannot be serious assault. In the basic model the sentencing panel comes into play after the offender has been found guilty. The sentence panel is held in private, consensus reached, perhaps some reintegration occurs, if only hugs, and then a written recommendation is subsequently sent to the judge. As a variation of this basic model there may a pre-court diversion model (i.e. bypassing the court system), something favoured by many advocates as more efficient and more empowering to the community. Sentencing circles along the lines of those happening in the Yukon (see "R. v. Moses" below) were uncommon, if at all extant. The sentences in this Alberta program are

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<sup>5</sup> Nielsen, Marianne. "Native Canadian Community Sentencing Panels: A Preliminary Report", paper presented at the American Society of Criminology Annual Meeting, Miami, 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>

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non-incarceral and usually similar to community service orders, sometimes with an imaginative angle. The offender and his/her family must agree that the sentence is fair. The judge accepts the recommendations and, in fact, according to Nielsen, in the two cases taken to appeal because the judge did not, the recommendations of the sentencing panel were upheld.

Nielsen contrasts sentencing panels and the 'euro-based' system in the usual way, comparing their objectives, styles, and so forth. She discusses the myriad of factors contributing to or detracting from the legitimacy or acceptance of this new sentencing initiative. She raises the question why such a different process would be grafted upon the conventional mainstream one and even be so accepted by the latter's officials (e.g. police, judges) but she neglects to note here that such sentencing panels are consistent with YOA ideas and also meant to increase respect for the mainstream justice system, considerations which suggest compatibility and symbiosis between these initiatives and that justice system.



**6. Relevant Documents, Studies and Practices – Other Northern Territories**

**7. Relevant Documents, Studies and Practices – International**