

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice –Peacemaker Diversion Project

Table of Contents

<b>1. Relevant Documents, Studies and Practices – Yukon.....</b>	<b>2</b>
1.1. Yukon Department of Justice.....	2
1.2. 2001-2002 Aboriginal Justice Strategy Contribution Agreement.....	2
1.3. Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon – 1992 .....	13
<b>2. Relevant Documents, Studies and Practices – Other Canadian.....</b>	<b>16</b>
2.1. A Framework for Community Justice in the Western Arctic – 1999.....	16
<b>3. Relevant Documents, Studies and Practices – Other Canadian.....</b>	<b>17</b>
3.1. Safe Community Options -1996 .....	17
<b>4. Relevant Documents, Studies and Practices – International .....</b>	<b>22</b>
4.1. Yukon Sentencing Circles and Elder Panels- 2001 .....	22

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

### 1.1. Yukon Department of Justice<sup>1</sup>

Peacemaker Court - Teslin Tlingit Council, Teslin, Yukon

- Five Clan Leaders act as an advisory panel to the Territorial Court;
- Separate Peacemaker Court led by Clan Leaders that deals with diversion;
- Based on Tlingit traditions, offenders are accountable to their Clans.

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### 1.2. 2001-2002 Aboriginal Justice Strategy Contribution Agreement

**THIS AGREEMENT** made the 7th day of November 2001.

BETWEEN:

GOVERNMENT OF YUKON, as represented by the Minister of Justice (“Yukon”)

AND:

TESLIN TLINGIT COUNCIL, (hereinafter referred to as “the Recipient”), as represented by its duly authorized representative

WHEREAS:

- A. Her Majesty the Queen in Right of Canada represented by the Minister of Justice of Canada (“Canada”) will provide financial assistance to the Recipient under the terms of the Aboriginal Justice Strategy Fund (the “Strategy”); and
- B. Yukon has agreed to share costs with Canada as a condition of the Strategy;

***NOW THEREFORE the Parties hereto, in consideration of the covenants, understandings and undertakings hereinafter set out, do hereby agree as follows:***

#### 1. CARRYING OUT THE PROJECT

- 1.1 The Recipient agrees to carry out the operation and development of the Peacemaker Diversion Project (referred herein as the “Project”) in a manner acceptable to Yukon and, without limiting the generality of the foregoing, in accordance with:
  - 1.1.1 the Project Description (attached as Schedule A);
  - 1.1.2 the Work Plan (attached as Schedule B); and,
  - 1.1.3 the Budget and Payment Schedule (attached as Schedule C and hereinafter referred to as the “Budget”).

#### 2. TERM

- 2.1 The term of this Agreement shall be from April 1, 2001 to March 31, 2002.

#### 3. ASSISTANCE

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<sup>1</sup> Government of Yukon, Department of Justice, Community Justice, <http://www.justice.gov.yk.ca/prog/cjps/cj/comjuscom.html>

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice –Peacemaker Diversion Project

- 3.1 The Yukon agrees to provide the Recipient with an amount not to exceed \$60,000 for the operation of the Project during the term of this Agreement.
- 3.2 The financial assistance provided under 3.1 will be paid in the following manner:
  - 3.2.1 A payment of \$30,000 upon execution of this Agreement;
  - 3.2.2 An interim payment on December 15, 2001 not to exceed \$21,000, upon receipt and approval by Yukon of an interim financial statement in accordance with 4.1.5 and upon receipt and approval by Yukon of the first written activity report in accordance with 8.1.2; and
  - 3.2.3 A final payment not to exceed \$9,000 (which sum represents a holdback of approximately 15% of the financial assistance provided under 3.1), upon receipt and approval of an audited final financial statement in accordance with 4.1.6 and upon receipt and approval of the second written activity report and the final Project report in accordance with 8.1.2.
- 3.3 The Yukon's obligation to provide assistance under 3.1 is subject to the following:
  - 3.3.1 money being appropriated by the Legislature for the purpose of this Agreement;
  - 3.3.2 Canada agreeing to provide financial assistance to the Recipient in the amount set out in the Budget; and
  - 3.3.3 the Recipient complying with the terms of this Agreement.

4. FINANCIAL ACCOUNTABILITY

- 4.1 With respect to the assistance provided by Yukon under 3.1 and the monies described in 3.3.2 the Recipient agrees:
  - 4.1.1 to make expenditures only for the purpose of carrying out the Project;
  - 4.1.2 to make expenditures only in accordance with the Budget;
  - 4.1.3 to allocate the assistance received in accordance with this Agreement;
  - 4.1.4 to maintain financial books and records, in accordance with generally accepted accounting procedures and methods, as well as other records to which the parties may agree, and to account for the assistance received under this Agreement separately from any other funds of the Recipient;
  - 4.1.5 to deliver to the Yukon an interim financial statement of its expenditures with respect to the Project for the period April 1, 2001 to September 30, 2001 due October 30, 2001, which statement shall be in a form acceptable to Yukon;

*Research Framework for a Review of Community Justice in Yukon*

Community Justice –Peacemaker Diversion Project

- 4.1.6 to deliver to Yukon an audited final financial statement of its expenditures with respect to the Project for the period April 1, 2001 to March 31, 2002 due May 31, 2002, which statement shall be in a form acceptable to the Yukon; and
  - 4.1.7 to make available, during the term of this Agreement and up to and including one year from the date of termination of this Agreement, to the officers or agents of Yukon or Canada, for the purposes of audit or review, all financial books, records and statements upon reasonable notice and during the normal business hours of the Recipient.
- 4.2 Despite paragraph 4.1.2, reallocations between the budget items set out in the Budget, not exceeding twenty per cent (20%), are permissible. Reallocations that exceed the 20% limit require the prior written approval of Yukon.
- 4.3 Any assistance provided through this Agreement that is
- 4.3.1 unexpended by the Recipient at the termination of this Agreement;
  - 4.3.2 not properly expended for the purposes of the Agreement, in the opinion of Yukon; or,
  - 4.3.3 in excess of the reduced amount of assistance under 5.2;
- shall constitute a debt due to Yukon and shall either be repaid immediately by the Recipient to Yukon or withheld by Yukon from funds otherwise due to the Recipient under this Agreement.
- 4.4 The Yukon may give written notice that it waives the obligation under 4.1.6 to have the financial statement audited.
5. REDUCTION OF ASSISTANCE
- 5.1 The Recipient shall immediately advise the Yukon in writing if it receives additional payments or any other form of contribution, gift, or grant in respect of the Project from sources other than those set out in the Budget, or if Canada increases or reduces its contribution to the Project.
  - 5.2 If it comes to the attention of Yukon that the Recipient received additional payments or any other form of contribution, gift, or grant in respect of the Project from sources other than those set out in the Budget, or that Canada has increased or reduced its contribution to the Project, Yukon may reduce the assistance provided under 3.1, 3.3 and 3.4 by any amount it may decide.

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice –Peacemaker Diversion Project

- 5.3 Yukon will give the Recipient 30 days written notice before reducing its assistance.
- 5.4 The reduced amount of assistance under 5.2 shall be the amount of assistance for the purposes of this Agreement.

6. IMPACT ON SELF-GOVERNMENT NEGOTIATIONS

- 6.1 The parties agree that any assistance provided by Yukon under the terms of the Strategy is without prejudice to the administration of justice program and service transfer negotiations (the “Negotiations”) which may take place pursuant to a Yukon First Nation Self-Government Agreement.
- 6.2 For the purposes of the Negotiations, the Recipient acknowledges that any assistance provided by Yukon under the terms of the Strategy will be determined by Yukon on an annual basis.
- 6.3 Unless the Parties otherwise agree, the provision of assistance by Yukon to the Recipient hereunder is not intended, in and of itself, to create a program or service for the purposes of the Negotiations.

7. CONFIDENTIALITY

- 7.1 Subject to paragraph 7.2, all information which the Recipient may obtain from clients or their legal counsel in carrying out the Project shall be treated by the Recipient as having the same confidentiality as solicitor and client communications. Any records maintained by the Recipient in respect of clients shall not be open to inspection except in accordance with the aforementioned principle.
- 7.2 Paragraph 7.1 is not intended to impede the compiling of information for evaluation or statistical purposes, provided that the identity of any particular client is not disclosed.

8. EVALUATION AND REPORTS

- 8.1 The Recipient agrees
  - 8.1.1 to maintain, in a manner acceptable to the Yukon, case files and other data which may be required for on-going monitoring, review, and evaluation of the Project;
  - 8.1.2 to provide Yukon written activity reports of Project activities due October 30, 2001, and January 30, 2002, and a final Project report due April 30, 2002; which reports, shall be in a form acceptable to Yukon;
  - 8.1.3 to undertake a self-evaluation of the Project in co-operation with, and at the request of, Yukon and Canada;
  - 8.1.4 to co-operate with the Yukon Department of Justice, in the event that Yukon undertakes any evaluation studies in respect of this Project, the costs of such studies to be borne by Yukon; and

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice –Peacemaker Diversion Project

8.1.5 to provide copies of any existing information, data, and statistics that Yukon reasonably requires to carry out such evaluation studies.

9. USE OF RESULTS

9.1 The Recipient shall retain copyright in any work produced by it as part of this Project; but the Recipient shall not contract away its copyright interest without the prior written approval of Yukon, and the Recipient hereby authorizes Yukon to produce, reproduce, or publish in any form or by any means the original work or any adaptation thereof in any language for use within the Yukon public service and for non-commercial distribution or dissemination.

10. PUBLIC ACKNOWLEDGMENT

10.1 Any information released or announced to the public by the Recipient concerning the Project shall adequately acknowledge the contribution made by Yukon.

10.2 Any information released or announced to the public by Yukon concerning the Project shall adequately acknowledge the contribution made by the Recipient.

11. TERMINATION

11.1 Either party may terminate this Agreement without cause by giving the other party 30 days written notice of its intention to terminate.

11.2 If this Agreement is terminated under 11.1:

11.2.1 the Recipient shall, within 90 days of the date of termination, provide the Yukon with an audited financial statement pertaining to the Project for the applicable period of time up to and including the date of termination; and

11.2.2 clause 4.3 of this Agreement shall apply to any assistance that is unexpended at the termination of this Agreement.

11.2.3 Yukon shall withhold any assistance not advanced to the Recipient as at the date of termination, other than assistance due to the Recipient in accordance with the terms of this Agreement up to the termination date.

12. DISPUTE RESOLUTION

12.1 In the event of a dispute between the parties arising out of this Agreement, the parties agree to attempt resolution through negotiation or other appropriate dispute resolution procedures.

13. DISCLAIMER

13.1 Nothing in this Agreement is intended to make the Recipient an agent of Yukon for any purpose whatsoever and the Recipient and its employees shall not be considered to be employees of Yukon.

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice –Peacemaker Diversion Project

- 13.2 The Recipient agrees not to hold itself or allow any person associated with the Project to hold himself or herself out as representing Yukon for any purpose whatsoever.

14. INDEMNIFICATION

- 14.1 The Recipient shall use due care in carrying out the Project and in performing this Agreement to ensure that no person is injured, no property is damaged or lost, and no rights infringed.

- 14.2 The Recipient agrees that Yukon shall not be liable for any injury to the Recipient, or for any damage to or loss of property of the Recipient caused by, arising from, or in any way related to the Project or to the performance of this Agreement.

- 14.3 The Recipient shall be solely responsible for

14.3.1 any injury (including death) to persons (including any officers, employees or agents of the Recipient), damage or loss to property or infringement of rights caused by, arising from, or related to the Project, the performance of this Agreement, or the breach of any term or condition of this Agreement by the Recipient or the officers, employees or agents of the Recipient; and

14.3.2 any omission or wrongful or negligent act of the Recipient, or of the officers, employees, or agents of the Recipient;

and the Recipient shall save harmless and indemnify Yukon, its officers, employees, and agents from and against all claims, liabilities and demands with respect to paragraphs 14.3.1 and 14.3.2 with such indemnity surviving the expiry or termination of this Agreement.

- 14.4 Paragraphs 14.2 and 14.3 do not apply to the extent that the injury, damage, or loss was caused by the wrongful or negligent act of an officer or employee of Yukon while acting in the scope of his or her employment.

15. ASSIGNMENT

- 15.1 This Agreement may not be assigned by the Recipient without the prior written consent of Yukon.

16. SCHEDULES

- 16.1 The following schedules are incorporated into and form part of this Agreement:  
Schedule A: Project Description  
Schedule B: Work Plan  
Schedule C: Budget and Payment Schedule

17. PROJECT NEGOTIATIONS

- 17.1 The parties shall conduct negotiations associated with the Project in a mutually respectful manner.

- 17.2 While the parties share a desire to keep the public informed, details of positions and documents exchanged or developed by the parties during negotiations associated with the Project will be confidential unless otherwise agreed to by the parties or unless public disclosure is required by any legislation relating to access to information or privacy.

- 17.3 The parties may issue joint statements to, or jointly attend meetings with, the media, individuals, groups, or organizations on the progress of any negotiations associated with the Project.

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice –Peacemaker Diversion Project

- 17.4 The parties shall consult with each other prior to any release to the media or the public of any information relating to Project negotiations.
- 17.5 No public consultation or public information process shall be used by any party as a means of encouraging support or developing public pressure for a particular negotiating position.



*Research Framework for a Review of Community Justice in Yukon*  
Community Justice –Peacemaker Diversion Project

18. NOTICE

18.1 Any written communication, report or notice required pursuant to this Agreement may be given by delivering the same by prepaid post:

If to the Yukon to:

Community Justice Coordinator  
J-10/Department of Justice  
Government of Yukon  
P.O. Box 2703  
Whitehorse, Yukon  
Y1A 2C6

If to the Recipient to:

Teslin Tlingit Council  
P. O. Box 133  
Teslin, Yukon  
Y0A 1B0

***IN WITNESS WHEREOF the parties by their duly authorized representatives have executed this Agreement hereunder this        day of December, 2001.***

**Government of Yukon**

**Teslin Tlingit Council**

per:

per:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Witness Witness

\_\_\_\_\_



*Research Framework for a Review of Community Justice in Yukon*  
Community Justice –Peacemaker Diversion Project

**SCHEDULE A**  
**PROJECT MANDATE and DESCRIPTION 2001/2002**

**TESLIN TLINGIT COUNCIL PEACEMAKER COURT PROJECT**

The Teslin Tlingit Council Peacemaker Court Project involves Clan Leader participation in both the Territorial Circuit Court sentencing and Peacemaker Court hearings.

The Peacemaker Court Project is based on the traditional justice structure of the Teslin Tlingit Council and provides an alternative to mainstream justice practices by diverting citizens in conflict with the law to the community where disposition of their cases becomes the responsibility of the Peacemaker Court Project. Cases are diverted at the discretion of Crown Counsel and the RCMP and typically involve only summary conviction cases.

The Peacemaker Court Project is the court of first instance in the Teslin Tlingit Council justice structure. Each Clan has its own Peacemaker Court. Within the Peacemaker Court process, individuals are held accountable to their respective Clan and the community at large. The behavior of an individual Clan member is considered as representing the behavior of the Clan and the Clan becomes responsible for resolving the dispute and for holding the offender accountable to the Clan and community.

The objectives of the Peacemaker Court Project are to:

1. encourage healing and reparation for individuals in dispute or in conflict with the law;
2. combine traditional and contemporary forms of justice to create a balanced Peacemaker Court Project;
3. educate and create awareness of the history, culture, and traditions of Tlingit people with regard to justice;
4. hold Teslin Tlingit citizens accountable to their community and Clan(s) in ways that are made meaningful by practicing traditional justice.

The Justice Coordinator facilitates the Peacemaker Court process and assists individuals who are in the mainstream Court process. The procedures provide time lines for scheduling hearings to ensure cases are dealt with in a timely fashion to minimize negative impact on the victim. Formalized time lines also ensure that the requirements of the RCMP and Crown are met.

One of the main goals of the Peacemaker Court Project is to encourage healing of Tlingit citizens. It is important that the Peacemaker Court Project and the Community Program Service Department be integrated in service delivery. Teslin Tlingit Council has developed an integrated case management approach and continues to work towards this goal.

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

**SCHEDULE B**  
**WORK PLAN for 2001-2002**

**TESLIN TLINGIT COUNCIL PEACEMAKER COURT PROJECT**

TIMELINE	TASK
Every 6 weeks	Coordinate and attend Peacemaker Court.
Bi-monthly or as required	Attend and contribute to Territorial Circuit Court.
Ongoing	Meet with clients and Clan Leaders.
Ongoing	Follow-up with client dispositions.
Ongoing	Continue with Self-Evaluation
As required	Attend Justice related Meetings - for example, Administration of Justice and Case Management.
As required	Contribute to TTC Newsletter. Keep TTC citizens aware of progress and direction of community justice.
Monthly and as required	Meet with RCMP and Crown. Establish a meeting schedule to share information.
November 2001	Meet with Crown and RCMP to review diversion procedures.
July 2001 October 2001 January 2002	Complete and distribute quarterly activity and statistical reports.
Quarterly	Coordinate and attend Steering Committee meetings.
October 2001	Attend Justice Coordinator Meetings.
November 2001	Interim financial statement - TTC Finance to provide the interim financial statement covering April – September 2001.
November 2001	Attend and participate in RCMP and Justice Coordinators Meetings.
January 2002	Meet with Yukon Justice for orientation and to review reporting process, etc.
March 2002	Attend Justice Coordinator Meetings.
April 2002	Year-end report of activities.
May 2002	Provide copy of final Audit to Yukon Justice and Aboriginal Justice.

**SCHEDULE C**  
**BUDGET and PAYMENT SCHEDULE 2001/2002**

**Part A.**

**BUDGET**  
**April 1, 2001 - March 31, 2002**

**REVENUE:**

Yukon Department of Justice	60,000
Department of Justice, Canada	60,000

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

<b>TOTAL REVENUES:</b>	<b>\$120,000</b>
<b>EXPENDITURES:</b>	
Administrator	48,700
Secretary (40.5 hrs biweekly)	22,000
Benefits @ 20%	14,140
<b>Sub-total:</b>	<b>84,840</b>
Clan Leaders & Elders Expenses	6,200
Office Expenses	6,990
Travel	6,500
Workshops, Training, & Community Education	4,570
<b>Sub-total:</b>	<b>109,100</b>
Administration @ 10% (includes audit)	10,900
<b>TOTAL EXPENSES:</b>	<b>\$120,000</b>

The contribution of the Yukon will be limited to the lesser of \$60,000 of the expenditures incurred, less monies received from sources other than those listed above.

**Part B.** **PAYMENT SCHEDULE**

1. First Payment of \$30,000 upon execution of this Contribution Agreement, see 3.2.1 of the Agreement.
2. Second Payment of \$21,000 on December 15, 2001, upon receipt of interim financial statement and second written quarterly activity report, see 3.2.2 of the Agreement.
3. Third and Final Payment of \$9,000 upon receipt of an audited financial statement and final written activity report, see 3.2.3 of the Agreement.

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### **1.3. Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon – 1992 <sup>2</sup>**

- The Teslin ‘tribal justice system’ uses clan leaders (or other elders as proxies) to advice on sentencing.
  - The basis for community involvement is valid and finds much support in recent criminology literature and in criminal justice trends.
  - The moral authority of a community will always be stronger than a remote legal authority in the form of a judge.
- Some time ago, the Teslin Tlingit people decided to return to a traditional system of government where the clan system forms the basis of community and social relations and a leader from each of the five clans identified.
  - The five clan leaders, in turn select the individual they consider most suitable to be as Chief.
  - As set out in the Teslin Tlingit Council Constitution, the clan leaders comprise the Teslin Tlingit Justice Council and subject to removal for misconduct or other circumstances, have lifetime appointments.
  - The genesis of using clan leaders at sentencing and the way in which they are used, appears to be as follows.

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<sup>2</sup> 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.

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

- The Teslin clan leaders and the Chief approached the judiciary with a view to becoming involved in the sentencing of offenders from the community.
  - The response to the request was favourable with the result that for some months the clan leaders have been involved in the sentencing of offenders.
  - The process by which they become involved is as follows.
- The day before the court the RCMP officer meets with the clan leaders to provide a copy of the court docket and to discuss each case.
  - The clan leaders usually ask the police officer what he thinks the sentence should be.
  - In court, the clan leaders, like a jury, sit close to the judge.
  - The only time the clan leaders are involved in the court process is at sentencing and when a guilty plea is registered.
  - The offender provides the court with information about the clan to which he or she belongs and the name of the respective clan leader.
  - If found guilty, the judge speaks to the clan leaders to involve them in the sentencing.
  - Defense and Crown provide their submission to the clan leaders but criminal records are not used because the clan leaders know every member of the community.
  - Pre-sentence reports, however, are provided to clan leaders.
  - The judge provides sentence ‘limits’ to the clan leaders (and in that sense is the legal ‘voice’ in the process).
  - The clan leaders consult among themselves and return with a decision.
- The perception of clan leaders interviewed was that they had the final word on the sentence but other perceptions are that the sentence is negotiated between the judge and the clan leaders.
  - The judge allows the clan leaders to speak to any guilty plea or finding and this includes non-aboriginal offenders or offenders from other communities.
  - A community member works with the clan leaders, takes notes of the proceedings and after consultation with the clan leaders their decision to the court.
  - Occasionally, clan leaders will ask an elder to act as a proxy on the panel.
  - The role and input of victims, and the role of the offender in choosing the involvement of the clan leaders in sentencing are not clear.
- A sentencing circle has also been initiated apparently at the request of the judge, but the relationship and respective roles of the court, the clan leaders and the roles of all parties associated with the circle are not yet clearly defined or understood.
  - An interview with three of the clan leaders and one elder, who on occasion sits with the clan leaders on sentencing revealed them to be somewhat upset at the use of circles, feeling their authority, was being eroded.
- One respondent with some exposure to the process noted that, “people are happy to get away from white man’s justice”.
  - According to another respondent there has never been a ‘peep’ from anyone about a disposition.
  - Future plans are to maintain the present practice until people are more comfortable with it, at which time a phase two would be instituted as well.
  - This gives the clan leaders having the jurisdiction of a justice-of-the-peace, whereby they would hear territorial statutes (and presumably local laws as well).
  - Clan leaders would have the power to notify court clerks to have offenders appear in court for minor offences in order to diminish the role of police and judges in the process.
  - The third phase would involve expanded jurisdiction for clan leaders whereby they could hear Criminal Code and serious offences.
  - The connection with the existing system would be maintained for offenders who did not comply with conditions imposed by clan leaders, or who continued to offend.
- Under the present Teslin justice arrangements, the clan leaders and the judge are responsible for determining the disposition, and the clan leaders are responsible for supervising and ensuring that the order is carried out.

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

- One principle of the approach is that every community member becomes involved in ensuring that offenders obey undertakings because of the visibility of the offender in the community and the common knowledge about the disposition.
- In the cases to date, various disposition including house arrest, participation in counseling and healing, other treatment approaches and restitution, have been used.

## **2. Relevant Documents, Studies and Practices – Other Canadian**

### **2.1. A Framework for Community Justice in the Western Arctic – 1999<sup>3</sup>**

- *Teslin Tlingit Council* - Clan leaders develop community dispositions and provide sentencing advice. Youth and adult offenders are diverted to a Tlingit Peacemaker Court which provides for a clan-based mediation process.

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<sup>3</sup> 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



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

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

##### **Teslin Tlingit Council Peacemaker Court – Sentencing Panel, Yukon**

##### **Project Description**

**Population:** The population is primarily aboriginal with the Teslin Tlingit Band having approximately 700 members.

**Start Date:** The Teslin Tlingit Council Peacemaker Court began in January 1991 in the community of Teslin.

##### **Project Structure:**

the Teslin Tlingit Council Peacemaker Court Project has two main components <sup>5</sup>:

- the participation of the five Clan Leaders as an advisory panel to the circuit court with respect to sentencing and pre-release matters; and
- the operation of the Peacemaker Court which deals with diversion.

The Project employs a Justice Coordinator who performs various duties to support the Project proceedings. The Justice Coordinator works closely with the local RCMP. <sup>6</sup>

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##### **Elder's Role:**

- The model allows the Elders to again be the centre for resolving disputes. <sup>7</sup>
- 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.”

##### **Tradition:**

- This Peacemaker Court is based on the Tlingit traditional system of dispute resolution, and is led by the Clan Leaders. <sup>8</sup>

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<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>

<sup>5</sup> Solicitor General of Canada, Corrections Population Report Fourth Edition for the Federal/Provincial/Territorial Ministers Responsible for Justice, Iqaluit, Nunavut, September 2000, <http://www.sgc.gc.ca/EPub/Corr/eCorrectionPop2000/eCorrectionPop2000.htm>

<sup>6</sup> Solicitor General of Canada, Corrections Population Report Fourth Edition for the Federal/Provincial/Territorial Ministers Responsible for Justice, Iqaluit, Nunavut, September 2000, <http://www.sgc.gc.ca/EPub/Corr/eCorrectionPop2000/eCorrectionPop2000.htm>

<sup>7</sup> Solicitor General of Canada, Community Development and Research, August 1994, <http://www.sgc.gc.ca/epub/abocor/e199613/e199613.htm>

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

- 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.
- This is a community-based traditional Aboriginal justice system.<sup>9</sup>

**Court's Role:**

- 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.
- This model was chosen over a Justice of the Peace model because it is consistent with Teslin Tlingit traditions and culture.<sup>10</sup>

**Offender's Role:** 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.”

**Process:**

- The Teslin tribal justice project is available to all residents in the community and does not exclude any kind of offence.
- Referrals of both adult and young offenders are accepted from the Crown, the RCMP and from Teslin Tlingit Council members.<sup>11</sup>
- 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 every-one in the community is aware of the offender's behaviour in the community.
- When Teslin Tlingit citizens are diverted from the mainstream justice system to the Peacemaker Court they become accountable to their community and respective Clan in a way that is meaningful to them.<sup>12</sup>
- The family of the offender also becomes involved and may assist in resolving the issue.<sup>13</sup>
- Peacemaker Court procedures have been developed to provide timelines to ensure that cases are dealt with in a timely manner, meeting the requirements of the RCMP and Crown.<sup>14</sup>
- After hearing the final comments of the Judge, the Elders retire to discuss their recommendations, which must be arrived at by consensus.

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<sup>8</sup> Solicitor General of Canada, Corrections Population Report Fourth Edition for the Federal/Provincial/Territorial Ministers Responsible for Justice, Iqaluit, Nunavut, September 2000, <http://www.sgc.gc.ca/EPub/Corr/eCorrectionPop2000/eCorrectionPop2000.htm>

<sup>9</sup> Solicitor General of Canada, Community Development and Research, August 1994, <http://www.sgc.gc.ca/epub/abocor/e199613/e199613.htm>

<sup>10</sup> Solicitor General of Canada, Community Development and Research, August 1994, <http://www.sgc.gc.ca/epub/abocor/e199613/e199613.htm>

<sup>11</sup> Solicitor General of Canada, Corrections Population Report Fourth Edition for the Federal/Provincial/Territorial Ministers Responsible for Justice, Iqaluit, Nunavut, September 2000, <http://www.sgc.gc.ca/EPub/Corr/eCorrectionPop2000/eCorrectionPop2000.htm>

<sup>12</sup> Solicitor General of Canada, Corrections Population Report Fourth Edition for the Federal/Provincial/Territorial Ministers Responsible for Justice, Iqaluit, Nunavut, September 2000, <http://www.sgc.gc.ca/EPub/Corr/eCorrectionPop2000/eCorrectionPop2000.htm>

<sup>13</sup> Solicitor General of Canada, Corrections Population Report Fourth Edition for the Federal/Provincial/Territorial Ministers Responsible for Justice, Iqaluit, Nunavut, September 2000, <http://www.sgc.gc.ca/EPub/Corr/eCorrectionPop2000/eCorrectionPop2000.htm>

<sup>14</sup> Solicitor General of Canada, Corrections Population Report Fourth Edition for the Federal/Provincial/Territorial Ministers Responsible for Justice, Iqaluit, Nunavut, September 2000, <http://www.sgc.gc.ca/EPub/Corr/eCorrectionPop2000/eCorrectionPop2000.htm>

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

- This process allows the Elders to reassume 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.
  - Because the Elders sit with the judge and take part in the proceedings, the Court is seen as part of a community process.<sup>15</sup>
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**Community Role/Development:**<sup>16</sup>

- The Teslin Tlingit Nation in Yukon is restoring its traditional system of government, particularly in the area of leadership and decision making, with some contemporary adaptations. Teslin Tlingit government is clan-based. The five Tlingit clans determine who is a member, select leaders and assume government-type responsibilities in respect of clan members. The Teslin Tlingit are building upon the family at the level of the nation through the establishment of several branches of government, including a general council (legislative branch), executive council, an elders council and a justice council. While these councils are not exact duplicates of traditional Tlingit institutions, they do reflect structurally the tradition of maintaining balance within the community through the five clans. For example, the general council comprises five representatives from each clan. Decision making is by consensus, but requires a quorum including at least three members from each clan. Similarly, each clan leader has a seat on the executive council, and the justice council comprises the five clan leaders. Each clan has its own court structure called a 'peacemaker court'.<sup>17</sup>
- The Teslin project is an attempt to develop a justice system that is more in line with the community's unique economic social and cultural needs.
- It helps to rebuild respect for traditional ways, for the role of Elders, and for the community as a whole.
- The system gives the community ownership.
- It provides an opportunity for Aboriginal people to participate more fully in the delivery of justice to their communities.

**Other Initiatives:**

- 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.

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<sup>15</sup> Solicitor General of Canada, Community Development and Research, August 1994, <http://www.sgc.gc.ca/epub/abocor/e199613/e199613.htm>

<sup>16</sup> Solicitor General of Canada, Community Development and Research, August 1994, <http://www.sgc.gc.ca/epub/abocor/e199613/e199613.htm>

<sup>17</sup> Teslin Tlingit First Nation, 'Aboriginal Self-Government and Judicial Systems', research study prepared for Royal Commission on Aboriginal Peoples, Canada (1995) quoted in *For the Seventh Generation: Royal Commission on Aboriginal Peoples, Volume 2: Restructuring the Relationship*, Ottawa)

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

- 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.

**Contact:** Georgina Sydney Box 133 Teslin, Yukon Y0A 1B0 Tel. (403) 390-2532 Fax (403) 390-2204

### **A Story<sup>18</sup>**

**The Crime:** *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.*

**Treatment:** *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.*

**Sentencing Options:** *When the time came for sentencing,*

- *the Crown was the only party that requested punishment (a prison sentence) while*
- *the sentencing panel (the community clan) recommended a community disposition.*

### **Offender’s Spouse’s Perspective**

- *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.*
- *Judge Heino Lilles was sitting at Circuit Court at this time. 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.’”*

### **Sentencing Panel:**

- *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...*

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<sup>18</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>

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

- *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.”*
- *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.”*

*(Please refer to commentary on circle sentencing on 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.)*

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**Successes:**

Since 1991, and within the first few years of implementation, the community realized:

- a 50 per cent decrease in property crime,
- a 75 per cent decrease in break and enters, and
- an approximate 50 per cent decrease in assaults,
- all resulting in an overall 35 per cent reduction in crime<sup>19</sup> (Senini, 1997:68).

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*R. v. J.A.P.* (28 May 1991), Teslin No. T.C. 90-04222 & 90-07328 (Yuk. Ter. Ct.) Unreported.

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<sup>19</sup> Senini, Dana, "Aboriginal Community Justice Initiatives," research paper prepared for the Royal Canadian Mounted Police, January, 1997 cited in Malaspina University-College [http://web.mala.bc.ca/crim/Student/Res\\_Justice.htm](http://web.mala.bc.ca/crim/Student/Res_Justice.htm)

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

##### 4.1. Yukon Sentencing Circles and Elder Panels- 2001 <sup>20</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.

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<sup>20</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/>

*Research Framework for a Review of Community Justice in Yukon*  
Community Justice – Peacemaker Diversion Project

- 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.
  - 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 offenders know 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.