

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

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1. Key Themes (to be explored)

- Each community should make its own community justice project plan to ensure the project fits the circumstances of their community – the path will be unique.

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2. Research Questions

2.1. Mission/Vision/Objectives/Goals

- see also chapter on **“Definitions/Principles” – “Results/Performance Measurement/Accountability”**
What are the stated mission/vision/objectives/goals of the community justice project? Short term? Medium term? Long term?

Does the community justice project have any suggestions as to what the mission/vision/objectives/goals/values of the other stakeholders should be with respect to community justice?

2.2. History

- see also chapter on **“History”**
When was the project formed?
Why was the project formed? To identify and describe justice problems and needs?
Was an inventory of an inventory of justice and related services prepared?
Who supported the project? Who opposed the project? Why?
Was a community needs assessment prepared?
How long was it before the project got started?
Was an action plan developed?
Was the ‘community’ defined? By whom? How? When?
Were participants selected for the project? By whom? How? When?
Was the most suitable type of restorative/community approach chosen? By whom? How? When?
Were project goals/objectives set? By whom? How? When?
Was a work plan prepared? By whom? How? When?
Was a funding proposal developed? By whom? How? When?
Was community support gained? By whom? How? When?
Were project staff trained? By whom? How? When?
Were operating procedures prepared to guide the project? By whom? How? When?

2.3. Sponsor/Organization/Structure/Governance

Who is the project sponsor?
- Community leaders
- Social Service workers
- Justice Officials
- Spiritual Organizations
- Volunteers
To whom does the project report?
How is the project structured?

Does the community justice project have any suggestions as to how governmental/non-governmental organizations (that sponsor/support the project) could be organized/structured to support community justice?

2.4. Roles and Responsibilities

What are the roles and responsibilities of the community justice project?
Does the community justice project have any suggestions as to what the roles/responsibilities/activities of government/related organizations, councils or working groups should be in community justice?

2.5. Accountability

- see also chapter on **“Results/Performance Measurement/Accountability”**
What are the overall accountability mechanisms of the community justice project?
Does community justice project have any suggestions as to what other accountability mechanisms should be in place for community justice?

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<p>2.6. Complaints</p> <p>- see also chapter on <u>“Results/Performance Measurement/Accountability”</u></p> <p>Is there a mechanism in place to respond to complaints about the community justice project?</p> <p>Does the community justice project have any suggestions as to what kind of mechanism should be in place to respond to complaints about community justice?</p>
<p>2.7. Conflict Of Interest/Power Dynamics</p> <p>How does project handle conflict of interest situations? Power dynamics?</p> <p>Does the community justice have any suggestions as to how community justice should handle conflict of interest situations and power dynamics?</p>
<p>2.8. Decision-Making</p> <p>How does project make decisions?</p> <p>Does the project have access to team-building exercises, workshops, training, advice or outside assistance to resolve the differences/disputes?</p>
<p>2.9. Interventions/Referrals/Diversions</p> <p>- see also chapter on <u>“Interventions/Referrals/Diversions”</u></p> <p>Does the community justice project have any suggestions about interventions/referrals/diversions?</p>
<p>2.10. Activities/Services/Approaches</p> <p>- see also chapter on <u>“Activities/Services/Approaches”</u></p> <p>Does the community justice project have any suggestions as to what activities/services/approaches should be undertaken by the other stakeholders in community justice?</p>
<p>2.11. Offences</p> <p>- see also chapter on <u>“Offences”</u></p> <p>What kinds of offences are handled by the community justice projects? Any suggestions?</p>
<p>2.12. Clients</p> <p>- see also chapters on <u>“Offenders”</u> and <u>“Victims”</u></p> <p>To whom are the services targeted? Any suggestions? Accused? Offenders? Victims? Other?</p> <p>How was this target group selected - by self-selection or referral?</p> <p>If self-selection – what were the factors behind for this decision?</p> <p>If referral - who referred participants? see chapter on <u>“Interventions/Referrals/Diversions”</u></p>
<p>2.13. Human Resource Management</p> <p>Who are members of the project? How was this person selected to be on the committee? Based on what criteria? Community Process, Elders’ recommendation, Healthy/respected members of the community, Recovered from abuse, Ex-Offenders Ex- Victim, Experience/Skills, Interest in justice, other</p> <p>Is the CJC composed of a cross-section of the community (Elders, First Nations, Gender, Age, School, Health, Business, Labour, Faith-Based, RCMP)?</p> <p>For each individual member, identify:</p> <p>Role (e.g. Coordinator, services provided)</p> <p>Gender – see also chapter on <u>“Gender”</u></p> <p>Age</p> <p>First Nation or Non-First Nation – see also chapter on <u>“Culture/Tradition/Diversity”</u></p> <p>Member of Community/Role in Community</p> <p>Experience (e.g. Skills)</p> <p>Education (e.g. Qualifications)</p> <p>Duration of membership</p> <p>Training - see chapter on <u>“Training and Education”</u></p>

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Is the member paid? How much?
Is the member a volunteer? see also chapter on “Volunteers”
<p>Workload: How many hours per month does the member spend on project delivery activities?</p> <p>How many hours per month does the member spend on project administrative activities?</p> <p>How much time does the member is spent on human resource management activities – training, recruiting etc.?</p> <p>What is the turnover statistics for the community justice project over the last five years?</p> <p>Is there a mechanism to recruit new members?</p> <p>Describe the work environment, mental and physical demands of the job, exposure to disagreeable conditions, stress, hazards that may be encountered as part of the work routine?</p>
Does the community justice project have any suggestions as to how other stakeholders could improve support for its human resource management activities?
<p>2.14. Financial Resource Management</p> <p>- see also chapters on <u>Funding/Budgeting; Costs</u></p> <p>Does the community justice project have any suggestions as to its financial resource management?</p> <ul style="list-style-type: none"> - How funding amounts are determined? - What core funding should be available? - What financial accountability mechanisms should be in place? - Improve support from other stakeholders? <p>How much time is spent on financial resource management activities?</p>
<p>2.15. Material Resource Management</p> <p>Does the project have office facilities?</p> <p>How does the project ensure safety measures for staff who are conducting offender or victim-related or community justice activities/services/approaches?</p> <p>How does the physical environment of the community justice project’s office address victim safety needs?</p> <p>How does the physical environment of the community justice project’s office address offender needs e.g. privacy?</p> <p>Does the program have office equipment?</p> <ul style="list-style-type: none"> - Fax - Computer - photocopier <p>How much time is spent on material resource management activities?</p>
Does the community justice project have any suggestions as to how other stakeholders could improve support for its material resource management activities?
<p>2.16. Project Administration</p>
<p>Do policies and procedures exist for the project? see also chapter on “Standards”</p> <p>What kind of records does the project keep?</p> <ul style="list-style-type: none"> - Are the records kept in a secure location?

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<ul style="list-style-type: none"> - Who has access to the records? <p>How often does the project meet? Are the meetings open to members of the public? How much time is spent on administrative activities?</p>
Does the community justice project have any suggestions as to how other stakeholders could improve support for its administrative activities?
<p style="text-align: center;">2.17. Community Services/Resources</p> <p>- see also chapter on <u>“Social Development Factors”</u></p>
<p>Are clients using other, related services in the community? Has this use of other services been a result of their involvement in the project? What links or partnerships have been developed among the programs and agencies providing different supports to clients?</p>
Does the community justice project have any suggestions as to how other stakeholders could facilitate collaboration with programs and agencies providing different supports to participants of the community justice project?
<p style="text-align: center;">2.18. Audits/Evaluations/Reviews</p> <p>- see also chapter on <u>“Results/Performance Measurement/Accountability”</u> and chapter on <u>“Review Methodology”</u>;</p> <p>Does the community justice project have suggestions regarding audits/reviews/evaluations?</p>
<p style="text-align: center;">2.19. Working Supportive Collaborative Relationships</p> <p>- see also chapter on <u>“Relationships/Partnerships”</u></p> <ul style="list-style-type: none"> - Does the community justice project meet with the following stakeholders in the area of community justice? - If so, how often? For what purpose? - Does the community justice project have the support of the following stakeholders in the area of community justice? - What is working well, in terms of the community justice project’s relationship with the following stakeholders in the area of community justice? - What are the challenges in terms of the community justice project’s relationship with the following stakeholders in the area of community justice? - How are disagreements or disputes between parties resolved? - Does the community justice project have any suggestions on how to improve working collaborative relationships with the following stakeholders?
Victims – see also chapter on <u>“Victims”</u>
Victims’ support/advocacy groups – see also chapter on <u>“Victims”</u>
Offenders – see also chapter on <u>“Offenders”</u>
Offenders’ support/advocacy groups – see also chapter on <u>“Offenders”</u>
Community justice project – see chapter on <u>“Community Justice Projects”</u>
Volunteers - see also chapter on <u>“Volunteers”</u>
Community – see also chapter on <u>“Community”</u>
First Nations- see chapter on <u>“First Nations/Aboriginal Justice”</u>
Native Courtworkers – see also chapter on <u>“Native Courtworkers”</u>
Elders – see also chapter on <u>“Elders”</u>
Other community resources (e.g. Schools, faith-based organizations, local businesses, non-governmental organizations)
YTG – Community Justice

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YTG –Crime Prevention
YTG –Victim Services/Family Violence Prevention Unit
YTG –Probation Services – see also chapter on “Probation”
YTG –Corrections – see chapter on “Corrections”
YTG – Health and Social Services (including Alcohol and Drug Secretariat)
YTG Women’s Directorate – see also chapter on “Gender”
YTG Education
YTG Housing
YTG Sports & Rec
Justice Canada
Crown Prosecutors – see also chapter on “Crown Prosecutors”
RCMP – see also chapter on “RCMP”
Judiciary – see also chapter on “Courts”
Defense/Legal Aid – see also chapter on “Defense Counsel”
2.20. Other Issues
What are the project’s specific concerns and/or issues?
2.21. Successes
– see also chapter “Successes”
What are the top five (5) successes for the project?
2.22. Challenges
– see also chapter “Challenges for Change”
What are the five (5) greatest challenges for the project?

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3. Relevant Documents, Studies and Practices – Yukon

3.1. Yukon Justice Coordinator’s Meetings

Since 1999, coordinators for community justice projects in the Yukon have been meeting in person twice yearly and by conference call as required. These meetings provide the opportunity to share information, meet together with funders and various government representatives.

Community Justice Project	Contact	Mailing Address	Phone, Fax, Email
1. Dena Keh	Terry Szabo, Justice Director	Liard First Nation Box 328 Watson Lake, Yukon Y0A 1C0	Ph. 536-2827 Fax 536-2544 Tsabo@kaska.ca
2. Kwanlin Dun Community Social Justice Project	Jenny Reid, Justice Director	Kwanlin Dun FN 35 McIntyre Drive Whitehorse, Yukon Y1A 5A5	Ph. 633-7850 Fax 633-7855 jreid@kdfn.yk.ca
3. Peacemaker Diversion Project	Karen Keenan Justice Coordinator	Teslin Tlingit Council P. O. Box 133 Teslin, Yukon Y0A 1B0	Ph. 390-2532 Ext 322 Fax 390-2130 Karen.keenan@ttc-teslin.com
4. Southern Lakes Justice Committee	Elaine Ash, Justice Coordinator	SLJC P. O. Box 201 Carcross, Yukon Y0B 1B0	Ph. 821-4009 Fax 821-3403 sljc@yknet.yk.ca
5. Haines Junction Community Justice Committee	Valarie Binder, Justice Coordinator	HJCJC P.O. Box 5336 Haines Junction, Yukon Y0B 1L0	Ph. 634-7020 Fax 634-7020 hjjustice@yknet.yk.ca
6. Ross River Justice Committee	Nancy Sterriah, Justice Coordinator	Ross River Dena Council General Delivery Ross River, Yukon Y0B 1S0	Ph. 969-2722 Fax 969-2019
7. Old Crow Justice Committee	Joe Tetlich , Justice Coordinator	Old Crow Justice Committee General Delivery Old Crow, Yukon Y0B 1N0	Ph. 966-3935 or Fax 966-3800 jtetlich@vgfn.net
8. Dawson Community Group Conferencing Society	Cheryl Laing Coordinator	DCGCS P. O. Box 1139 Dawson City, Yukon Y0B 1G0	Ph. 993-5060 Fax 993-5065 conferencing@yknet.ca
9. Tan Sakwathan (First Nation Youth Diversion Project)	Kim Rumley, Coordinator	Tan Sakwathan 3159 - 3 rd Ave. Whitehorse, Yukon Y1A 1G1	Ph. 633-7693 Fax 668-4460 Rumley86@hotmail.com

3.2. Yukon Department of Justice¹

The Yukon Department of Justice supports community-based justice initiatives, assisting communities to develop local solutions that aim to be more effective at resolving conflict in ways that promote healing, reconciliation and respect.

The Department promotes Community Justice as a framework for “how we do business”. Community Justice allows for the delivery of community-based justice services and programs that are developed in response to locally identified needs. The Department encourages communities to take responsibility for these community-based justice initiatives wherever possible.

Community Justice as a framework can incorporate a restorative justice philosophy. A restorative justice philosophy is an approach to crime that focuses on healing relationships and repairing the damage crime causes to individuals and communities. A restorative justice philosophy provides an opportunity to approach people and relationships with deeply grounded values such as respect, inclusion, healing and compassion.

The Yukon Government provides financial support to 6 First Nation governments and 3 non-profit societies in partnership with the federal Aboriginal Justice Directorate for community justice activities. The Government also provides support to community groups by facilitating training opportunities, by promoting information sharing and by providing support in capacity building and development where possible.

The following is a brief summary of the projects funded in the Yukon:

- **Kwanlin Dun Community Social Justice Project - Whitehorse, Yukon**
 - Victim and offender support in the justice system
 - Circle sentencing
 - Family Group Conferencing
 - Crime Prevention initiatives
 - Parole Board pre-release circles
 - Community meetings to build awareness about 'justice' and to involve the community in planning justice initiatives in their community
 - Justice Council made up of community and 'justice system' representatives.
- **Southern Lakes Justice Committee - Carcross, Yukon**
 - Formed in 1992, leader in the promotion of community-based justice;
 - Peacemaking circles, mediation, pre and post-charge diversion, provide recommendations to the Territorial Court, and assist with Adult Probation supervision;
 - Active in the community.

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

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

- **Haines Junction Community Justice Committee - Champagne & Aishihik First Nations, Haines Junction, Yukon**
 - o Committee is made up of representatives from Village of Haines Junction and Champagne & Aishihik First Nations;
 - o Project is made up of six circles: Territorial Court (circuit), healing/talking, circle sentencing, mediation, diversion and local Justice of the Peace;
 - o Contracted to publish the quarterly Community Justice Links Newsletter;
 - o Recently released a Victims Handbook and have implemented Family Group Conferencing as a new circle.

- **Old Crow Justice Committee - Vuntut Gwitchin First Nation, Old Crow, Yukon**
 - o New Justice Committee in November 1999;
 - o Began with Family Group Conferencing;
 - o Have dealt mostly with post-charge, Old Crow Liquor Prohibition Regulation tickets;
 - o Implementing a victim assistance program with the RCMP.

- **Ross River Justice Committee - Ross River Dena Council, Ross River, Yukon**
 - o New Justice Committee;
 - o Planning to start with pre-charge diversion, using the Family Group Conferencing model;
 - o Developing guidelines and procedures to follow; have a draft information pamphlet.

- **Dena Keh Justice ("our people's way") - Liard First Nation, Watson Lake, Yukon**
 - o Practice the Family Group Conferencing model, implementing Kaska traditions;
 - o Tripartite policing agreement;
 - o Provide sentencing and interim release recommendations to the Territorial Court;
 - o Strong Elders involvement.

- **Dawson Community Group Conferencing Society - Dawson City, Yukon**
 - o Project takes referrals of pre and post charge youth and adults, post-sentence cases and youth under 12;

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- Referrals are mainly by the RCMP, the Crown, the Court, the School and self-referrals;
 - Each case is considered on its own merit and criteria is applied to each case;
 - Promote awareness and consultation in the community.
- **Tan Sakwathan, First Nation Youth Diversion Project - Skookum Jim Friendship Center, Council of Yukon First Nations, Whitehorse, Yukon**
- Provide support to youth in the legal system;
 - Diversion program is for youth and their families;
 - Eight week sessions with programming on traditional laws and values, parenting and communication skills.

3.3. Aboriginal Justice Strategy (AJS) Trends -2000²

3.3.1. Program Start Dates

Program Name	Start Date ³
Haines Junction Community Justice Program	1994
Liard First Nation Dena Keh	1997
Kwanlin Dun Community Social Justice Program	1993
Southern Lake Justice Committee	1992
Tan Sakwathan Diversion Program	1998
Teslin Tlingit Council Peacemaker Court	1995

3.3.2. Program Growth

Province/Territory	# of Programs		
	1996-97	1997-98	1998-99
Yukon	3	5	6

3.3.3. Program Sponsors

- In the Yukon, the most common sponsors were a First Nation/Band Council.
 - By 1998-99, 4 out of 6 projects were sponsored by a First Nation/Band Council.

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

³ As this table highlights, some programs funded by AJS began operation prior to AJS funding.

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3.4. A Framework for Community Justice in the Western Arctic – 1999⁴

Yukon Initiatives - Champagne and Aishihik First Nations, Kwanlin Dun First Nation, Teslin Tlingit Council, Liard First Nation, Carcross First Nation

- In the Yukon, many communities and First Nations are actively pursuing alternatives to the mainstream criminal justice system as a means of achieving greater public accountability, faster responses, increased victim support and a broader range of options for dealing with offenders.
 - o Sentencing alternatives include a curative discharge program, community service work, fine options, community justice committee support groups, house arrest, residential home placements, a male batterers' program, a sex offender risk management program and sex offender group program for special needs offenders.
 - The curative discharge program, house arrest and temporary absence programs have been implemented over the past few years as a means of de-incarcerating low-risk offenders.
 - These residential placements assist in conditional sentencing, a recent sentencing option.
 - The sex offender risk management program, a component of the Yukon's "Keeping Kids Safe" strategy, provides comprehensive monitoring and programming of convicted sex offenders in the community.
 - The risk management model is also being adopted for high-risk spousal assault cases.
- Several communities are receiving funding under the federal Aboriginal Justice Strategy and matched funds from the Yukon Government. These communities and their programs include:
 - o *Champagne and Aishihik First Nations* - The Haines Junction Justice Committee, a partnership between Aboriginal and non-Aboriginal community members, serves Haines Junction residents and Champagne and Aishihik First Nations members living in Canyon, Champagne, Takhini and Whitehorse. Circle sentencing, mediation and diversion services are offered.
 - o *Kwanlin Dun First Nation* - This Whitehorse community justice project is based on a restorative justice model and uses a mediation process for resolving disputes both informally and in the more formal circle sentencing process. The scope of their justice committee is being expanded to include youth and adult diversion.
 - o *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.
 - o *Liard First Nation* - an active Family Group Conferencing/Justice Committee program is overseen by the Dena Keh Justice Committee in a location serving the largest criminal case-load outside of Whitehorse.
 - o *Carcross* - a joint Aboriginal/non-Aboriginal committee, the Southern Lakes Justice Committee, has been active in circle sentencing and developing community dispositions for a police-referred diversion program.

⁴ 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

3.5. Building Community Justice Partnerships - 1997^{5 6}

Building a Community Justice Committee

- To retain local responsibility, and to enable the community to be a full partner, the following characteristics of building and maintaining a community justice committee seem necessary.
 - Community representatives on the committee should not be selected/appointed by justice officials, but chosen by the community through a process determined by the community.
 - Representation on the community justice committee should be balanced among age groups and gender and should include representatives from all sectors of the community.
 - The richer the variety of community representatives, the stronger the committee will be (preferably teachers, health officials, business, labour and church leaders).
 - People who have been offenders and victims can be invaluable members.
 - Politicians must be informed and supportive but are not suitable members of a community justice committee.
 - They can sit on the advisory committee. Community justice must be beyond political influence and remain driven by a broad diversity of representatives of all sectors in a community.
 - Community justice committees are strategic mechanisms for dealing with both federal and provincial/territorial levels of government, for networking with justice officials, and for establishing a focus for local justice initiatives that is independent of the local political structure.
 - If the committee can remain close to the grassroots of the community, it will be more able to build and to retain community support.
 - Justice committees should try to make decisions by consensus.
 - While volunteers make up the core of a community justice committee, sufficient funding must be available to provide for staff (coordinator, victim/offender support workers) time to run an office that provides administrative support for community justice committee
 - The workload of the community justice process will determine how many of the key community workers will need to be paid and whether they need to be part or full-time employees of the community justice committee.
 - To be an effective equal partner, the community must be adequately funded to participate.

⁵ Stuart, Barry. 1997. *Building Community Justice Partnerships: Community Peacemaking Circles*. Ottawa: Aboriginal Justice Learning Network, Department of Justice.

⁶ 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>

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- Funding arrangements must be sufficiently permanent to allow the community justice initiative to focus on its work and to evolve.
- Uncertainty over funding can severely undermine morale and preclude essential long-term planning.
- The justice committee should periodically be refreshed with new volunteers.
- The committee should be in regular contact with local justice officials including police, Crown, probation officers, courtworkers, and local treatment personnel.
 - There are enormous advantages in local justice officials serving as members of the committee.
 - All local justice officials have important inputs to the community decision whether they accept offenders into the community justice processes.
- Community justice committees can assist in securing community-based direction and ownership, acquiring resources, recruiting volunteers, providing leadership, and building effective working relationships among all partners.

Community and Staff Meetings and Retreats

- Staff meetings on a regular monthly basis serve to redress internal friction, reassess priorities and sustain good working relations.
 - Regular meetings with all partners, directed to the same objectives and to improve the interaction of people and the coordination of services, keeps the partnership growing in a 'good way'.
 - Open houses with the public several times a year, planned around a celebration dinners or volunteer recruitment, assist in keeping the public informed, supportive and engaged.
- Finally, retreats for both staff and partnership, preferably twice a year, can be invaluable.
 - These retreats (out of town) allow for time for undistracted brain-storming about how to improve all the aspects of community justice.
 - Without taking time to challenge and reconsider initial goals, to refine and redefine strategic plans, the initiative may not adjust in a timely manner to problems or to new opportunities.
 - Especially during the time of building community justice, taking time to incorporate the wisdom of trial and error experiences in a constructive, collaborative way is critical.
 - It takes time to apply the lessons of experience.

Start Up – Start Simple – Start Small

- Communities should first build their confidence and skills by dealing with minor offences, first offenders and young offenders.
 - In such cases, for a relatively small investment of volunteer time, resources, training and infrastructure, a significant return can be generated to change behaviour of offenders and in improved results of victims.

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- Taking time to gain experience in diverting adult and young offenders who committed minor crimes can enable a community to develop the skills and perhaps much more important, acquire self-confidence to do more both as a consequence of their experiences and as a result of growing community support.
- Moving too quickly to take on serious, especially controversial cases before community confidence exists before the kinks and problems are worked out in the process can impose burdens and pressures that the process may not be ready to handle.
 - For many, the Circle process is a radical departure from the Court process.
 - Only exposure to and experience can remove the skepticism and wariness of its public and professional partners.
 - Consequently, there are many advantages in starting with less serious cases that fall within the comfortable confidence and skill level of participants.
- Successfully dealing with minor cases gradually gains community support and removes both misinformation and ungrounded fears about how community justice functions and what it aspires to achieve.
- Ultimately community justice must not be restricted to minor cases.
 - Communities must be able to do what they feel competent to take on within a community justice partnership.
- Making your own plan, participating in creating something unique, lies not only at the core of achieving community well-being, but is central to ensuring the project fits the special circumstances of your community.
 - In each community the first steps may be quite different.
 - Some communities may believe several steps over several years may be necessary before handling their first case.
 - Other communities may feel the need and find the resources to move within a relatively short time to take responsibility.
- Beginning immediately with an actual case as a kick-start is an option for some.
- Experience cautions against simply “jumping in” as a means of asserting community responsibility.
- Conversely, too much preparatory work can wear down interest, generate a daunting litany of imagined disasters that impose unnecessary restrictions, deaden creative energy or discourage taking any bold steps at all.
- All community initiatives must develop principally by trial and error.
 - The adventure shared by the founders in working through the challenges of developing community justice inspires a commitment to make it work and creates both the fact and sense of community ownership – an indispensable element of any successful community initiative.
- There will be many surprises as community work through the first few cases, some positive, some not.

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- Commencing with a broad base of support, a clear set of guiding principles and realistic goals will help take advantage of the good surprises and constructively assimilate the experiences of bad surprises.
 - The emergence of strong support or opposition can never be completely anticipated.
 - So much depends upon the dynamics of each case, on the inclination of the local media or others to appreciate the larger picture of what community aspires to achieve or to appreciate how the same case might have unfolded within the formal justice system.
 - Investing time with the media, business community, church groups and numerous other agencies to seek their participation, input and at least their understanding helps minimize the occurrence of, or damage caused by 'bad surprises'.
 - However, due to the unpredictable nature of events surrounding conflict, nothing can ever fully insure against the adverse impact some individuals or cases may cause.
 - The circumstances facing each community will determine what is useful and primarily shape the path each community must follow in regaining responsibility for managing conflict.
 - For many the path will be difficult, for all the path must be uniquely theirs.
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3.6. Putting Aboriginal Justice Devolution Into Practice - 1995 ⁷

Justice Devolution: Lessons and Future Directions

One only needs to look at Yukon in the past five years to realize the amount of changes which have taken place in the devolution of the administration of justice. Many people point to the decreasing official statistics, in the number of people processed or incarcerated, etc. However, the greatest lesson to learn may lie in a Kwanlin Dun saying, "If you walk too fast, you will walk right past." We should take our time.

The need for change is self-evident and undeniable, but more importantly, the need is in the Canadian justice system, for all groups, and not just in aboriginal justice. Changes are coming. Especially with the impending creation of Nunavut, the different groups in the present Northwest Territories will witness an unprecedented level of activities. The possibilities are endless; we should avoid looking for "the" model. The case studies of the Workshop bear testimony to that. For example, while Kwanlin Dun started with less serious offenses and does not feel prepared as yet to tackle sexual abuse, Hollow Water started with the toughest and what it considered the core problem, sexual assaults and abuse. Both are "right" for their community. A common observation is that expanding community involvement holds out more promise than any other methods.

There are also limitations to change. One cannot ignore the declining public support, the tighter fiscal climate, and the political agenda respecting self-government. For Aboriginal communities, there is a danger of replicating the mainstream court system, of widening the net of the alternative system or process, and in silencing the voice of healing and restoration. The tendency to legislate minimum sentences will impact on the options available to communities.

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

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What would future models look like? They are likely to be different across the country. One future trend may be the movement of cases between territorial/provincial courts and the community level. There will be a presumption that less serious cases would go to the community level, but with an option to be heard before the courts, while more serious cases would proceed to the courts, but the possibility of interplay with the community. The starting point of any change should be the empowerment of the community .

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

4.1. Alternative justice method grows in Nunavut - 2002 ⁸

- Nunavut wants to expand its use of restorative justice in the territory.
- 'A lot of people... see it as a very natural thing.'- Qajaq Robinson
- Under the program, an offender and victim come together. With the help of a facilitator, they try to reach agreement on ways to repair the harm that was done.
- "If we locked someone up for two years in B.C.C. and they came out and committed another crime, we haven't solved anything," says Constable Chris Coles of the Iqaluit RCMP. "Through restorative justice, through getting the offender to accept responsibility for what they've done and see the harm that's been caused.
- The Department of Justice's Qajaq Robinson says people who have used the restorative justice system have said good things about the experience. She says it's more adapted to the traditional Inuit way of dealing with offences.
- "A lot of people familiar with the north and who have grown up here see it as a very natural thing," she says. "I think a lot of people see it as, 'About time, this is great', so a lot of it has been positive."
- Coles says the program's now being used for less severe crime. Sexual and spousal abuse cases are excluded at this point.
- Coles says workshops to train facilitators to help in the process have been held in several Nunavut communities, including a recent one in Iqaluit.

4.2. Nunavut (Northern) Justice Issues – 2000 ⁹

- Establishing the initiative: adult or youth?
 - o The literature indicates that it is important that the initiative knows whom it intends to serve for a number of reasons:
 - Adults and youths have different needs.
 - Adults and youths often commit different crimes.
 - Adult males tend to commit more violent crimes and youths tend to commit more property offences.

⁸ WebPosted Jan 24 2002 08:46 AM CST Iqaluit, Nunavut –

⁹ 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>

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- This has implications on the strategies developed and the roles that the community will play in meeting the needs of the parties involved.
- Adult and youth initiatives have different avenues available to them (i.e., alternative measures in the Y.O.A.).
 - As a result they will look and operate very differently.

4.3. Inuit Women and the Nunavut Justice System – 2000 ¹⁰

History of Community-Based Justice Initiatives

- Community-based justice initiatives were first introduced in Nunavut by the GNWT in the early 1990s.
 - These initiatives were presented as a means to address the many long-standing problems identified by Aboriginal peoples in the NWT communities.

Founding Principles

- The program had its foundation in principles of restorative justice which focus on healing damaged relationships to restore harmony within the family and the community, rather than on punishment.¹¹
 - This approach was seen as compatible with and easily incorporating the teachings of Aboriginal people emphasizing healing, respect, cooperation and balance.¹²
 - As such, the process of resolving conflicts in a way that repairs, heals, and restores harmony includes the victim, the offender, and the community.

Types of Initiatives

- The initiatives introduced by the GNWT included:
 - the promotion of a community-based justice system, consisting of local justice committees supported by a community justice specialist, employed by the GNWT to serve a specific region;
 - the promotion of alternative measures to the existing criminal justice system such as the adult court diversion program set up in Baffin regional communities; and
 - the promotion of sentencing alternatives, especially by Justices of the Peace such as reparative sanctions (ie. probation requiring community service work, rehabilitation, and restitution to the victim) and on the land programs for young offenders;¹³

Government

- Officially, the Nunavut government has said little about the community-based justice initiatives it intends to pursue. Likewise, Bill C-57 did not address this area directly.
 - The Nunavut government has recognized that the former community-based justice initiative lacked the necessary infrastructure to support the committees operating in the communities.

The Program

¹⁰ Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

¹¹ Department of Justice, Community Justice Division, Your Community Justice Committee: A Guide to Starting and Operating a Community Justice Committee (Yellowknife: GNWT, 1997) p. 1 cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

¹² Department of Justice, Community Justice Division, Your Community Justice Committee: A Guide to Starting and Operating a Community Justice Committee (Yellowknife: GNWT, 1997) p. 1 cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

¹³ Pauktuutit, Inuit Women and Administration of Justice, Progress Report #2 (January –March, 1995, Appendix 2: Male Abuser Counselling Program Pilot Project Proposal, pp. 1-2 cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

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- **Justice System:** The NSDC Justice Conference report links the need to give local people greater control over justice matters in their communities with expanded roles for existing justice bodies in the community such as the justice committees and JPs.
- In his remarks at the conference, the President of the NSDC, Elijah Erkloo identified the need for Inuit to take on a greater role in community justice issues:
 - We want to know how we can allow Inuit to take more responsibility for dealing with justice issues at the community level, in ways which respect our traditional values and beliefs. ...This meeting is about Inuit taking more responsibility for justice issues in their communities. ...We want to come up with clear recommendations about what more we can be doing in our communities that we are not doing now. We want to know how the Nunavut justice system can bring peace to Inuit.¹⁴
- Nunavut Department of Justice: has indicated it is committed to providing **adequate physical space** for the committees to carry out their work.
 - As well, it will encourage the development of a **communications network** between the various justice committees and provide **ongoing training** for committee members.
 - Information regarding the type and subject matter of this training was not provided.
 - Whether individuals participating on the committees will be paid for this public service that they provide voluntarily is still an unanswered question.
- **Community Justice Specialists:** Within Nunavut there remain four community justice specialists operating as the link between the Department of Justice and the community.
 - The title and role of the “specialists” are being reconsidered by the Department.
 - The four individuals operating in Kitikmeot, Keewatin, North Baffin and South Baffin as community justice specialists are expected to take on the role and responsibilities of coordinating and supporting community justice committees within the communities of their region.
 - The Nunavut Department of Justice is committed to having the coordinators assist in the design and delivery of the community-based justice committees’ work.
 - This change in roles also reflects a broader, perhaps, philosophical shift – from the “specialist” or “expert” directing the community to the “coordinator” who assists and supports the community in its work.
- **Community Justice Committees:** The NSDC views the increased use of community based justice committees as a means of ensuring local people have a greater say and control over justice matters in the communities, and can perform their role in ways which respect traditional values and beliefs.¹⁵
 - This, in the words of Chair Erkloo, is a means to ensuring that “the Nunavut justice system can bring peace to Inuit.”¹⁶
 - Providing Inuit with the ability to regain control over their affairs in this way also has the potential effect of facilitating a more efficient handling of matters, and ultimately a quicker resolution of issues.
 - The work of the NSDC brings the fundamental conflict of Inuit approaches to justice and the punitive nature of the existing justice system to the fore.
 - The approach taken by the NSDC is a positive step towards reflecting Inuit values of restoring harmony and peace within the community rather than punishing an individual for a crime committed against the state.
 - As noted in its report, the NSDC strives to achieve this by keeping one goal in mind, “Wherever possible offenders must be kept in their community”. This is best achieved, it is thought, “... by giving more responsibility to Community Justice Committees and Justices of the Peace.”¹⁷

¹⁴ NSDC, Report of the NSDC Justice Retreat and Conference, November 1998, pp. 4-5.. cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

¹⁵ NSDC, Report of the NSDC Justice Retreat and Conference, November 1998, pp. 4-5, cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

¹⁶ Ibid.

¹⁷ Ibid.

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- The NSDC also recommends expanding the sentencing options of committees, as it did for JPs, when dealing with matters involving first time offenders of serious offences and repeat offenders cases.
 - This is a clear shift from the ideological framework of the Euro-Canadian justice system. For the NSDC, incarceration is no longer the only means to respond to criminal activity.
- The GNWT program adopted by the Nunavut government empowers community justice committees to operate within the communities once a motion is passed by the hamlet council recognizing the authority of its community justice committee to deal with cases involving youths and/or adults.
 - Pursuant to the *Young Offenders Act*, the territorial government will formally appoint members to the community justice committees to deal with cases involving Inuit youth upon concluding an agreement with the hamlet council.
 - In some cases in the past, adult offences, including minor cases of wife assault, have been diverted to the community-based justice committees according to protocols signed by the federal Crown counsel office (since the federal government retains the prosecutorial powers in Nunavut), the RCMP, and hamlet councils.
- **Tasks:** The NSDC report recommends that the justice committees take on the following tasks to improve their effectiveness in their respective communities:
 - strengthen and increase capability, through the use of traditional ways and elders, and through ongoing training and networking;
 - deal with serious matters, including domestic violence;
 - deal with matters brought to them by community members and groups, not only the RCMP;
 - communicate with RCMP to deal with problem quickly;
 - require better community awareness and respect for these committees; and
 - teach young people about traditional values.
- **Methods for Resolving Problems**
 - The GNWT program identifies victim-offender mediation and family group conferencing as possible methods of resolving problems.
 - **Victim-Offender Mediation:**
 - Where the victim-offender mediation model is used, the victim and offender meet face to face.
 - The role of the committee is to act as a mediator and to focus attention on problem solving.
 - The committee moves through the same four-stage process described above.
- **Community Justice Committee – Membership**
 - A guide was prepared by the GNWT setting out the basic guidelines to be followed when setting up a community justice committee.
 - It described:
 - participants as respected members of the community;
 - they must not be involved in criminal or otherwise offensive activities; and
 - they could not have been convicted of a criminal offence in the last three years.
 - In addition, committee members must represent a broad cross-section of the community, and should be able to contribute a wide range of experience and knowledge.¹⁸
 - Within Nunavut, there is no uniformity to the membership or operation of community justice committees.
 - **Crown/RCMP:** Where committees exist, they operate on a voluntary basis and vary in size and mandate. On the latter point, it appears that the role of a committee is dependent on the willingness of the Crown and RCMP to recognize and work with the committee and the commitment of its membership.
 - **Elders:** The community justice committee is considered by NSDC as the vehicle by which elders can play a vital role. The NSDC recognizes that the elders are essential to ensuring those using and providing committee services do not lose touch with Inuit traditions.

¹⁸ Department of Justice, Community Justice Division, Your Community Justice Committee, p. 3. . cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

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- **Defence:** It acknowledges that committees have been used in the past as tools for the defence¹⁹ and now must take the whole community into account, including the victims and their families. However, the means by which this goal will be met are not clarified.

The Strengths

- The NSDC views the increased use of community based justice committees as a means of ensuring local people have a greater say and control over justice matters in the communities, and can perform their role in ways which respect traditional values and beliefs.
 - This, in the words of Chair Erkloo, is a means to ensuring that “the Nunavut justice system can bring peace to Inuit.”
 - Providing Inuit with the ability to regain control over their affairs in this way also has the potential effect of facilitating a more efficient handling of matters, and ultimately a quicker resolution of issues.
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 - This is a clear shift from the ideological framework of the Euro-Canadian justice system.
 - For the NSDC, incarceration is no longer the only means to respond to criminal activity.

Committee Structure

- Pauktuutit and others have challenged how committees are structured.
 - In particular, controversies have arisen regarding the range of the “community” members represented on these committees.
 - The controversies appear to be rooted in the fundamental value differences between the committee members and members of these marginalized groups associated with such factors as age, gender, and religion.
 - For example, community-based initiatives provide a role for elders to work one on one with the offender.
 - However, as noted in the discussion regarding JPs, there are concerns that community justice committees will put elders in the awkward position of judging the offender.²⁰
 - Again, as noted in the discussion regarding JPs, there may also be conflicts between an elder’s values and those of other members of the community, particularly women.
 - Some women have experienced elders that do not perceive violence against women as a serious problem or do not have the required skills to provide effective counselling to an offender of this type of crime.²¹

¹⁹ NSDC, Report of the NSDC Justice Retreat and Conference, November 1998, p. 10..29. cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

²⁰ Nightingale, “Just Us” and Aboriginal Women, p. 25-30, cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

²¹ Nightingale, “Just Us” and Aboriginal Women, p. 26, Canadian Panel on Violence Against Women (1993). Changing the Landscape: Ending Violence – Achieving Equality. P. , Curt Taylor Griffiths et al. (1995). Crime, Law and Justice Among Inuit in the Baffin Region, NWT, Canada. p. 202, cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

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- Perhaps a more fundamental challenge underlying the issue of representative membership is the ability of the community to take on the responsibilities required of community justice initiatives.
 - o Inuit women see an essential determinant of a community preparedness to do this work as the health and well being of the community and those participating in the committees.²²

Support

- While training and awareness of the issues described above is essential, just as important is providing community justice committees with necessary support.
 - o To a certain extent, the community justice coordinator positions being considered by the Department of Justice and referred to earlier in this report, may alleviate the burdens associated with organizational details, including the work associated with providing the infrastructure services.
 - o It remains a challenge to ensure that the other supports and services required to assist the committees in carrying out their work and achieving the goals of community-based justice are in place.

Community-based Justice Initiatives²³

- Community-based justice initiatives have the potential to permit meaningful community participation.
 - o They reflect a commitment to responding to repeated concerns of the community, as represented in the comments of the Chair of the Inuit Justice Task Force who said people want to be more involved in how people in the justice system are treated.
- However, much remains to be done to ensure equality of access, equal representation and accountability within the administration of justice.
- **Question:** In your opinion are there members of your community who would be willing to participate on diversion committee and decide on alternative measures?²⁴
 - NOTE:** the concerns raised under the section on mediation about selection, appointment, screening, and training of mediators, apply also to the selection appointment, screening, and training of diversion committee members
 - o **Answer** -the justice committee could also act as the diversion committee not just oversee it
 - the communities are too small to have layers of communities there are not enough people
- **Question:** Is the justice committee a more effective method to meet your expectations?²⁵
 - o **Answer** -unclear what the Committee is being compared to, if it is the existing criminal justice system use of circuit court judges, we don't see the committee replacing the justice system
 - o -have to continue to ask the question in order to get this committee and the other models proposed in this paper, what do we have to give up
- **Question:** Are the powers granted to the justice committee sufficient?²⁶

²² Department of Justice, Record of Proceedings of the Aboriginal Women and Justice Consultation, November 1993, p. 16. . cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

²³ Pautuutit. Inuit Women and the Administration of Justice, Phase 1: Project Report, 1993 cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

²⁴ Pauktuutit, Inuit Women and the Administration of Justice, Phase II: Project Reports –Progress Report #1 (July 1, 1994 -December 31, 1994), Appendix 3 -Presentation to the Advisory Committee on the Administration of Justice in Inuit Communities cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>. The participants of the justice workshop held in Ottawa August 12-16, 1994 presented their views, recommendations and response to the working document of the Quebec Advisory Committee on the Administration of Justice for Native Communities. Two representatives from the Ungava Coast and two representatives from the Hudson Coast accompanied Martha Flaherty and Ruby Arngna'naaq in the oral presentation to the Committee members. This presentation took place in Ottawa on August 16th before the Committee Chair, Judge Coutu. This was an Advisory Committee established in Quebec, however, the issues raised parallel the issues and concerns identified by women in Nunavut.

²⁵ Ibid.

²⁶ Ibid.

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- **Answer** -taking into account our earlier responses to mediation and diversion, the role of the justice committee seems adequate
 - but there could be more in relation to probation (see next answer)
 - if the committees take on more responsibility that should be done so ONLY if they have adequate resources and training to take on different responsibilities
 - as discussed under the diversion section, in many small communities having a diversion committee and a justice committee is too many layers, they should have one committee to do both.
- **Question:** Do you see other possible functions which could be performed by the justice committee?²⁷
 - **Answer** -the Committee or Justices should be mandated to oversee probationary orders granted by the judges, the probation officers are too few and do not adequately follow-up and there are a lot of breaches
 - -the Committee could meet with probationers on a regular basis to ensure they are following their orders, if there is a breach, they would be responsible for notifying the Judge and police immediately to take action
- **Question:** Do you believe that members of your community would be willing to participate in a justice committee? If so, could you identify them?²⁸
 - **Answer** -our comments regarding who would be mediators, the need to be paid not volunteers (which was raised under mediators and diversion) and the need for extensive screening and selection criteria (as proposed by us for Justices) would have to be undertaken for a justice committee
 - there are too many committees on a volunteer basis, this is far too important to leave it to volunteers, we need people paid to do this and they must be thoroughly screened and would apply just like a JP
 - they should also receive extensive training about the criminal justice system, impacts and dynamics of family violence, abuse, child abuse and assault and sexual assault on victims
- **Question:** Do you have any other suggestions regarding other methods of participation by the community in the administration of justice?²⁹
 - **Answer** -we would welcome the opportunity to further develop alternatives, we haven't had an opportunity to spend some time thinking about this
 - this is the first time we have been consulted on this matter, with more time we can feel we can develop some safe and workable alternatives and models
 - we have reviewed the proposals of the Inuit Justice Task Force and we do not fully agree with their proposals as they would not adequately address the needs of women and children who are victims of violence and could compromise the safety of women and children in our communities even more so than the existing system

Consultation of the Justice Committee³⁰

- this would be useful for some cases, again it may not be appropriate for abuse and assault cases in that specific community due to the inter relatedness of the community or if they have had no specialized training relating to family violence and sexual assault
- this would be useful as long as the committee is adequately resourced and the concerns raised under our response on the judicial committee are addressed

Community Justice³¹

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid

³⁰ Ibid.

³¹ Pauktuutit, Inuit Women and the Administration of Justice, Pauktuutit, Phase II: Project Reports -Progress Report #2 (January 1, 1995 - March 31, 1995) cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

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The Justice Project continues to receive calls from women in the NWT raising concerns or sharing personal experiences with community justice matters. Often the calls are from women who are victims of abuse and are seeking assistance and support, as they have very little in their community, to address the abuse and deal with the criminal justice system. Attached to this report and identified as "Appendix #5" is a copy of letter sent to a GNWT community justice specialist which further illustrates the problem. To date we have not received a response to this letter.

One specific community justice matter involving the Pangnirtung's Men's Group was the subject of discussion in the presentation made by Pauktuutit before the Standing Committee on Justice and Legal Affairs regarding Bill C-41. It appears there is very little commitment on the part of the GNWT to set standards or guidelines to ensure community justice initiatives in Nunavut do not further victimize or harm Inuit women who are victims of violence. For further details please refer to the copy of Pauktuutit's Bill C-41 presentation to the Standing Committee which is attached to this report and identified as "Appendix #6".

(a) Community-Based Justice³²

...writing to you about some information we received since our workshop in Rankin Inlet regarding the community justice committee's activities in Sanikiluaq.

As you are aware, Pauktuutit's Justice Project has focused on the need to ensure community-based justice reforms be accountable and acceptable to all members of the community. Flowing from this, we have been advocating for the use of negotiated guidelines and standards that would be used to guide communities in the way in which they establish their committees, who can participate and what types of matters they can undertake.

We have increasingly become more concerned with the operations of the committee in Sanikiluaq. I was informed that you have the responsibility for community-based justice in Sanikiluaq and therefore have directed this matter to you as we understood from Kristina's presentation in Rankin Inlet, the concerns we are raising would be matters you are addressing as the community justice specialist.

We would very much like to know what is being done to rectify the problems with this committee- its membership; the type of cases it is involved with; the lack of training provided, the lack of any procedures regarding referrals to the committee.

We would like to know how this committee was established -was it under your program. We understand that this committee came to be established by Judge Brown. We would like to know if the Department plans to establish some type of procedural guidelines as to how these committees get established; who can participate; and what their mandate is? How is this body sanctioned to be dealing with justice issues through a diversion program? We would like any information that you can provide on these issues.

Existing community-based justice initiatives³³

In evaluating and assessing the amendments presented in Bill C-41, our basic assumption is that the safety of women and children in the communities cannot be compromised or jeopardized in any way. We recognize that the existing system is failing Inuit, yet at the same time, the new alternatives being proposed in Bill C-41 must be seriously examined to ensure that they do not compound the damage and suffering already caused by the existing system. (p. 85:23) Since 1991, the Government of the Northwest Territories -the GNWT- has taken a number of steps in introducing community-based justice alternatives. These have included the promotion of a community-based justice system,

³² Pauktuutit, Inuit Women and the Administration of Justice, Phase II: Project Reports –Progress Report #2 (January 1, 1995 - March 31, 1995) - Appendix #5 -Letter from Justice Project Coordinator to Baffin Community Justice Specialist, February 16, 1995 cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

³³ Pauktuutit, Inuit Women and the Administration of Justice, Pauktuutit, Phase II: Project Reports -Progress Report #2 (January 1, 1995 - March 31, 1995) -Appendix #6 - Minutes of Proceedings and Evidence from the Standing Committee on Justice and Legal Affairs Respecting: Bill C -41, Tuesday February 28, 1995, Witnesses: Inuit Women's Association of Canada cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

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consisting of local justice committees supported by a community justice specialist within each region; the promotion of alternative measures to the existing criminal justice system such as adult diversion programs along the lines of diversion programs for Young Offenders; and the promotion of sentencing alternatives, such as sentencing circles, reparative sanctions and restitution in the form having to go hunting and providing country foods to victims and community service. (p. 85-8)

The experience to date, however, provides certain lessons about how they should - and should not - be implemented if they are going to be successful at meeting the needs of *all* members of the community. (p. 85:8)

Justice committee selection is inappropriate. (p. 2) ³⁴

4.4. Aboriginal Justice Strategy (AJS) Trends -2000³⁵

4.4.1. Program Growth

Province/Territory	# of Programs		
	1996-97	1997-98	1998-99
Nunavut	0	4	6
Northwest Territories	0	5	6

- The most growth by province or territory from 1996-97 to 1998-99 was found in both NWT and Nunavut where no programs were funded in 1996-97 but by 1998-99 there were six each.

4.5. A Framework for Community Justice in the Western Arctic – 1999³⁶

- The precise number of community justice committees across the Northwest Territories is difficult to determine as there is a discrepancy between the number of committees reported by the RCMP and that reported by the community justice specialists.
 - o While the Department funds 31 Community Justice Initiative projects, it is estimated that there are 15 community justice committees active at this time (not every funded community or project involves a committee, nor is the creation of a committee required by the program).
 - o These committees are at varying stages of formation and development with some having been operational for a number of years.
 - o Some committees are strictly youth justice committees while others deal with both youth and adult diversions.
 - o In 1998, across all communities, there were 201 cases diverted from the court.
 - o Of this total, 122 were youth diversions and 79 were adult diversions.

³⁴ Department of Justice (Canada), Record of Proceedings: Aboriginal Women and Justice –Consultations - Inuit Women, - November, 1993 cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

³⁵ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

³⁶ 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.

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- In 1998/99 the Community Justice Division operated with a budget of 2.355 million dollars.
 - During that year, \$557,500 was allocated for direct disbursement to community agencies and committees in the Western Arctic through contribution agreements.

Committee Coordinators

- Coordinators said that not only the hours but the nature of the work is stressful and that they often lack the necessary training or program support to enable them to perform their duties well.

Activities of Committees

- Depending upon the community in which they operate, and the degree to which they have matured, community justice committees engage in a number of justice-related activities.
 - While the range of activities across all committees is extensive, most are focused on handling diversions and few are engaged in more than one or two other activities (such as fine options or prevention programs).
 - Though community justice committees engage in a variety of justice-related actions, no community appears to be undertaking a comprehensive range of education, prevention, justice delivery and aftercare activities.
- There was a mixed response across all respondent groups regarding whether the activities of community justice committees are adequately addressing justice needs and issues at the local level.
 - However, as is fitting for a program based on communities defining their justice interests, most respondents endorse the concept of communities setting their own priorities for their activities.
 - There are distinctly differing views between respondents who feel that committees are able to take on more than they currently handle and those who feel that they are already busy enough within the limitations of committee members' time, support services and coordination available to them.
 - What is obvious is that busier committees require the support of coordinators and that additional activities would therefore have implications for the level of funding committees receive.
- There are still essential developmental steps to be taken by communities:
 - developing community justice committees where they do not exist, expanding the knowledge of committee members and undertaking a greater range of restorative justice approaches at the community level.

Community Justice Committees And Coordinators

- Currently there are 31 community justice initiatives funded by the Department of Justice, 15 of which involve active community justice committees (another 11 are described as "inactive" and five have no committee).
 - Of these 15 committees, nine have paid coordinators and six do not.
 - This study conducted site interviews in eight communities where the Department funds community justice projects.
 - It should be noted that these communities are among the most active in terms of their justice initiative projects and that other community justice projects and committees appear to be in varying states of change, renewal, decline or revival.

Committee Mandate

- The Department of Justice - Community Justice Division 1997 publication [Your Community Justice Committee A Guide to Starting and Operating a Community Justice Committee](#) notes:
 - "Community Justice uses the strengths of the people in the community.
 - It allows people who know the offender and victim to work out solutions that are suited to the individual situation.
 - Community Justice only works if community members get involved.

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- It also needs the support of those involved in the formal justice system: the police, the judges, the Crown prosecutors, probation officers, and the Department of Justice.
- They all need to work together, looking for alternative ways of administering justice In the Northwest Territories."
- It also states:
 - "Many Communities have chosen to establish Community Justice Committees.
 - These are recognized by the Department of Justice, and by the RCMP and Courts.
 - They have the authority to deal with the cases that are referred to them, and may also advise Judges or Justices of the Peace about cases going through the court.
 - A Community Justice Committee really gets its authority through being recognized by the community.
 - This is usually demonstrated by a motion passed by the Municipal/Band Council. Formal appointments are made by the Minister of Justice for the Northwest Territories, under the Young Offenders Act."
- All of the reviewed background material regarding the Community Justice Initiative in the Northwest Territories makes it abundantly clear that the initiative is premised on communities deciding how to handle their own justice issues and putting in place the mechanisms to do so.
 - The range of options available to communities in deciding how to focus their efforts on justice issues is comprehensive and maintains flexibility at the local level.
 - The options include (among others): community justice committees dealing with diversions, community wellness and healing activities, crime prevention, family group conferencing, victim/offender mediation, community sentencing, fine options, community service orders, community custody, community supervision.
 - Since communities define their own committees and range of justice interests, there are no clear mandate statements, goals or objectives for the many community level initiatives funded by the Department.
 - In addition, while some communities officially recognize their committee with a Municipal or Band Council motion, the lack of a formal requirement for such endorsement is a weakness in the overall program.

Structure and Membership

- According to the booklet Your Community Justice Committee - A Guide to Starting and Operating a Community Justice Committee.
 - "There is no set number of members on a Community Justice Committee.
 - Six is a good number to start with, but it is up to each community to decide how many members their Committee should have.
 - One of the members of the committee should be designated as the Chairperson.
 - Normally the Chairperson would be selected by the other members of the Committee."
- Most community justice committees in the Northwest Territories consist of a handful of volunteers (in most cases fewer than 12 people), some with the assistance of a full- time coordinator and some with a part-time coordinator.
 - Community justice specialists noted that committees try to maintain a balance among community groups and interests in selecting members and give all members equal status on the committee.
 - In some communities members are nominated by Band Council/Municipal Council and most undergo a criminal records check (which may or may not disqualify the person if they have a record).
- Two-thirds of those interviewed for this study indicated that they have concerns about the structure and membership of community justice committees as they currently exist (as with so many questions asked in this

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review, responses were not unique to any one particular respondent group; rather common views were shared by divergent groups).

- Many of these concerns involve potential conflicts of interest and bias as communities are small and it is often difficult to find committee members who are not related to individuals involved in the cases they are hearing.
- Other concerns regarding committee structure and membership raised by respondents include:
 - their operating context is very political with communities having First Nations, hamlet or municipal councils, Metis locals, etc., all wanting to have a say or control over justice issues;
 - recruitment and replacement is difficult - are the right skills being recruited, is orientation to the role of committee member effective;
 - some committee members have their own past and troubles to deal with; if these are not healed or they are still "unhealthy", how can they help others or act as role models;
 - there is a lack of understanding of confidentiality and conflict of interest; more training and awareness of these issues is required;
 - committees are not diverse enough - need the full representation of the community - men, women, elders, youth, Aboriginal and non-Aboriginal members;
 - the pool of available skills may limit the effectiveness of committees.
- As noted in a subsequent section of this report, these concerns are not unique to the Northwest Territories but also exist in many of the other jurisdictions examined.
 - Clearly there are significant questions regarding the composition of committees and the attributes of individuals who are members of committees.
 - However, though few respondents spoke specifically to the issue of committee structure, when this was raised there was agreement that committee structure should be determined by the community being served.

Committee Coordinators

- Committees with an adequate level of funding and whose workload is greater than volunteer members can manage usually hire a community resident as a paid coordinator to assist them.
 - Of the 26 active and inactive community justice committees identified by this review (based on information obtained from CJSs), nine have paid coordinators.
 - Three of these coordinators are part-time only.
- The coordinators we interviewed explained the kinds of tasks that they carry out:
 - recruitment of new committee members - this may require obtaining references and CPIC record checks;
 - meeting with justice system and human services representatives - schools, probation, social services, RCMP, Crown, recreation and mental health were mentioned;
 - attending court when held in their community;
 - administering Fine Options in some communities;
 - arranging and monitoring Community Service Orders in some communities;
 - scheduling diversion hearings - contacting accused, victims and committee members;
 - attending diversion hearings;
 - arranging and attending meetings with their committee as well as recording minutes;
 - keeping a record of committee members attending meetings and ensuring that the appropriate honourariums are paid;

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- monitoring the outcomes of diversions and preparing reports to RCMP and letters to the court;
- preparing funding proposals.
- Not every coordinator performs all of these activities but the above list exemplifies the typical responsibilities that comprise the coordinator's role.
- Given the range of tasks expected of coordinators, it is not surprising that some committees have found it difficult to identify a suitably qualified person for the position.
 - The fact that most committees' funding is only adequate for a part-time coordinator was reported to be a discouraging factor.
 - In many communities, the most capable individuals already have employment, which they are not willing to give up for a part-time salary.
 - In a couple of cases, this difficulty has resulted in a committee hiring someone who is currently working in another justice-related capacity and who continues to act in both roles.
 - While this person may have appropriate qualifications and brings a knowledge of the justice system to the position, there have been questions raised about potential conflict of interest if the individual is also a courtworker (as in one situation).
 - A courtworker's primary concern is to assist accused and to appear in court on their behalf while community justice committees must address the needs of both victims and accused in an impartial manner.
 - However, the issue of conflict of interest of such dual-employment situations was raised by only a few respondents.
 - One justice system respondent pointed out that, though the potential for such conflict exists, this may not necessarily happen - some persons can "wear more than one hat" and be able to differentiate their respective responsibilities.
- A bigger issue for most committees and coordinators is the high turnover in the position of coordinator.
 - In one instance, there had been four coordinators in the past year.
 - Several coordinators indicated that, despite their job being just "part-time", they are working almost full-time hours.
 - Coordinators said that not only the hours but the nature of the work is stressful and that they often lack the necessary training or program support to enable them to perform their duties well.
 - A number of training/support needs for coordinators were identified by a wide range of respondents:
 - training
 - financial records/bookkeeping, other recording requirements,
 - committee development,
 - understanding of the Euro-Canadian justice system and the court process,
 - computer use,
 - using the internet,
 - program and work planning,
 - proposal- writing,
 - conflict resolution;
 - greater clarification of their own roles and responsibilities;

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- opportunities to establish linkages and regular communication with other coordinators and committees;
 - information about potential funding sources;
 - information about community justice programs in other jurisdictions;
 - adequate and appropriate private office space for holding diversion meetings and confidential discussions with clients;
 - dependable and ready access to computer, phone, fax.
- Our information regarding committees and coordinators relies largely on CJS accounts (we revised some data based on our interviews with coordinators).
 - The funding information was provided by the Community Justice Division and the diversion statistics have been compiled by RCMP detachments in each community, although these figures are recognized as being very unreliable.
 - Some conclusions regarding the role of the coordinators.
 - There tend to be higher numbers of reported diversions for those committees with coordinators as opposed to those without coordinators (some small communities without coordinators have no local RCMP detachment).
 - Four of the five communities listed here that are receiving matched federal funding have paid coordinators.
 - Most committees that have coordinators are concentrated in the Beaufort and Sahtu Regions.

Activities Carried Out

- Community justice committees undertake a range of justice activities though these vary from committee to committee.
 - The Community Justice Program, as outlined in the booklet *Your Community Justice Committee - A Guide to Starting and Operating a Community Justice Committee*, is structured to encourage and permit communities and committees to define the range of justice approaches and activities that they wish to engage in to meet community needs.
- Respondents in this study identified the following types of activities of community justice committees (it should be noted that in many cases a specific committee may only be conducting one or two of these activities, as most committees are currently focused on diversions):
 - alternative measures for youth and adults;
 - sit with Territorial Court and provide sentencing advice;
 - education and information to the public;
 - provide information to elders and youth to draw them into the process;
 - political activity in terms of corrections - lobby for the types of correctional facilities they need in their communities;
 - advocate for change in the court system - the system that is in place now is partly a reflection of the push on the part of committees;
 - conduct community justice meetings;
 - hold information forums for the public;
 - full range of involvement with the community - youth and adults;
 - community defined whatever it is that the community wants them to do;

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- handling diversions according to the federal/RCMP guidelines - pre-charge from RCMP, post-charge from the courts, passing sentences;
- monthly business meetings and meetings with clients;
- providing information to the courts;
- diversions - sending youth to bush camps;
- starting to get more into prevention.
- There was a mixed response across all respondent groups regarding whether these activities of community justice committees are "adequately addressing justice needs and issues at the local level."
 - Those who feel satisfied that committees are addressing needs stated that the program has demonstrated success at the community level (e.g., people listening to the elders, following through with their sentencing, not re-offending, changing their lives, reduced number of cases).
 - Some feel, however, that issues of committee credibility, lack of reporting and accountability or family and political intervention overshadow the ability of committees to truly address needs.
 - Yet other respondents said that most committees are still in a developmental stage and it may be too early to determine whether community needs and issues are really being addressed.
- As listed below, respondents pointed to a number of specific factors or influences that cause difficulties for committees in their work in communities:
 - family and political ties - makes it hard to be impartial;
 - power structure in the community;
 - committee members who are not healed themselves - credibility of committee members;
 - not being visible enough to combat the perception of family bias;
 - language barriers - terminology of the justice system;
 - lack of community support for the decisions of the committee;
 - not having the right people/skills on the committee;
 - funding limitations, especially for training;
 - weak committee chairpersons;
 - inadequate funding to pay people for their work;
 - need for a part-time person to work with the committee - support role;
 - fear of retribution from the community;
 - questions about RCMP commitment - whether they really believe in the program.
- Given the diverse kinds of activities in which community justice committees are engaged, respondents were asked to identify what they felt should be priorities for committees. Their suggestions include a wide range of responses as follows:
 - earlier intervention;
 - letting the person who has committed a crime know that the committee cares about them, is hurt by what they have done to the community;
 - committee must become healing-based - this is a cultural bias, it is the way we understand traditional justice;
 - working with the people in the community, more community involvement, working a bit too much in isolation now;

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- determine why the person got into trouble in the first place, then deal with the cause of the problem;
- getting elders back on the committees and use the traditional lodge;
- dealing with their own problems as individuals - need positive role models for credibility;
- having community representation;
- doing more advocacy, supervision of offenders;
- identifying gaps in community services and how to address them;
- initiating proposals for funding for community services and help to develop them; . working with diverted clients;
- working with parents and families - this is where most of the problems start;
- following-up with clients, even after they have fulfilled their sentence;
- working more closely with interagency groups for support and resources;
- developing a community justice manual - this would outline how the community sets its policies and principles of functioning;
- looking more carefully at ways of including victims to provide a better understanding to the committee of how the victim feels.
- A number of respondents (including community and organizational-based respondents) also noted that all committees are different and that the committees should be setting their own priorities.
 - As the above list of respondent-identified priorities demonstrates, a number of individuals (who tended to be government or RCMP respondents) think that committees could be doing more, or at least could expand their current efforts, to better address community justice needs and issues.
 - While respondents acknowledged limitations of time, resources, funding, skills and the need for the committees themselves to make this decision, most also feel that committees are able to take on more activities/responsibilities than they are currently managing.
 - Among the additional activities/responsibilities identified are:
 - there could be a role in the formal justice system where the CJC meets with the accused or someone who has pled and is waiting for sentencing - might be a supportive role for them to play with these cases;
 - there is an issue with federal inmates who have nowhere to go when they get out - as there is no parole system in the communities they end up in Yellowknife where the RCMP plays this role; maybe the CJC could be of assistance in some of these cases - assist Community Corrections with probation activities - programs being developed;
 - all committees are at different levels; they have to determine their own needs and build from a traditional base - stick to their community justice mandate;
 - identify justice needs of communities and find programs to meet these needs;
 - be the voice of the community in the formal justice system, provide advice, deal with victims, counselling, setting of conditions (within the framework of probation);
 - potential for greater variety; committee has become very advanced in the past four years and is willing to take on more serious cases;
 - activities such as supervision of offenders, post-release care - but they do not have the resources for these activities now;

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- could take on much more than they are now handling, but they would need staff to support them, like coordinator and support staff;
- do additional work, even in communities with little crime, participate in prevention programs in schools, drug and alcohol awareness, self-esteem, culture and tradition;
- work more on crime prevention, not just after the fact. .
- The respondents who feel that committees could not undertake additional activities (usually community-based respondents and those who work closely with committees) generally stated that committees are already handling as much as they can with the available resources.
 - These respondents made comments such as:
 - they are busy enough with what they are handling - very time consuming as it is;
 - not with current level of funding, staff and support;
 - do not have enough people or resources to handle more cases, very stressful for members.
- Depending upon the community in which they operate, and the degree to which they have matured, community justice committees engage in a number of justice-related activities.
 - While the above list of activities appears extensive, it is important to note that most committees are focused on handling diversions and few are engaged in more than one or two other activities (such as fine options or prevention programs).
 - It is clear that some respondents feel that committees are addressing community Justice needs, while others feel that they are not.
 - It is also clear that a number of factors do, or are perceived to, hamper community justice committees in their activities.
 - The realities of small communities where many people are related, local power structures and weaknesses in committee membership are not unique to the Northwest Territories and, while these do constrain communities, they exist as challenges to all community justice initiatives (see chapter 8.0).
 - As is fitting for a program based on communities defining their justice interests, most respondents endorse the concept of communities setting priorities for their own activities.
 - There are distinctly differing views between respondents who feel that committees are able to take on more than they currently handle and those who feel that they are already busy enough within the limitations of committee members' time, support services and coordination available to them.
 - What is obvious is that busier committees do require the support of coordinators and that additional activities would therefore have implications for the level of funding committees receive.

Conclusions

- Community justice committees and coordinators are the central actors in the Community Justice Initiative of the Northwest Territories.
 - As such it is appropriate that these bodies are self-defining within the parameters of the community justice philosophy on which the program is premised.
 - It would appear, however, that many parties would benefit from greater clarity regarding the roles and responsibilities, structure, activities and accountability relationships of community justice committees.
- In order to be most effective in addressing community justice issues and needs, community justice committees must comprise the very best possible candidates.

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- Recognizing that the life skills, education levels and experience of many community residents has not adequately prepared them for community justice roles underscores their need for training.
- Coordinators and committees themselves should identify their training requirements and present their priorities to ensure the presence of appropriate skills among their community justice decision-makers.
- While community justice committees engage in a variety of justice-related actions, no community appears to be undertaking a comprehensive range of education, prevention, justice delivery and aftercare activities.
 - There are still essential developmental steps to be taken by communities:
 - developing community justice committees where they do not exist,
 - expanding the knowledge of committee members, and
 - undertaking a greater range of restorative justice approaches at the community level.

Community Justice Worker Positions - Such positions are important for liaison and communication between communities and the existing justice system.

Community Justice Workers Employed by and Reporting to a First Nation Government - First Nation control of these positions helps to ensure close contact with Chief and council and provides local support. This can also reduce the criticism that community justice workers are working for two masters, i.e., the government and the community.

Client Record

Client Information

Date ____/____/____
d m y

Community _____

Name of Committee _____

Client Name

first last

Address

Phone

Gender M F

Date of Birth ____/____/____
d m y

Offender Status: Young offender Adult

Offender Status: Aboriginal Non- Aboriginal

Is client (can check more than one):

- | | |
|---|---|
| <input type="checkbox"/> Employed | <input type="checkbox"/> Having problems attending school |
| <input type="checkbox"/> Unemployed | <input type="checkbox"/> Not in school |
| <input type="checkbox"/> Attending school regularly | |

Offence / Charge Information

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Process Information

Type of process used to make a decision in this case (check one).

- Community Justice forum Mediation
 Justice Committee panel Victim offender reconciliation
 Other (describe)_____

Number of persons involved in reaching a decision_____

Was the victim asked to be involved in the determination of the Alternative Measure?

- No Yes Not applicable (no victim)

If victim was not asked, why not?_____

Did the victim participate in the determination of the Alternative Measure?

- No Yes Not applicable (no victim)

If victim did not participate in the determination, why not? Please explain:

Are there any personal or family issues that contributed to this offence which were identified during the process? If yes, please summarize below:

Agreement and Completion Information

Was an agreement reached? No Yes

Date agreement reached ____/____/____
d m y

Describe the details of the agreement below and whether it was completed:

Type of agreement	Check if part of agreement	Completed?		
		Yes	No	Partially
Supervision requirement (specify length)				
Caution or caution letter (specify from Court__or RCMP__)				

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Community service (# of hours _____)				
Personal service, describe:				
Restitution/compensation (Amt \$_____)				
Educational program (e.g, traditional knowledge or land skills) Name _____				
Apology				
Charitable donation (Amt \$_____)				
Counselling, describe: _____				
Workshop / social skills improvement, describe: _____				
Substance abuse treatment				
Healing Circle				
Other, describe:				
All issues resolved during the process, so no further action required				

Person assigned to monitor the agreement _____

Does the committee feel the client completed the overall agreement?

No Yes

Date of completion of agreement ____/____/____ 31. Date file closed ____/____/____
d m y d m y

If the agreement was not completed, what action was taken?

Were there further offences prior to completion of agreement?

No Yes If Yes, describe below

Date	Offence

Date file to be destroyed (i.e., 2 years after referral date) ____/____/____
d m y

MONTHLY UPDATES_ *To be filled in at end of each month while client is in the program.*

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Month _____Year_____

Participation in Alternative Measures (describe successes and problems)

Other important issues (school, work, home, family, friends, health)

Personal growth and change relating to this person

Issues which need to be addressed

MONTHLY UPDATES_.

Month _____Year_____

Participation in Alternative Measures (describe successes and problems)

Other important issues (school, work, home, family, friends, health)

Personal growth and change relating to this person

Issues which need to be addressed

MONTHLY UPDATES_

Month _____Year_____

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Participation in Alternative Measures (describe successes and problems)

Other important issues (school, work, home, family, friends, health)

Personal growth and change relating to this person

Issues which need to be addressed

MONTHLY UPDATES_

Month _____ Year _____

Participation in Alternative Measures (describe successes and problems)

Other important issues (school, work, home, family, friends, health)

Personal growth and change relating to this person

Issues which need to be addressed

Justice Committee Activity Record

Name of Community: _____

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Name of Committee: _____

Name of Justice Committee Coordinator: _____

Period of Time Covered by this Activity Report: from ____/____/____ to ____/____/____
d m y d m y

General Activities of Committee During Period Described Above

Activities of Committee	Description of Activity (if required)	How Many Sessions	Who Involved (general description)	How Many People Attended
Community Justice Meetings				
Training for Committee Members				
Special Training or Workshops for Community				
Crime Prevention Education				
Lobbying or Advocacy Work				
New Project Development				
Other (describe)				

Successes: _____

Problems/Issues which have arisen for committee: _____

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Client Data

Data Collection Period: from ____/____/____ to ____/____/____
 d m y d m y

Referrals and Activities	No. of Clients whose case was closed during this time period				
	Adults		Youth		Total, All Clients
	M	F	M	F	
REFERRALS					
RCMP Referred					
RCMP Accepted					
Crown Referred					
Crown Accepted					
JP Referred					
JP Accepted					
Court Referred					
Court Accepted					
TOTAL NUMBER REFERRED					
TOTAL NUMBER ACCEPTED					
DIVERSION PROCESS USED					
Community Justice Forum					
Justice Committee Panel					
Victim Offender Reconciliation					
Mediation					
Other (describe):					
TOTAL PROCESSES					
TYPE OF AGREEMENT					
Supervision Requirement					
Caution or Caution Letter					
Community Service					
Personal Service					
Restitution / Compensation					
Educational Program (e.g., traditional knowledge and land skills)					
Apology					
Charitable Donation					
Counselling					
Workshop / Social Skills Improvement					
Substance Abuse Treatment					
Healing Circle					
Other (specify):					

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TOTAL TYPES OF AGREEMENT					
STATUS OF CLOSED CASES					
Agreement completed successfully					
Case closed without successful completion					
TOTAL CLOSED CASES					

Note: “Total Accepted” should equal “Total Processes” and “Total Closed Cases.” “Total Types of Agreement” may be a larger number if more than one type of agreement is involved for some clients. “Total, All Clients” should equal the total of the four columns for each item.

Number of new referrals in this time period whose case is still open _____. (Do not include these cases in the above report.)

4.6. Justice Committees as Vehicles to Justice Self-Determination – 1994 ³⁷

- This article, part of a workshop compendium, looks at some of the justice committees that are operating in the NWT - specifically in Fort McPherson, Rae-Edzo, Tuktoyaktuk and Iqaluit.
 - o It only gives a brief description of each, a description that represents one person’s perspective, but some of the questions from the audience and dialogue between the audience members and the participants illuminate the issues that face a justice committee when being developed and operating in the North.
 - o This article gives an overview of a number of local Justice Committees operating in the North.
 - o Arising out of that overview and comments from the audience, a number of issues worthy of note come to the fore.

Underlying Themes

- Each local Justice Committee is unique, just like the communities they serve.
- There is no template that one community can provide for another - just suggestions and options.
- These have to be developed and molded for and by the community.
- Justice Committees recognizes that it is important to recognize who is being served –adult or young offender.

Findings

- There are various local Justice Committees operating in the NWT:

Wabasca Youth Justice Committee: Operating since 1991, the Committee has four sub-committees. Although they mainly work with youth, the Committee also addresses first time adult offenders in the community. Only 10% of the youths that were diverted to the Committee re-offended. The dispositions they use include apologies, community service orders, and restitution, and the process focuses on healing the offender. The RCMP supports the initiative and the Justice Committee depends on the RCMP for referrals.

Iqaluit Adult Diversion Program: Operating since 1992, the Committee has five subcommittees. The committee is reliant on volunteers who make up such groups as a screening committee (to determine if it is a case that they can deal with - if not it goes back to the formal criminal justice system) and a follow-up committee/team (to address the needs of

³⁷ Football, Betty Ann, William Kehoe, Madeleine Qumuatug, Wanda Vanelts and Ray Yellowknee. “Justice Committees as Vehicles to Justice Self-Determination”, in *Justice and Northern Families: In Crisis... In Healing... In Control*. Burnaby: Northern Justice Society, Simon Fraser University, 1994. 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>

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the offender after the disposition and recommendations have been made to ensure they are being met and the offender is getting what he/she needs). Between referral and follow-up the Committee works with the offender to persuade him or her not to act badly in the future, works to reconcile the offender with the victim, focuses on preventing division in the community and maintaining harmony between the victim and offender. The Committee deals with minor offences, such as shoplifting and fighting, although they are not all first-time offenders. The Committee relies on the RCMP and Crown counsel for referrals.

Fort McPherson Justice Committee: Operating since 1991, this Committee evolved from a youth justice committee to one that incorporates adult offenders as well. They have a close working relationship with the RCMP, Crown and Judge (for referrals, support and acceptance of community dispositions). They found that most of the recommendations they have made to the court have been accepted. Their main goal is healing the offender and the community. As a result there is a strong focus on healing. The participants noted that healing would take on a different look and plan of action for each community. For them, a community healing camp has been discussed for future development.

Rae-Edzo Band Justice Committee: At the time of the presentation, this initiative was not as successful as the others claimed to be. However, the participants pointed out that even though this particular initiative was not adequate, something must be done because circuit courts are definitely not working. As a small community they have experienced many problems that revolve around funding (none), a lack of community support and volunteers to assist the Committee, and a feeling of overwhelming powerlessness when facing the inter-related issues of criminal activity in the community, and wondering 'where to start'.

Conclusions/Issues from the Dialogue:

- **Community specific:**
 - o It is important that a number of options are explored to determine the best one for each community.
 - o As each community is unique, so must be their local Justice Committee (its operation, development, goals and relationship to the formal system).
- **Community driven:**
 - o The community has to be very involved in the design and administration of a local Justice Committee as well as the recommendations that it makes to the court.
- **Justice Committees as a process:**
 - o There are no instant solutions since many things take time to change.
 - o Committee representatives discussed how there have been ups and downs in their Committees operation and such periods of shifting levels of success are normal.
- **Relationship with other agencies:**
 - o The relationship the Committee has with other agencies (the formal system) has to be clear.
 - o Will the focus be on diverting the cases from the formal system pre-charge, or will the focus be post-charge?
 - o In both cases an adequate referral system is required and a good working relationship with the RCMP, courts and Crown must be established.
 - o The courts must ensure that they will give serious consideration to the recommendations the Committee will make.
- **Case-selection:**
 - o The cases that the community will deal with have to be determined in the development stages.
 - o For example will the Committee address minor offences, first time offenders, youth or adult offenders, or both? These are issues that should be adequately examined.
 - o However, as a Justice Committee evolves, so must their offence thresholds and case selection. A case-screening group may be useful in this case. A question that may guide their decision to get involved, suggested by the Iqaluit Adult Diversion Program, may be whether the help of the community (given their resources and abilities in relation to the offence in question) would make a difference for the offender and the victim.
- **Maintaining community commitment:**
 - o Maintaining community commitment to the Justice Committee may be problematic.

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- Strategies for addressing that have to be addressed.
 - Consensus at this workshop was that the Committee needs strong, committed individuals involved.
 - **Options for selecting Committee members:**
 - There are many ways a community can decide who will make up the Justice Committee.
 - The participants held that such a determination should be based on the needs of each particular community.
 - For some local Justice Committees it may be desirable to have the Elders choose members.
 - For others, the Committee should be made up by those who are considered healthy and respected members of the community.
 - Others felt it was important to include those individuals in the community who have recovered from abuse on the Committee, as they may be best able to understand the offender's needs and motives as well as many issues involved.
 - **The important role and needs of the victim:**
 - The victim must not get lost in the focus of healing and reconciling the offender.
-

4.7. Aboriginal Women and Justice –Consultations Inuit Women -1994³⁸.

- An Inuit women commented on the use of circle sentencing and how this has affected her community.
 - "Inuit don't have circle sentencing. We are not Indians. The feds often treat Inuit like First Nations people. I am glad circles are being re-evaluated and a closer look is being taken at the administration of justice. ... Circle sentencing has increased the problem in our communities.
 - Offenders sit in circles and they have relatives.
 - Those relatives have in-laws.
 - They often hold the power.
 - As you said, crime suddenly went way down and we have healed in ten months. Thank you for taking a second look. ... On circle sentencing, no thank-you."(p. 27)
- Fundamental differences exist between the administration of justice, the justice system itself and the needs and wishes of Inuit.
 - Who determines the priorities?
 - A delegate explained that the word "rights" does not exist in the Inuit language.
 - A participant related "we have hurts, problems and obstacles to a group operating effectively."(p. 18)
- A participant noted that "the government officials and judges are telling communities what alternatives to the justice they use.
 - While this is coming from 'well-intentioned outsiders', it is not coming from the community" as it must. (p.18)
- Delegates explained that healing circles and sentencing circles are not part of Inuit culture.
 - One participant stated that "outsiders may think that it's a nice touch" (p. 18)
- The concept of diversion might be more appropriate.
 - They explained that because Inuit have been told how to do things for the last fifty years they have come to expect it. ..Inuit, especially women, are much more likely to assert their views now and that some communities are ready to take over responsibility for some aspects of the administration of justice. (pp. 18)...there are many unreasonable demands put on volunteers in the implementation of alternative justice. They contended that adequate funding and recognition of the value of work done by volunteers is both lacking. People providing these services should be paid for their efforts. (p.19)

³⁸ Department of Justice (Canada), Record of Proceedings: Aboriginal Women and Justice –Consultations Inuit Women, April 6-7, 1994 cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, Inuit Women and the Nunavut Justice System, 2000-8e, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-c.pdf>.

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- "...the Nunavut government could indicate what crimes police should focus on, and subsequently have a significant degree of control of the administration of justice." (p.19)
- When Inuit are charged, for example, with petty crimes for actions that are not considered criminal by Inuit society, such as borrowing, they are totally baffled by the court system and why they are there. The concept of ownership of law determines what becomes the norm and affects priorities such as treating property offenses more seriously than crimes against the person."(p.19)
- Participants held that by not allocating funding for justice initiatives equally among the regions, problems are created.
 - One delegate stated "if you have a group of children and give candy to only two, you have a problem. If you're going to do something somewhere, do it everywhere not only in Iqaluit." (p. 19)
- Participants also expressed that they felt it was unreasonable for southern professionals "parachuted" into communities to expect Inuit people to compensate for their lack of ability to communicate. It was also a problem to expect people to provide this service without compensation. (p. 19)
- Inuit women began this session by raising a number of key points: ...questioning real justice and whose it is; considering the safety of children; and asking who evaluations community values?(p. 30)

"The question of ownership of the law becomes the larger question. Patch-working a system that never applied or worked in the first place is not solution. ...if someone maliciously damages my personal property it is not an offence against the Crown, it is an offence against me and my property. By extension, harm done to a child is also done to a mother. My child is merely a statistic to the legal system. When you own your own laws you can place emphasis on people over property and power. What is valuable in our society is human life. The western world on discovered this recently, and this is not reflected in the Criminal Code. The whole premise of the system is based on something foreign to Inuit, so it will never work. Band-aid solutions will not solve the problem." (p. 31)

I am not afraid of the court system. I might be afraid of having a criminal record and perhaps not getting a nice government job. I would be scared shitless of going before respected elders and having to explain why I had committed a crime. Not only does the southern system impose itself, they try to restrict what we say." (p. 31)

The government has assumed the responsibility for the administration of justice by imposing white male-dominated judicial system on Inuit. Elders were not consulted and were excluded from the process. Whereas the community traditionally would have intervened to maintain social order and safety, the impersonal southern justice system does not make allowances to permit the time or support needed to bring change and does not deal with situations immediately, as would happen in traditional society. (p. 31) It seems society is afraid to say no to anything any more and everyone cites the human rights of the offender if we ask for labour or for restitution. In the Baffin, we can't find anyone to supervise people on fine option. (p.32)

"The cost of maintaining the existing system is not solving the problem. "Will community justice mean inheriting the existing system or will it mean designing a new system."(p. 33)

"I would like to suggest that the process of transferring administration of justice is slowed down until Inuit women are consulted, feel safe and fully involved. I would like to go at the speed of the women, and wait for Inuit women to do their own research and assessment. I do, however, recognize that may not be possible and we must take advantage of the current initiatives." (p.33)

"...the long term solution is that the transfer of the administration of justice must be accountable to Inuit women and their children. There must be participation of women, not just as "victims" but because these policies and initiatives directly impact on all women's lives and further entrench the inequality of women. Many of these policies and initiatives victimize women.

Justice can't be blind when it comes to gender." (pp. 33-34)

5. Relevant Documents, Studies and Practices – Other Canadian

5.1. Restorative Justice - A program for Nova Scotia - 2001³⁹

Community Agencies ⁴⁰

At all four entry points, the referring body (police, Crown attorney, judge, Correctional Services/Victims' Services staff) has the option of referring a case to a community agency.³⁰ Upon referral, agency staff will contact all the parties involved in the case, including the offender, their support people, the victim, and their support people. The staff person will work with the victim and offender to provide the support they need to participate in the restorative forum. Information about the available options will be provided to the parties, and an assessment will be made as to which model is most appropriate to meet their needs. The agency will organize the meeting, prepare all participants, and facilitate the meeting. Agency staff will follow up with the offender and victim, and may refer the offender back to the conventional system if he/she does not comply with the agreement arising out of the restorative forum.

Nova Scotia is presently served by seven alternative measures societies. These societies have an impressive base of volunteers, and have credibility in their respective communities. They have provided a strong voice of leadership in community justice issues in the past, and have expressed an interest in handling more serious offences, and in working more with victims. These agencies have also worked in partnership with the Department of Justice for many years, and are therefore well suited to deliver service in this Initiative.

In some geographic areas, it may be appropriate to utilize other community agencies, or to encourage and support the community in the development of a community justice committee.³¹

5.2. Yorkton Tribal Council, Community Justice Programs - 2001⁴¹

The Yorkton Tribal Council (YTC) Community Justice Project focuses on developing a justice system that is based on Aboriginal culture, values and customs. This initiative is based on the 1995 agreement between federal, provincial and Aboriginal governments to work toward a community-based First Nations justice system.

Program Objectives

Promote public education about alternative measures.
Consult with elders and community members about developing a justice program.

Services Offered in 2000/2001

Services in each community may include:
crime prevention;
public education;
dispute resolution and peace keeping;

alternative measures for adults and youth, including diversion, healing circles and family group conferences;
workshops about crime prevention, the needs of youth, victims services and community corrections; and
community-based support programs for offenders.

³⁹ Restorative Justice - A program for Nova Scotia, Update 2001, <http://www.gov.ns.ca/just/rj/rj-update.htm>

⁴⁰ <http://www.gov.ns.ca/just/rj/rj-framework.htm>

⁴¹ http://www.saskjustice.gov.sk.ca/branches/Comm_Services/justice_programs/yorkton.htm

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Caseload

Up to nine training sessions about mediation and family group conferencing or community accountability conferencing for members of each community justice committee. Up to nine workshops on crime prevention, youth programs, victims services, corrections programs, and other community-based services.

Yorkton tribal Council operates the Yorkton Alternatives Measures Program, which will complete up to 100 adult alternative measures cases.

Program Organization and Management

The Yorkton Tribal Council Justice Network includes representatives from each Community Justice Committee (CJC) and a representative from the city of Yorkton. The Justice Network and Elders guide the Justice Co-ordinator and the Tribal Justice Committee in all of their activities.

The Justice Initiatives Co-ordinator, who reports to the Yorkton Tribal Council Director of Operations, takes the lead in developing the justice program. Two Assistant Co-ordinators work with the Community Justice Committees and a Clerical/Administrative Assistant helps with justice activities and performs office duties.

Up to 100 adult cases will be completed.

Program Organization and Management

The Yorkton Tribal Council oversees all aspects of the diversion program. Representatives from the Yorkton Tribal Council, Saskatchewan Justice, the RCMP, Social Services and the Crown Prosecutor's Office form an Advisory Committee that provides advice about the program and works to strengthen relationships between these agencies. An Alternative Measures Caseworker develops the program and supervises two alternative measures caseworkers.

5.3. Making It Safe: Women, Restorative Justice/Alternative Dispute- 2000⁴²

What formal complaint mechanisms allow parties to register difficulties encountered with the program or its staff during the process?

Family Disputes

What are parties told about the limits of confidentiality? When are they informed about this?

What information is given to parties about possible consequences of disclosure of facts in the mediation process? Who gives this information? When?

What information is given to parties about how information revealed in mediation might be used if the mediation terminates without an agreement? In subsequent court proceedings?

How is full disclosure of financial statements ensured?

Criminal-Type Conflict

What are both the victim and offender told about the limits of confidentiality? When are they informed about this?

Are the limits of confidentiality discussed with all participants involved (eg. all those in a sentence circle)?

What information is given to the victim about the possible consequences of disclosure of facts to the offender and others involved? Who gives her this information?

What information about the implications of disclosure of facts and admissions of responsibility are given to the offender?

5.4. Aboriginal Justice Strategy (AJS) Evaluation – 2000⁴³

- In some communities, they were identified incidents where the mainstream justice personnel were referring cases to community justice projects that they were *not equipped* to deal with.

⁴² Provincial Association Against Family Violence, Newfoundland and Labrador Making It Safe: Women, Restorative Justice and Alternative Dispute July, 2000, <http://www.nfld.com/~paafv/>

⁴³ Department of Justice Canada, Evaluation Division, Final Evaluation Aboriginal Justice Strategy, Technical Report, October 2000

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- The community justice workers indicated that it is difficult to turn such cases away, as they believe it will reflect poorly on them.
- On the other hand, to accept such cases, but be unable to provide adequate services to a client, can lead to victim and community dissatisfaction, decreased support and doubts in the minds of mainstream justice workers.
- This type of situation reveals the necessity of open communication and trust between project and mainstream justice staff.
- Ideally, the community project should have capacity to continue the project competently regardless of turnover in project staff or mainstream justice staff.
- However, there continues to be a concern that certain individuals are the keys to project success.
- It appears that some of these individuals are taking on too much, have high stress levels and liable to burnout, but continue to lack replacements

5.5. Aboriginal Justice Strategy (AJS) Trends -2000⁴⁴

5.5.1. Program Growth

Province/Territory	# of Programs		
	1996-97	1997-98	1998-99
British Columbia	2	2	7
Saskatchewan	15	17	22
Manitoba	1	3	6
Ontario	3	5	7
Quebec	0	0	1
Nova Scotia	1	1	1
Newfoundland	1	0	0
Nunavut	0	4	6
Northwest Territories	0	5	6
Yukon	3	5	6
TOTAL	26	42	62

- Each year the number of programs funded by AJS has increased.
- The most growth, by year, took place in fiscal year 1998-99 where the number of programs funded increased from 42-62

5.5.2. Sponsor

Sponsor	# of Programs		
	1996-97	1997-98	1998-99
Aboriginal Agency	8	14	20
Band/First Nation	11	15	22
Justice Committee	0	2	2
Municipality	0	4	6

⁴⁴ Department of Justice Canada, The Aboriginal Justice Strategy: Trends in Program Organization and Activity 1996-1997, 1997-1998 and 1998/1999, Prepared for the Aboriginal Justice Directorate, Department of Justice Canada by Naomi Giff, March 10, 2000 -

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Sponsor	# of Programs		
	1996-97	1997-98	1998-99
Tribal Council	7	7	12
TOTAL	26	42	62

- The sponsor of the project is the organization that enters into a contribution agreement with AJS and the province or territory. There are five identified project sponsors: First Nation/Band Council, Justice Committee, Municipality/Hamlet, Tribal Council, or Aboriginal Agency (eg. Friendship Centres, Corporations, Woman's organizations.)
- The most common sponsors nationally were First Nation/Band Council and Aboriginal Agencies, sponsoring 22 and 20 projects respectively as of 1998-99.

5.5.3. Program Structures

- There are a variety of ways in which project developers organize the project and the name they choose to assign it.
 - The choices are not restricted since it is determined at the community level.
 - Although there is quite a bit of overlap between these forms of organization (for example, between community justice committees, diversion committees, and tribal justice committee) they are included to show the breadth of choices that have been made and the structures that have been chosen, not assigned.
 - Naming plays an important role in making a project relevant to the community as possible.
 - By far the most common structure is a Community Justice Committee, with 25 operating by 1998-99.

5.5.4. Workload:

- The workload of the Justice Coordinators is very heavy and multi-faceted.
 - They do a lot of work as seen in their job description and activity reports.
 - They are also (generally) not paid very much.
 - They are often swamped with paperwork and have a number of varying reporting requirements to meet that takes up much of their time.
 - They act as liaison, they assist and organize the community justice committee, they collect and disseminate community needs, they represent the community and they consult with the community.

5.5.5. Reintegration Activities

- There are a variety of **reintegration activities** being reported on and projects that are engaging them.
 - In 1996-97, 10 projects reported engaging activities to assist the offender reintegrate back into the community (38%). In 1997-98 that figure was 18(43%) and in 1998-99, 24 projects (39%) reported such activities.
 - By 1998-99 at least half of the projects in Nunavut, the Northwest Territories, Nova Scotia and British Columbia are engaging in reintegration activities.

5.6. Restorative Justice – Identifying Some Preliminary Questions, Issues/Concerns - 1998⁴⁵

Screening for Appropriateness

- The use of screening tools to determine participants' appropriateness for a particular restorative program or the need for specialized support services also raises a number of questions and issues including:
 - Have separate tools been developed for victims and offenders?

⁴⁵ 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

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- Do these tools assist in identifying mental health problems and/or leaning disabilities which may make the participant an inappropriate subject for a restorative program or identify the need for specialized supports?
 - Do victim-oriented tools expressly assist in identifying histories of victimization – particularly with respect to sexual offenses – of prospective participants?
 - Do offender-oriented tools identify obsessions and typologies of those offenders who engage in behaviours like criminal harassment?
 - Consider developing and implementing policies and procedures with respect to the following:
 - Confidentiality
 - Criminal Record Checks
 - Reference Checks for Volunteers
 - Record Management
 - Complaints, Critical Incidents and Liability
 - Program Evaluation
 - Conflict of Interest
 - Specialized training needs
-

5.7. Developing/Evaluating Justice Projects in Aboriginal Communities - 1998⁴⁶

- **Membership** Need to select the right staff
 - Past justice initiatives typically have entailed the hiring of one or two staff persons to coordinate developments, provide services and the like.
 - With the limited resources made available, the short-term time frame, and the combination often of high expectations and 'lots to do' (either because of little other programming or lack of effective collaboration of community programs), the need to select the right person(s) is very crucial; often the wrong choice is fatal for the project.
 - A selection committee should determine the kind of program/project objectives and processes desired, the kind of person(s) most suitable under those circumstances, and then arrange for a selection process.
 - Equity in carrying out a program is a key to the legitimization of authority
 - While it is expected that all Aboriginal justice initiatives will have the formal approval of chief and council, the legitimization of their authority in the community (and certainly the level of respect for the program and its staff) will also depend upon how effective the staff have been in treating cases and persons equitably (i.e. being fair to all participants and treating all persons equally insofar as the case circumstances and community-sanctioned bio-social statuses are similar) and in communicating that accomplishment to the community at large.
 - This accomplishment is always difficult and perhaps especially so in small communities where kinship ties are dense and where formality and distant relations between staff and service users are less likely.
 - Where equity has not been seen to have been achieved (e.g. several diversion projects) the Aboriginal justice initiatives have faltered but its achievement can effectively cancel out many other project shortcomings.
-

⁴⁶ Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, Themes from the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

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5.8. Planning/Evaluating Community Projects - 1998 ⁴⁷

- **Who Should Organize the Program:** There are many different ways of organizing restorative justice initiatives.
 - In some communities, band leaders have identified justice problems and developed initiatives to solve them.
 - In other places this organizing role has been played by teams of social service workers, community groups, churches, or justice officials.
 - Several communities have built successful programs by establishing community justice committees.
 - In Figure 1⁴⁸, Judge Barry Stuart, a leading advocate of Aboriginal restorative justice programs, outlines how and why to build such a committee based on his experiences in the Yukon. – (see above under Yukon section)

Planning Checklist

Step 1: Identify and Describe Problems and Needs

This is your **research** stage. Crime and justice statistics and consultation with the community are used to define crime and justice problems in their community context, to establish priorities, and to describe the key aspects of these priority problems through detailed problem analysis. The result is a precise statement of the problem(s) you wish to address.

Setting Program Priorities

If there are several unmet needs, you will have to **set priorities**, as it is not advisable to take on too many problems at once. Several factors should be considered when you determine your priority problems:

- First, if possible you should address the problem that is of greatest concern to your community. The consultation that you did as part of your community needs assessment will have identified the problems that are of greatest concern.
- Second, you must ensure that your community has the capacity to deal with the problem you select. If you decide to take on a problem that demands more human and financial resources than your community can provide, your program will almost certainly fail. It may be best to begin with modest goals and to build on success when tackling larger issues. For example, you may wish to gain experience using restorative justice programs for minor offenses before facing with the challenges of supervising long-term serious offenders within your community.

The product of the first phase of your restorative justice planning process is a community justice needs assessment that is based on your community's problems and the programs available to meet those problems. In this stage you should have completed the following steps:

⁴⁷ 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>

⁴⁸ Stuart, Barry. 1997. Building Community Justice Partnerships: Community Peacemaking Circles. Ottawa: Aboriginal Justice Learning Network, Department of Justice.

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gathered information about your community's justice problems and needs in sufficient detail that you can assess their relative seriousness using data from a variety of information sources.

gathered information about your community in order to understand the community characteristics that may affect criminal justice problems and programs.

prepared an inventory of justice/corrections and related services to determine the agencies and programs in your community.

prepared a community needs assessment that has identified the gap between needs and available services - once you have identified your community's priority problems you will want to analyse these problems in detail before you begin working on solutions.

Product: **Community justice needs assessment** statement describing your problem in as much detail as possible.

Step 2: Develop An Action Plan

This is your **strategic planning** stage. The product of the second phase of your planning is an action plan describing in detail the programs/approaches to be carried out along with a list of those who are to participate. It will also include a statement of goals and objectives and a detailed work plan to help in the implementation of the action plan. In this stage the following steps should have been completed:

defined the boundaries of the community the program will serve.

selected the participants who will be involved in the planning and implementation of your program.

Who is in the best position to help you deal with the needs and problems you have identified? Some will already have been involved in the needs assessment stage of the planning process. If a steering or planning committee has been responsible for this stage of the planning, at least some members of this committee will likely form part of the group that will be responsible for the rest of the work.

One factor that you must consider in selecting participants is that responsibility for justice issues is shared among a number of different orders of government. Programs can operate at the national, provincial, city or town, band, or community group levels. This means that programs will involve partnerships between a variety of different groups and organizations. For example, in establishing the Community Holistic Circle Healing program to deal with the problem of sexual abuse in and/or around the Hollow Water First Nation in Manitoba it was necessary to work with several federal and provincial government departments as well as to develop the program at the community level (Lajeunesse, 1993). At the federal level, the RCMP were responsible for policing the community; Health and Welfare Canada provided psychological counselling and assessment services; and, the NNADAP worker was a member of the team coordinating the program. At the provincial level, the judiciary and Crown Prosecutors had to agree to refer offenders to the program rather than dealing with them in the normal fashion. Probation Services were involved because offenders normally received the disposition of probation. Child and Family Services were involved because the program was directed at sexual abuse and family violence. A variety of people, including members of the Southeast Tribal Council were involved at the local community level where program services were actually delivered. Finally, while not all community members were formal participants in the program, all had to support the offenders and victims who lived among them or the program could not have been successful.

Because of its size and scope the Hollow Water program also had full-time staff, specifically seven full-time family violence workers, and an administrative assistant. In addition there were some community volunteers.

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A final factor that should guide the selection of participants is that you have representation from all segments of the community. Women and men should be represented, along with representatives of as many of the community's families as possible. This will ensure that justice programs operate in the interests of all community members and do not favour members of one group over others.

Your own decisions about program participants must be based on your local circumstances including the nature of your problem, the financial resources available, and the degree of participation you can expect from members of your community and the agencies that serve them. It is important that you determine who will represent the community in developing and applying community justice responses.

Consider the following simplified case:

Your planning group has found that your community has a problem with offenders who continually victimize other community members. Most of these repeat offenders have alcohol problems. These offenders are shunned by most other community members, but this only serves to isolate them further. The justice system has not handled these offenders in a satisfactory manner as cases take a long time to resolve and offenders often continue to cause trouble in the community while awaiting the disposition of their cases. They sometimes go to jail but when they come back the cycle of offending continues. Victims of their crimes are very dissatisfied with the justice process. Your planning group finds there are no supervisory or treatment programs in the community and a long waiting list for alcoholism treatment. The group decides that you would like to introduce a program that is culturally-relevant, that helps the offender reintegrate into the community, and that gives the victim a much larger role in the process. Following this needs analysis, you have determined that your program will be targeted at residents of your reserve.

Your next task is to decide who you want to participate in the rest of the planning process. One category of participants will be representatives of different components of the criminal justice system including the police, the judiciary, the courts, and the correctional system. You should also include people from the reserve such as band officials and elders along with alcohol and drug counsellors. It is crucial that the interests of victims should be represented. One of the best methods of mobilizing community members is to use existing community groups. Groups such as support groups for domestic violence victims that have the mandate of dealing with justice-related issues can be a good source of interest and expertise for new programs.

For each potential participant, you can outline the task to be performed or the role to be carried out. You also should think about the reason why the potential participant should get involved. Not everyone has the time, the interest, or the motivation to become involved so you must be prepared to make a strong case to them to convince them to help with your program. Also, restorative justice is an innovative alternative to normal correctional and court practices and the mainstream system must adapt to new methods such as mediation and community involvement in sentencing. Thus you should be prepared for resistance from some of those working in the justice system and you must have a strong case in order to obtain their participation and commitment.

The role of the federal and provincial governments is particularly important. Governments have a number of incentives to move toward greater use of restorative justice practices. In an era of cost-cutting, some governments have recognized that alternative justice methods can save money. Also, despite the get tough rhetoric of many politicians and community members it is clear that sending more people to jail for longer periods of time is not the most cost-effective means of reducing crime (Donziger, 1996). The failure of the justice system to deal with crime and to deal with the harm done to victims opens the door for alternative approaches to justice. Governments have taken some steps that will facilitate restorative justice programs. For example, the governments of Quebec and New Brunswick have both moved to close institutions and to

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deal with more offenders in the community in order to save money and to allow the use of alternative approaches. Federal legislation including the Young Offenders Act and the recently enacted conditional sentencing legislation have given judges and communities the legal tools necessary to make use of restorative approaches.

determined the type of program that will best meet your community's needs.

Once you have decided who will participate in the rest of the planning and implementation process, you must decide what type of program you will implement. A program can be defined as the activities undertaken by your community to accomplish a particular objective or set of objectives. This definition is very simple, but it is also very important because it assumes that anyone planning a program will be able to specifically state their objectives. This statement of objectives will be important in keeping your program on track. It will also act as the basis of your program evaluation as the actual results of your program can be assessed against its objectives to see if changes are needed.

Several types of restorative justice programs have been traditionally used in Aboriginal communities and you will likely be able to adapt one of these programs to your community's needs. The research that has been done on these programs tells us they can be effective only if they are implemented properly. Those who are planning restorative justice programs can learn from the lessons of others who have implemented such programs. In this section of the manual, we will describe how these programs work, briefly review some of the research on each of these programs, and point out the lessons learned for those who wish to implement restorative justice programs. While these programs are popular ones, you should not feel limited by what has been done elsewhere. Because each Aboriginal community has its own history, cultural traditions, resources, social problems, and administrative capacities programs that have been successful in one place may fail in another. Members of your own community will have the best idea of what will be most successful in resolving your unique problems.

All of these programs are intended to reduce the use of imprisonment in Canada. Prison remains the cornerstone of the criminal justice system (The Church Council on Justice and Corrections, 1996) but the use of imprisonment is costly to the state and to the individual and does not provide satisfying justice to our communities. Whether programs involve community-based probation, healing circles for incarcerated offenders, or diversion of young offenders from the system, they are intended to reduce the likelihood or the duration of confinement.

specified the goals and objectives that will guide the implementation of the program.

Set Goals And Objectives

You have now designed your program. To guide the implementation of that program and to provide a basis for evaluation, you must establish goals and objectives. Definitions of these terms vary, but here **goals** refers to the final aim of your program (e.g. to reduce recidivism among offenders and to increase victim satisfaction with the justice process) and **objectives** refers to the specific tasks that must be accomplished in order to implement your program (e.g. to have the agreement of judges, prosecutors, and police to participate in circle sentencing by April 1). Setting realistic targets for goals and objectives is important. It is better for the morale of participants, most of whom will be volunteers, to exceed modest goals than to fall short of more ambitious ones.

Once you have established your goal or goals, you need to consider the objectives that must be accomplished in order to reach your goals. The more clearly you think through these objectives, the easier will be your implementation. Your planning team should develop an action plan like that set out in Figure 6.

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You should specify who is responsible for each objective and how the objective should be carried out. In many cases, once you have broken down objectives and responsibilities you will have to reach agreements with those who are responsible for these tasks. For example, when dealing with the formal justice system you should develop written agreements and protocols to clarify the roles and responsibilities of all involved with the project. When dealing with criminal matters, some of them potentially quite serious, it is important that proper procedures and processes be followed.

Figure 6

Goal To Be Accomplished

Objective

Who is Responsible for Objective?

Procedures for Carrying Out Objective

Your action plan must also specify the dates by which each objective must be met. For example, assume your community has decided to implement a victim-offender mediation program for minor property offenders. You plan to begin the program on September 1. You have determined your objectives and developed the following action plan that will guide program implementation:

OBJECTIVE 1:

Complete negotiations with judges and prosecutors on the circuit court to ensure their cooperation with the program by x.

ACTIVITY 1

Planners will meet with judges and prosecutors. The discussion will involve describing the rationale for the program, discussing the views of the judges and prosecutors, and obtaining their formal agreement to participate in the program.

OBJECTIVE 2:

Prepare forms for recording case information by x.

ACTIVITY 2:

Determine what information you wish to record and develop the form. Make arrangements to have the forms printed and distributed to program administrators.

OBJECTIVE 3:

A location must be found for mediation sessions by x.

ACTIVITY 3:

Look at possible locations for mediation sessions and negotiate the use of your preferred location.

OBJECTIVE 4:

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Training of paid and volunteer mediation staff must be completed by July x.

ACTIVITY 4:

Develop a training package for all those who will be involved with the program. Find instructors and ensure they are familiar with your community and with the specific program you will administer. Find a location for training and run training programs. Evaluate the training to ensure that staff have obtained the necessary skills to administer the program.

This is only a partial list of the objectives and activities, but it illustrates the point that each program component has an objective and each objective has an activity or activities. The explicit statement of objectives and activities clearly tells everyone exactly what must be done. In cases where you have not achieved all your objectives, problems can be pinpointed and adjustments made before the final outcome of your program is jeopardized.

prepared a work plan to establish duties and tasks and to act as an implementation timetable.

After you have prepared your action plan with times and tasks specified, you should put the information together in a work plan which will enable you to tell at a glance if your work is proceeding on schedule. This plan will set out duties and tasks and will act as an implementation timetable. While such plans should have some built-in flexibility, planners should clearly specify the dates by which the various activities should start and finish.

completed a funding proposal to obtain the funding needed to establish and to operate the program.

Action plan

Step 3: Implement Your Program

This is your **action** stage. The product of the third phase is an operational program that the group has implemented. In this phase you should have:

obtained the support of community members who will be involved as volunteers.

carried out a public education campaign to inform the public about the aims and operation of the program.

trained program staff in the goals and methods of the program.

decided if the implementation of the program will be phased in or the entire program implemented as soon as possible.

Should You Phase-In Your Implementation?

If you are planning a large, complex program you may wish to implement it in several stages. There are several ways of doing this. First, you can carry out a pilot project in which you implement the program on a smaller scale and carefully evaluate the program

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and its results. Second, if your program is in several communities or different parts of the same community, you can phase the implementation geographically rather than trying to do it all at once. This will allow program organizers and workers to get comfortable with the program at a manageable pace and to make necessary changes before the complete program begins. Finally, if your program can be broken into distinct stages, you can implement it one step at a time. For example, in a victim-offender reconciliation program you may wish to limit the program to a few minor offenses before you move on to more serious crimes. You must also ensure that you do not allow unrealistic levels of referrals that will overwhelm your resources. A workload that is too high will over-extend your resources and diminish your chances of success.

Implemented program

Step 4: Monitor And Evaluate Your Program

This is the **assessment** stage. The product of this final phase of the process is the information necessary to determine whether your program has been properly implemented, if the program should continue, and how it should change. In this stage, the following steps should have been completed:

monitored the program's implementation.

evaluated the program's impact.

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

Product: Information to determine whether your program has been properly implemented, if it should continue, and how it should change.

5.9. Neighbourhoods Take Charge in Stopping Crime -1998 ⁴⁹

After two years of operation, the South Ottawa Committee Justice Committee (formerly the Russell Heights Committee Justice Committee) is deemed a success by project coordinator Douglas Henderson. The South Ottawa CJC was the first of its kind in Ottawa and is spawning the birth of another in the Ottawa community of Southgate.

The South Ottawa CJC was born in response to frustration at the ineffectiveness of the formal justice system. "The whole idea is to stop the young offender from committing further offences, to stop the cycle that happens where they get involved in more serious crimes," says Henderson. "Communities feel their concerns go unheard and feel increasingly helpless as they watch their young people become embittered and harder to reach." Victims' voices are also

⁴⁹ McDonald, Melissa, Neighbourhoods Take Charge in Stopping Crime, Peace and Environment News, November 1998 <http://perc.ca/PEN/1998-11/s-mcdonald.html>

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heard in a community justice committee, something that only happens in the formal system at sentencing if the victims choose to give victim impact statements.

First time young offenders who have been charged with minor assault or property crimes can be diverted by police to the CJC if the offender and victim agree to this.

A core committee made up of community volunteers meet and interview the youth who has committed the offence. If appropriate, the offender will be invited to take part in a sentencing circle, which is a system of justice inspired by Aboriginal justice models. Key people who have a positive influence in the offender's life are also invited to join the circle.

In the circle, everyone participates equally in the discussion of the case. An appropriate sentence is then agreed on by consensus. Sentencing can include an apology to the victim, community service work, drug and alcohol treatment sessions or any other from a host of options.

CJCs depend on volunteers from the community, but as Mr. Henderson notes with some frustration, "People move on." Volunteers undergo mediation and crisis intervention training as well as training in justice system issues. As the South Ottawa CJC has progressed, there has been a turnover of volunteers, requiring further expansion, recruitment and training of people. At the same time the committee has expanded its catchment area beyond Russell Heights to include other areas of south Ottawa.

To date three cases have gone through the system. "Some are more successful than others," says Henderson. The success of the program, however, can be far-reaching. Henderson talks about the ripple effect of the program. In one case, he reports that an offender went through the system and as a result his mother went on to do a parent training course.

A second Ottawa community justice community is being developed in the Southgate area of Ottawa. "There is more structure involved in this CJC, whereas the South Ottawa CJC was more community driven in the beginning," says Mr. Henderson. With the support of regional councillors Diane Deans and Dan Beamish, the process of recruiting community volunteers should begin in late October. Funding has been provided by the Ontario Trillium Foundation.

"I believe in the concept so much, it's nice to be involved," says Henderson. "CJCs are viable, but if we want to reconnect youth to the community, they do take some work. The formal justice system is just not working and [the system] must trust that the community has the wisdom, capacity and knowledge to deal with crime."

A manual on how to set up a Community Justice Committee is being developed by the Crown Attorney's office and should be available in November. Call Southeast Ottawa Community Services at 521-9100 for information on its availability.

5.10. Seeking Change: Justice Development In LaLoche, Saskatchewan -1997 ⁵⁰

This report is a short case study of crime, criminal justice processing, and justice developments in a northern non-primary resource Dene community in Saskatchewan. Laloche has a very high crime rate which generates a high rate of incarceration. The chief offenders are young male adults, ill-educated, underemployed, and prone to recidivism and to a high level of court-related offences (e.g. fail to appear, breach of probation) and person offences. The author examines justice developments including the umbrella Community Development Corporation, the Community Justice

⁵⁰ LaPrairie, Carol. *Seeking Change: Justice Development In LaLoche, Saskatchewan*. Ottawa: Department of Justice, 1997 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/c199805/c199805.htm>

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Development Worker, and Alternative Measures, and makes recommendations for both these latter initiatives. She also stresses the need for greater collaboration between the criminal justice system and the community as well as between the police and the community.

In discussing this troubled and welfare-dependent community the author reports on the decline of community and communitarianism that presumably have accompanied material improvements and other facets of modernity, but she is careful to delineate both community strengths and the factors conducive to crime and disorder. LaPrairie emphasizes that the community's informal mechanisms of social control and dispute resolution are quite weak and there tends to be a lack of communication, apathy, and a small volunteer base for boards and other community activities. There is a great dependence on the police (RCMP) "for a huge variety of things" and the police in this busy detachment have not initiated formal cautioning or diversion programs nor become involved in activities such as the Aboriginal Shield Program for schools. The author identified the special crime problem as young male adults who are repeat and chronic offenders, and their marginalized families.

LaPrairie describes the LaLoche Community Development Corporation (CDC) as heavily engaged in justice-related initiatives but suffering from the common problem of attempting too many things at one time. One of its projects is the justice development worker program but there is ambiguity in it concerning mission, direction, and accountability. Similarly, there is a lack of networking on the part of the CDC and/or justice worker with officials of the criminal justice system who expressed both a willingness to become involved and a surprise about the lack of contact. LaPrairie suggests a need for a communications strategy, and, as noted above, also advances recommendations to improve the two main justice initiatives, namely the justice worker program and alternative measures.

5.11. Shubenacadie Band Diversion Program: Final Report and Overall Assessment -1996⁵¹

This monograph provides an assessment of the last year of the Shubenacadie Band diversion project and then provides an overall assessment of the four year project. The last year was one of stress and uncertainty as the project limped to its end. The penetration rate of the project was disappointingly low and the return of cases to the provincial criminal court because of non-attendance or non-compliance was disappointingly high. While offenders, victims, and the community in general still supported the diversion concept, its implementation left much to be desired because there was little community involvement, an aura of secrecy, little networking with Justice officials, and a lack of morale associated with the organization's passivity (the style was to wait for cases to be referred by the Crown and not to pursue cases nor exhibit high visibility). In the second part of the monograph this project is discussed in the more general context of restorative justice and diversion strategies which were initiated throughout North America in the 1970s and 1980s (pre-family conferencing) and its similar "administrative justice" thrust (i.e. cases are handled by program staff rather than at open court or with much community participation) is highlighted.

5.12. Justice Development Workers - 1995⁵²

This paper presents a basic bare-bones review of federal and provincial projects generating justice development workers in Aboriginal communities. Using a mailed questionnaire the views of seventeen justice development workers (variously called justice coordinators, facilitators, researchers) were obtained. These data were supplemented by information from a

⁵¹ Clairmont, Don. *Shubenacadie Band Diversion Program: Final Report and Overall Assessment*. Halifax: Tripartite Forum on Native 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>

⁵² Campbell, Jane and Associates. *Justice Development Workers: Review and Recommendations*. Ottawa: Justice Canada, Aboriginal Justice Directorate, 1995 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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few community managers and a handful of funding officials. The primary role of the justice worker in practice was seen to be serving as a bridge between the community and the external justice system, filling service gaps, more than doing community justice development. Major problems included the implications of short-term funding, and the lack of training for most workers. Still, a number of interesting initiatives were launched by the justice workers and they clearly found lots of useful justice activities to focus upon, usually stretching their initial mandates. Apparently, too, the communities supported and valued the projects as did the external justice officials. The report highlights the factors that have led to successful justice worker programs (e.g. community participation, formation of justice committees, good pre-implementation work, good communications to the community) and correspondingly, factors that were associated with the least successful programs (e.g. lack of clearly stated objectives, poor communication of the project's mandate and limits). The report also calls attention to the importance of in-service training, networking with the external justice system, and collaboration with other service providers in the community.

5.13. The Hollow Water Community Holistic Healing Program - 1995⁵³

Hollow Water is located 150 miles northeast of Winnipeg in Manitoba. There are four communities with a total population of about 1500 involved in the Community Holistic Circle Healing Process (CHCH). This program has been developed entirely by the community. The emphasis in the process is on healing and restoration, rather than punishment. It uses the authority of the legal system when necessary, but concentrates on restoring harmony and balance and on the healing of the victim and the offender. The CHCH is based upon the Anishnabe principles of respect, caring, sharing, kindness, honesty, strength and humility. It recognized the four parts to a person, the physical, the mental, the emotional and the spiritual. It is believed that neglect of the emotional and spiritual aspects of life has led to the social problems CHCH was created to address.

In 1984, community members embarked upon a process of trying to identify the nature of their community's problem, determine the causes, and work toward the development of solutions. This started them on the road to their "Community Holistic Circle Healing Process". This process had developed, largely as a response to the community's identification of sexual abuse as one of the primary underlying causes of the social problems. In developing the response, the community concluded that it would be necessary to coordinate the various agencies of the community. An extensively trained assessment team, currently made up of 24 members, including NADAP, Child and Family Services, RCMP, Southeast Tribal Council, volunteers, Sexual Abuse Workers, etc. forms part of the process. The majority of the members are women. A protocol was developed by the Assessment Team outlining a 13-step process which focused on protecting the victim, confronting the victimizer, providing support to the victim, the families, identifying the needs of and providing resources to the victimizer, the victim and their families, through to the development and implementation of a healing contract. This protocol between Hollow Water and the Manitoba Department of Justice formed the basis of the relationship between the justice system process and the community process.

For a victimizer to be entitled to participate in Circle Healing, he must accept responsibility for his action. In "justice" terms, this translates into a requirement that the accused plead guilty. If the accused does not agree to the community process or does not plead guilty, the Crown will pursue the prescribed penalties of the justice system. After a disclosure is made to the community's assessment team, the matter is reported to the RCMP. While community processes commence, the RCMP investigate the matter and, where appropriate, charges are laid. Although there is no intention to interfere with the accused's legal rights, a guilty plea is expected within a reasonable time. Normally this would occur

⁵³ Michael Watson (Manitoba, Canada) *cited in* The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>

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after the initial assessment, the results of which are referred to the Crown. Then, subject to the limitations of the protocol, the Crown indicates its position on whether to agree to the community approach.

After a guilty plea is entered, there is a lengthy remand, largely to complete an intensive evaluation but also to start the healing process. At the end of the evaluation, the assessment team prepares a report for the court with its recommendation for sentence. This usually involves a suspended sentence with a lengthy period of probation. The probation conditions will include strict requirements for continued participation in the community process, usually for a period of three years. This practice was developed in response to community expectation; the sentencing process takes place in the form of what has come to be known as a sentencing circle. The normal range of sentence for many of these offenses, if committed in other communities, would be from three to five years of incarceration. The higher courts have not had an opportunity to pass judgment on this conscious decision to by-pass the sentences which they have prescribed, a decision the Manitoba Department of Justice is prepared to argue. There is currently an extensive evaluation process underway and it is hoped that the Court of Appeal will not have any Hollow Water cases reach it until after the completion of the evaluation.

5.14. The Canim Lake Family Violence Program - 1995⁵⁴

Canim Lake is a small community in the British Columbia Interior. The majority of the adult population went to Indian residential schools. In a community-driven research study, it was found that 83% of the population have a history of alcohol and drug abuse, 70% experienced sexual abuse and 15% admitted to sex offenses. The Canim Lake Family Violence Program, which has taken five years to develop, is a diversion and treatment program for sexual assault and abuse. It was spearheaded and planned mostly by the women and victims of the community. There is a community oversight committee.

The program consists of seven phases, each dealing with problems of personal violence. It requires complete disclosure of sexual offending by abusers, confirmed by polygraphs. It uses deferred reporting in order to allow abusers to participate in the program. Structured groups formats characterize the primary intervention. "Community living contracts" and monitoring by polygraphs are part of the treatment and renunciation process. Crisis intervention training for community members is an integral part of the program. The program has accepted self-referrals, and has started youth groups and elders groups.

The program has developed supportive relationships with the official agencies. A protocol is signed between the Canim Lake Band and the British Columbia Ministry of Attorney General for the guarantee of the rights of the accused and victims. The Band successfully lobbied for a full-time RCMP officer and a half-time probation officer for Canim Lake, and for court sittings in the community. It receives strong support from provincial social departments, and liaises with provincial and federal boards of parole for community input into parole decision-making.

⁵⁴ Charlene Belleau (British Columbia, Canada) *cited in* The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>

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5.15. Community Is Not A Place: A New Look At Community Justice Community Council Reports 1993-1995⁵⁵

Aboriginal Legal Services consists of a courtworker program, an Aboriginal legal aid clinic, a training program for court workers, an inmate liaison program, and a diversion program. This latter intervention diverts adult Aboriginal offenders in Toronto before their cases get processed in court. The protocol established with the federal and provincial governments is quite broad excluding only the most serious offences and incidents of family violence. In most respects the program is quite similar to other major Aboriginal adult diversion programs (e.g. Indian Brook, Nova Scotia) in terms of protocol, selection of panel members, post-charge referral, format of the hearing, minimum involvement of victims, types of dispositions, budget level, and pivotal status of crown prosecutor. It differs in having a broader eligibility for offences, in its handling of cases where the disposition is not completed, in the pattern of offences dealt with (primarily theft, prostitution, and court offences), and in its aggressive advocacy and pursuits of cases for diversion. Extensive data are systematically compiled on the socio-demographic characteristics of clients, type of offences involved, dispositions rendered, completion rate, and recidivism. It has been one of the most successful Aboriginal adult diversion programs initiated in Canada.

5.16. Considerations for Achieving "Aboriginal Justice" in Canada -1993⁵⁶

Diversionary Model – Southern Island Tribal Council, British Columbia

- Another variant of the community input theme, but still within the confines of the Euro-Canadian justice process, is evident in the diversionary scheme developed by the South Island Tribal Council in conjunction with the federal government and the Provincial Court.⁵⁷
- This is a programme you may well be familiar with, since it has received considerable press coverage in both the *Globe & Mail* and the BC papers.
- I do not have the time today to discuss the South Island project in great detail, but it may be considered a step beyond "sentencing circles" insofar as any aboriginal person who met criteria set by the elders for diversion, was dealt with entirely by members of the First Nation, and never by a Provincial Court judge.
- Whether the project was enjoying success or not depends on whom you ask, but an interesting element of this project is that it is now on indefinite hold, having been de-railed by members of the community who were concerned about the way certain cases were being resolved.

⁵⁵ Aboriginal Legal Services of Toronto. *Community Council Reports, Quarterly Reports, 1993-1995*, Toronto 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>

⁵⁶ Ted S. Palys, School of Criminology, Simon Fraser University Considerations for Achieving "Aboriginal Justice" in Canada presented at the annual meetings of the Western Association of Sociology and Anthropology, held in Vancouver, British Columbia, in 1993. <http://www.sfu.ca/~palys/wasa93.htm>

⁵⁷ Tennant, Paul. (15 April, 1992). Programme Review: The South Island Justice Education Project. Unpublished manuscript, prepared for funding agencies (primarily the federal Department of Justice). (Professor Tennant is in the Department of Political Science at the University of British Columbia.) cited in Ted S. Palys, School of Criminology, Simon Fraser University Considerations for Achieving "Aboriginal Justice" in Canada presented at the annual meetings of the Western Association of Sociology and Anthropology, held in Vancouver, British Columbia, in 1993. <http://www.sfu.ca/~palys/wasa93.htm>

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- I have no problem with that insofar as the decision to de-rail was undertaken by members of the community who felt that their perspective was not being addressed in the project.
- Instead, my concern is that the power to proceed or not has been returned to the federal government - who had funded the scheme - rather than being left for the community to determine its own resolution.
- At South Island, assuming the project ever gets back on track, the issue will arise when the Tribal Council declares its readiness to handle all cases involving aboriginals without any governmental intervention or blessing required.

In any event, all the projects I have noted to this point are projects that focus on "crime" as defined by the Criminal Code and its officers, albeit with varying amounts of aboriginal involvement and responsibility for key decisions about process and outcome, and it is noteworthy that all have received support from the federal government, whether directly in the form of funding, or indirectly in the form of apparent consent with the practices being engaged. My main point is that the government has found funding to support these initiatives, none of which poses any immediate threat to its decision-making supremacy, or calls into question its authority.

Gitksan and Wet'suwet'en of British Columbia⁵⁸

- The day has already arrived for one proposal that more adequately tests governmental tolerance, from the Gitksan and Wet'suwet'en of British Columbia, aptly titled *Unlocking Aboriginal Justice* (Gitksan-Wet'suwet'en Education Society et al, 1989)⁵⁹.
- A more detailed account is precluded by the brief time we have here today, but suffice it to say that their proposal takes the traditional stance of arguing that "justice" is not a domain apart from everyday life, but very much integral to it.
 - "For a Gitksan and Wet'suwet'en there is no such thing as a purely legal transaction or a purely legal institution. All events in both day-to-day and formal life have social, political, spiritual, economic as well as legal aspects." (p.15).
- Similarly, "crime" does not exist as a specialized category that can somehow be demarcated away from other types of behaviour, and "specialists" (such as lawyers and police and judges) are not necessary because all disputes are to be resolved among the families of those affected.
- Like most other First Nations, family structures were the basic control institution, and most interaction and resolution occurred on a face-to-face basis. The elders played a significant role in this regard.
 - "Authority rather than power governs decision-making and authority is based on personal respect. In this context, political and economic decisions are by consensus, with greater weight given to the

⁵⁸ Ted S. Palys, School of Criminology, Simon Fraser University Considerations for Achieving "Aboriginal Justice" in Canada presented at the annual meetings of the Western Association of Sociology and Anthropology, held in Vancouver, British Columbia, in 1993.

<http://www.sfu.ca/~palys/wasa93.htm>

⁵⁹ Gitksan-Wet'suwet'en Education Society, Smithers Indian Friendship Centre, and Upper Skeena Counselling and Legal Assistance Society. (20 March 1989). *Unlocking Aboriginal Justice: Alternative Dispute Resolution for the Gitksan and Wet'suwet'en People*. (Unpublished proposal to the B.C. Ministry of the Attorney General). cited in Ted S. Palys, School of Criminology, Simon Fraser University Considerations for Achieving "Aboriginal Justice" in Canada presented at the annual meetings of the Western Association of Sociology and Anthropology, held in Vancouver, British Columbia, in 1993. <http://www.sfu.ca/~palys/wasa93.htm>

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thoughts of those with proven ability, experience and wisdom. ... Decisions and laws are not policed. Instead, there is a withdrawal of support from the person or group making the unpopular decision. Those who offend established laws and morals lose authority in the community." (pp.13-14).

- The Gitksan-Wet'suwet'en had considered other alternatives, and had even tried alternative legal systems earlier this century, but found them wanting. The authors of the proposal state:
 - "...[T]he setting up of parallel justice systems for native communities - with native police, native courts and native jails - will not work unless the society already has equivalent institutions of its own. The decentralized Gitksan and Wet'suwet'en societies cannot accommodate the hierarchical court system and specialized enforcement powers of the police." (p.25).
- This leads the authors to conclude that
 - "If, as we suggest, the content of indigenous justice, that is its principles, laws and precedents, is to be used in a meaningful way, it must function within the structure of indigenous justice. Attempts to fit the content of one system into the structure of another are bound to fail." (p.25).
- This view of "justice" as synonymous with "a way of living", and the attendant need to have structures of justice mirror structures of authority and responsibility within the community, are not unique to the Gitksan and Wet'suwet'en.
- But to make a long story shorter, it is noteworthy that the Gitksan-Wet'suwet'en proposal has never been funded, in large part precisely because their proposal talks about justice as a part of everyday living, and, unfortunately, there is no "Department of the Way We Live" in either Ottawa or Victoria.
 - Their proposal did not "fit" neatly into any particular bureaucratic niche. As the authors recounted in a supplementary report (Gitksan-Wet'suwet'en Education Society et al, 1990)⁶⁰,
 - "We anticipated, correctly as it turned out, that the proposal would not fit within existing guidelines for government funding programs. The provincial government response has been coordinated by the Ministry of the Attorney General. Three meetings have been held with ministry committees but their mandate has been more to ease delivery bottlenecks within the existing justice system than to facilitate structural solutions.
- For their part, federal ministries referred the proposal to the Department of Indian Affairs which declared justice to be a self-government issue that could not be acted upon until the current self-government negotiations with the Gitksan and Wet'suwet'en Chiefs have been concluded.

5.17. Shubenacadie Band Diversion Program: Analysis/Interim Evaluation - 1993⁶¹

⁶⁰ Gitksan-Wet'suwet'en Education Society, Smithers Indian Friendship Centre, and Upper Skeena Counselling and Legal Assistance Society. (4 May 1990). *Unlocking Aboriginal Justice: Phase I Resubmission*. (Unpublished proposal to the B.C Ministry of the Attorney General).

⁶¹ Clairmont, Don. *Shubenacadie Band Diversion Program: Analysis and Interim Evaluation*. Halifax: Tripartite Forum on Native Justice, 1993 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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This monograph provides an interim assessment of the adult diversion intervention undertaken by the Shubenacadie Band in collaboration with the federal and provincial governments in 1992. Chapters are devoted to crime and social problems in the Indian Brook community, to the analyses of court records at the provincial criminal court, to the findings of community surveys of adults and youths dealing with their perceptions of community justice issues and their views on diversion and this specific project, and to the history of the diversion project to date. Concerning the latter, attention was paid to the objectives of the project and the extent to which they were being realized, the selection and training of panel members, the evolution of the diversion organization, the evolving protocol for cases and concurrent negotiations with Justice officials, the penetration rate for the project, the diversion procedures and ceremonies, and the impact on the various parties. The main conclusion was there had been significant institution building but that the penetration rate was low (i.e. few of the eligible cases went to diversion) and that the project was quite conventional in its procedures and dispositions. There was little victim-offender reconciliation and little community participation beyond the diversion organization itself.

5.18. The Move Toward Devolution in Quebec - 1992⁶²

- After the 1992 Sommet de la Justice, organized by the then Minister of Justice Gil Rémillard, the Minister made a commitment to set up a committee to consult all the Aboriginal peoples of Quebec.
 - The goal of the consultation was to develop with them new approaches to the administration of justice, which would better meet their needs and would take into account their social and cultural values.
 - The committee has recently completed its work with a report ready for submission to the Minister.
- The presentation summarized the results of the consultation and recommendations.
 - The committee visited many Native communities in Quebec.
 - In conducting the consultations, it was found that the communities did not reject the justice system.
 - There was in fact support for both Canadian and Quebec laws (with the exception of laws related to hunting and fishing).
 - The main problem as perceived was that the system was administered by strangers.
 - The consultation also found that, while the justice system was seen as a solver of problems, there was also an insufficient knowledge among the people of existing laws.
 - By and large, communities had difficulties expressing what they wanted from the justice system or from devolution.
 - Some indicated a readiness to assume more responsibilities for administration of justice, but none indicated that they were ready to assume total responsibility.
 - The main proposals resulting from the consultation are:
 - mediation, diversion and referral to the Justice (of the Peace).
 - These proposals are not new, of course, but if they are accepted, it will be the first time that they are incorporated into the official system in the province.
 - In order to implement the proposals, the approach that has to be adopted must be global, flexible, "devolved" (i.e. the community assumes the level of responsibility it can at any given stage and progresses in its assumption of further responsibility as trained personnel become available), and involving permanent programs (not pilot projects).

⁶² Jean-Charles Coutu (Canada) *cited in* The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>

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- It is also proposed that every community have a group of people (who can be called a justice committee) to take responsibility for justice matters, as well as working with and counseling the local Justice of the Peace.
- There should also be a maitre d'oeuvre who will oversee the implementation of the recommendations of the report of the advisory committee.
- Potential initiatives include exhaustive examination of sworn witnesses, consultation of the justice committee, and sentencing circles.

6. Relevant Documents, Studies and Practices – USA

6.1. Devolution and the Issue of Sovereignty in Alaska⁶³

- In Alaska, the devolution of justice to the rural Native communities appears to be dependent upon the exercise of tribal sovereign powers by the individual Native communities.
 - In the United States tribal sovereignty is a limited sovereignty and is subject to the plenary powers of the U.S. Congress.
 - The relationship of tribes to the various states of the United States is less straight forward, but in general, states oppose the exercise of tribal sovereignty and view tribal governments as infringing upon their powers.
 - Often times the exercise of sovereign powers is challenged by state governments or by persons who are not tribal members.
 - Two issues determine whether a Native group possesses tribal sovereignty:
 - whether the tribe is a federally recognized tribe, and
 - whether the geographical area over which the tribal power are being exercised constitute Indian country.

In addition, in Alaska, two further statutes have relevancy to devolution. The 1971 Alaska Claims Settlement Act terminated Aboriginal land claims, Aboriginal hunting and fishing rights and all but one reservation. In exchange, village corporations created under state laws received compensation for the extinguishment of tribal rights. Public Law 280 recognizes state legal jurisdiction (including the administration of justice) in six states, one of which is Alaska. Taken together, these two statutes indicate that devolution of justice does not appear to be a readily attainable reality.

United States policy has generally favored assimilation, with periodic support for self government. Federal and state governments have been very effective in destroying tribal governments, including destroying institutional memory (e.g. information on customs). The recent Alaska Native Commission, which was a joint federal/state commission, was tasked with determining the welfare of Alaska Native villagers and making recommendations regarding future government policies concerning Alaska Natives. The Commission Report suggests that the source of many justice-related problems is the state of "learned dependency" of many Native Alaskans; the solution can only be derived from a resumption of responsibility by the Native communities. One of the ways of transferring responsibility is to amend PL-280 so as to expressly give criminal jurisdiction to tribal government.

⁶³ David Blurton (The United States of America) *cited in* The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>

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6.2. Community Justice Concepts and Strategies - 1998⁶⁴

⁶⁴ American Probation and Parole Association, Community Justice Concepts and Strategies
<http://www.appa-net.org/publications%20and%20resources/communit1.htm>

COMMUNITY JUSTICE CONCEPTS AND STRATEGIES

EXECUTIVE SUMMARY

Some of the newest applications of justice in the community are truly connecting the justice system and the public in unique ways. These practices are serving as bridges, gates, and pathways to integrate system and community objectives to such a point that they are being blended into one indistinguishable outcome: justice.

Mark Carey, (1997, p. 5)

Director of the Dakota County (Minnesota) Department of Community Corrections:

A NEW TYPE OF JUSTICE SYSTEM¹

A revolution is occurring in criminal justice. A quiet, grass roots, seemingly unobtrusive, but truly revolutionary movement is changing the very nature and fabric of our work. Many theories regarding crime and criminal behavior have been advanced throughout the recent history of criminal justice. The criminal justice system has, in turn, developed and implemented changes based on some of those theories. Although these changes have led to creative innovations, they seldom have changed the basic nature of the business of criminal justice. What is occurring now is more than innovative; it is truly inventive. A paradigm shift is changing the focus of the work of criminal justice away from the offender exclusively and toward the community and victim(s).

Because crime continues to plague our society, a better understanding of the problem is needed, as well as guidance toward reasonable progress in solving it. Something beyond the scope of a new theory is required. As John Dilulio (1993, p.5) states:

A paradigm is broader than a theory. A theory is a statement about a relationship between two or more variables that is supposed to hold under specific conditions. A new paradigm orients general understanding to historical, empirical, or normative realities that a prevailing paradigm has arguably de-emphasized, devalued, or simply ignored. In essence, to call for a new paradigm is to appeal for new concepts and categories of thinking about a given subject.

¹Adapted from Blasius, E. (1998). Community justice: An emerging concept and practice. In K. Dunlap (ed.) Community justice concepts and strategies. Lexington, KY: American Probation and Parole Association.

The call for a new paradigm, and how we view crime, is being spearheaded by citizens and victims who feel left out of the criminal justice process. Citizens might not articulate their frustration in terms of a need for a such a shift, but at the heart of their anger and dissatisfaction is the feeling that the criminal justice system does not represent their interests. Criminal justice professionals often express a corresponding frustration with the public's "hysteria" resulting in "get tough" legislation related to crime control. The public (community) is often viewed as an outside obstruction that must be "sold" on new policies by criminal justice "experts." When the public fails to buy into such policies, the frustration and rift between the public and the criminal justice system increases.

Not only is there a rift between the public and the criminal justice system but also within the criminal justice profession. We must address these issues in order to move forward, rather than remain in a system that is fragmented, lacks a clear mission, and seems to provide little value to the public it is sworn to protect. In order to solve the problem, its nature and source should be understood.

Changing Justice From Community-Based to Community-Driven

Numerous traditional community-based programs began during the community corrections movement of the 1970s. Nonviolent, property offenders were placed on community supervision in an effort to avoid or alleviate prison crowding and to provide courts and parole boards with additional options. However, community-based programs often failed to engage the community in which the offender resided. Community-based programs, though placed in the community, were considered to be detrimental to both the offenders and the community they were designed to serve. Traditional or community based programs were often (Fulton, 1996):

- *One-dimensional mindset.* Offenders are, first and foremost, viewed as criminals; individual characteristics of offenders are viewed as the primary cause of crime and, therefore, as the primary target of change.
- *Closed-system approach.* Dyadic relationship between offender and community corrections; restricts information from going to the community.
- *Offender reform is goal.* Requires changes in the offender, and conformity to accepted community standards.

Community justice programs are developing truly *community-focused or community-driven* corrections programs. Most importantly the programs are located in the communities, requiring involvement with the offender's environment, expanding the offender's support system within the community and advocating services. Community-driven/community focused² programs are (Fulton, 1996):

- *Multi-dimensional mindset.* Offenders are viewed as fathers, daughters, drug addicts, employees; individual characteristics, family dynamics, and community structure and organization are viewed as contributors to crime and, therefore, as equally important targets of change.
- *Open-system approach.* Information is shared with community members and organizations as a means to expand the network of support for offenders and to protect the community.
- *Offender reintegration is goal.* Requires changes in the offender, e.g., attitudinal and behavioral, and the community, e.g., acceptance, support, opportunity.

A significant departure in practice of the Community Justice Model from the traditional

²The original citation indicates community places and community-based; however, the reference has been modified to community-based and community-focused or community-driven.

criminal justice system is its reliance on active citizen involvement rather than on exclusive management of the system by bureaucracies (Bazemore and Day, 1996). At the individual case level, this translates to opportunities for victim-offender mediation, increased attention to victim restitution, development of offenders' pro-social skills, and changes in offender cognition that replace criminal thinking and behavior. At the community level, it requires increased responsibility by all citizens for providing the services and mechanisms needed for community safety and satisfaction. This may include increasing job opportunities, closing crack houses, cleaning up parks, providing child care for working mothers, providing mental health or substance abuse treatment, or other community-selected approaches. At the criminal justice system level, a Community Justice Model means including citizens in general, and victims in particular, in the policy development and practice implementation. Community justice requires focusing on community partnerships to meet the needs of victims and citizens, to hold offenders accountable, and to provide prevention programs for a safe community. Community justice also demands a change from a system of isolation and exclusivity to one of open and active communication, cooperation, and collaboration.

Toward a New Paradigm of Justice

The current paradigm of criminal justice is focused on the offender (Barajas, 1996). Multiple, contradictory, and competing purposes of work are expressed in terms of things to be done to or done for offenders. This offender focus is at the core of the public's frustration. The frustration is manifested in statements that the criminal justice system is aptly named, because it represents the interests of the criminal (i.e., offender) rather than the public or victim. The following model, Figure A, illustrates the current offender-centered criminal justice paradigm.

From the standpoint of the community and victims, Figure A can be referred to as the criminal justice model because of its offender focus. In this model, the traditional purposes of punishment, deterrence, incapacitation, and rehabilitation compete for prominence as politicians' posture in response to public mood shifts and outcries.

In the confusion created by competitive and contradictory purposes — as well as fickle

Figure A: Traditional Criminal Justice Model — Offender Focused



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public and political climates — calls for reform are based on rationality. The professional rhetoric calls for the creation of a rational system of sanctions; whereby, the purpose and scale of individual sanctions are based on “rational” policy decisions.

The concept of “rationality” promotes strategies for reforming the system by creating policies that will ensure more uniform and easy to measure results. While on its face such an approach makes perfect sense, it does not fit within the real world practice of justice professionals. Policy makers and practitioners are told to define the purposes of individual sanctions or programs in order to, among other things, better measure the results. These purposes are invariably offender-focused (e.g., sanctioning, rehabilitation). Moreover, a truly rational approach to policy-making would dictate that purposes be consistent in all agencies on the criminal and juvenile justice continuum. For example, a jurisdiction operating under a *just deserts model* of sentencing, but having a department of corrections with a strong culture based on rehabilitation, would either have to change its corrections programs to a more punitive mode or change its sentencing practices to a more rehabilitative model.

Intuitively, justice practitioners feel that it is possible, and indeed necessary, to balance competing sanctioning purposes (e.g. rehabilitation, incapacitation, deterrence) in order to effect positive results. This holds true even if such an approach is not viewed as completely rational.

The increasing pressure to implement results-oriented work practices creates a sense of urgency to determine what works in corrections/criminal justice. The overwhelming majority of encouraging research in social learning theory often referred to by practitioners as “what works” is firmly rooted in the criminal justice model and is focused mostly, if not exclusively, on the rehabilitation step of the model. The emphasis is on long-term behavioral changes of individual offenders through effective treatment.

The competition with other sanctioning purposes is intense, and recidivism often is the primary measure of success. “What works” advocates bemoan the fact that rehabilitation has been relegated to the lowest rung of the ladder and punishment is at the top. To these advocates, the primary goal is to convince policy makers, practitioners, and the public that rehabilitation should be at the top to achieve the best recidivism results. Those who advocate punishment, or any of the other sanctioning purposes, are equally adamant that their views should prevail.

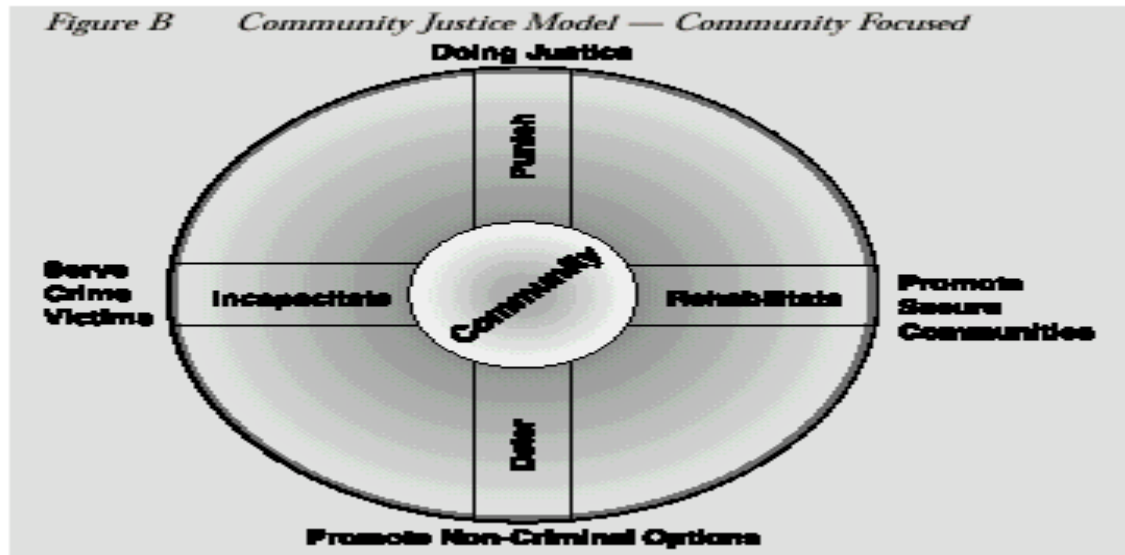
What is needed is a non-competitive, non-contradictory design that strives primarily for harmony rather than rationality. There is no reason for rehabilitation, punishment, or any other sanctioning purpose to be at odds or in competition with one another. There is no reason for justice components to work in isolation from each other or from the community.

The way to achieve harmony in the system is to shift the focus from the offender to the community. Placing the community at the center of the effort instead of placing the offender at center stage. Rather than asking what to do to offenders or do for offenders the question becomes: “How can we create and maintain safer communities?” By asking that basic question, the traditional purposes of the work become equally worthy means to an end rather than independent ends competing for prominence. This community focus is the core of the community justice paradigm as illustrated by the model in Figure B.

This model derives its identity in terms of the value of the work rather than from its purpose. More specifically, it identifies four civic ideals or values that drive the work. The ideals, which were formulated by the Bureau of Justice Statistics (BJS)-Princeton Project, (Dilulio, 1993) are

- doing justice,
- promoting secure communities,
- serving crime victims, and
- promoting non-criminal options.

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Principles of Community Justice

Although there is no universally accepted definition of community justice, there are some essential elements of community justice that are expressed in the following principles.

- The community (including individual victims and offenders) is the ultimate customer, as well as partner, of the justice system.
- Partnerships for action, among justice components and citizens, strive for community safety and well being.
- The community is the preferred source of problem solving as its citizens work to prevent victimization, provide conflict resolution, and maintain peace.
- Crime is confronted by addressing social disorder, criminal activities and behavior, and by holding offenders accountable to victims and the community.

Core Values

The basis for these principles can be found in the following core values. The justice system benefits and serves the community by:

- striving to repair the damage caused by crime to individual victims and communities,
- working to prevent crime and its harmful effects,
- doing justice by addressing problems rather than merely processing cases,
- promoting community protection through proactive, problem-solving work practices plus interventions aimed at changing criminal behavior.

These efforts help to create and maintain vital, safe, and just communities where crime cannot flourish.

A SYSTEMS APPROACH

Community justice is a proactive systems approach which emphasizes community partnerships and crime prevention. Justice professionals, who are attempting to engage the justice system and the public in unique partnerships, are looking at new ways to view their work and considering new ways of doing the business of justice. In the process, they are shaping a process of change. Change creates disruption and is not normally something that is intentionally sought. Nevertheless, lack of public confidence in the current criminal and juvenile justice systems demands change. Visionary criminal justice protagonists are refocusing or reinventing the system to have an impact not only on providing offender control and punishment but also on victim restoration, community involvement, and offender competency development.

In the Community Justice Model, the community is the ultimate customer, and justice professionals must modify their perspective from thinking of themselves as experts to actively engaging the community in problem solving by becoming partners with the community. Through community engagement, justice professionals have implemented practices which hold criminals and delinquents accountable for their actions, develop responses that address repairing the harm to victims, and promote and enhance community safety through community partnerships and crime prevention.

Common Elements of Community Justice Initiatives

Communities are unique; each has different demographics, needs, and problems. A program that works in one community may not work exactly the same way in another area. Therefore, agencies seeking to implement community justice programs need to have an understanding of the common elements of community justice initiatives so that programs and practices can be tailored to the special needs and individual circumstances of their communities. In essence, community justice initiatives allow communities, individuals, and justice agencies to

- develop community partnerships;
- share information and engage in joint problem solving;
- coordinate, cooperate, and collaborate;
- develop community supported programs;
- participate in prevention activities;
- assist in repairing harm to the victim and the community;
- hold offenders accountable;
- expand the network of community support; and
- increase public safety and create safe and vital communities.

Crime is a community problem — not solely a justice system problem. Community justice encourages communities and justice agencies to engage in partnerships for crime prevention activities prior to an offense being committed and for the sharing of information for collective problem solving once criminal incidents do occur.

The Relationship between Community Justice and Restorative Justice

"Community justice" and "restorative justice" often are used as synonymous terms. While the terms are complementary, in actuality they are not interchangeable. Community justice has an impact on the system in which we work, and restorative justice has an impact on how we do that work. In other words, community justice provides a system that is inclusive and seeks partnerships within the community for prevention of and response to the overall issue of crime. Restorative justice focuses on the repair of the harm to the victim and community and improvement of the prosocial competencies of the offender as a result of a damaging act.

COMMUNITY JUSTICE CONCEPTS AND STRATEGIES

Designed to provide the reader with a basic understanding of community justice and strategies for community engagement, *Community Justice Concepts and Strategies* is a roadmap towards achieving the needed paradigm shift. It is a compilation of information from justice professionals, agencies, and communities who have successfully advocated for and/or formed community partnerships. The compendium provides theory, practical information, and examples of non-traditional, proactive approaches to criminal justice emphasizing crime prevention and community partnerships.

Examples of programs are provided to illustrate initiatives developed by justice agencies and community partnerships with a goal of creating safe and vital communities by assessing the needs of the community, listening to victims, engaging community members, and focusing on community safety through offender competency development and accountability.

Community Justice Concepts and Strategies will not provide a sample program for replication, or a step-by-step process that can be followed for active community involvement and the establishment of a community justice program. What it will provide is threefold:

1. Specific chapters written by professionals illustrating their experiences with community justice in a specific arena, i.e., restorative justice, community policing, community courts, community prosecution, community corrections, and victim services.
2. Information on how to engage the community and the process necessary for building a foundation for the development of community justice.
3. Personal examples of transition to community justice, not replacing an existing system but enhancing it by engaging the community as an equal partner in moving from community corrections to community justice.

Community Justice Concepts and Strategies is divided into three modules that provide practical examples of community partnerships and describe the process for a new way of doing the business of justice: "community justice."

Module I: Concepts and Strategies for Community Partnerships and Crime Prevention

The theoretical concepts and guiding principles of two important components of community justice are described — community partnerships and crime prevention. Chapters in Module I

- provide an introduction to the concept of community justice and describe how jurisdictions are in transition from a community-based justice system to a community-driven justice system that is rooted in the community and is a uniquely individual process in each community;
- discuss crime prevention and community involvement as key initiatives directed toward a safe and vital community;
- describe the tenets of restorative justice, including its guiding principles and values;
- review the crime victims' role in community justice;
- explain how balanced and restorative justice can be used to reengage the community in the juvenile justice process; and
- outline the process of mobilizing the community, establishing a planning team, and developing a comprehensive plan.

Module II: Community Justice — Practical Applications in Non-Correctional Settings

In Module II, examples of community partnerships in non-correctional settings are provided including community policing, community courts, and community prosecution. It also

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describes how the concept of community justice is being applied on a practical level in jurisdictions across the United States. Chapters in Module II examine

- how successful problem solving programs and community partnerships are formed in non-correctional settings;
- how to empower the community and fully engage them into an active relationship; and
- how to involve community members in the identification of community problems and solutions for both the criminal and juvenile justice systems.

Module III: Transitions To Community Justice - Personal Perspectives

Personal examples of transition from community corrections to community justice are provided by both adult and juvenile justice practitioners who have experienced, or are experiencing, the transition to community justice in their jurisdictions. Each chapter discusses problems faced, changes required, and advancements made in their transition. In particular, Module III offers an inside look at what can be accomplished when communities are invited to participate as partners in the justice system. Chapters in Module III

- outline the partnership between the Boston police departments Gang Unit and juvenile probation officers working the streets together in "Operation Night Light;"
- delineate the process used in Vermont to establish reparative boards, which involve the community in the sentencing of offenders;
- detail the new role of a community justice liaison for probation and parole officers;
- describe the organizational change in Deschutes County, Oregon, from a department of community corrections to a department of community justice; and
- provide the keynote address of Mark Carey at the 23rd Annual APPA Training Institute held in Norfolk, Virginia, August 30 - September 2, 1998, entitled "Building Hope Through Community Justice."

CONCLUSION

What is going on today in the justice system is truly a paradigm shift toward community justice and away from offender focused criminal justice. Community justice can be seen in many neighborhoods, whether it is one of aboriginal justice, indigenous justice, neighborhood cohesiveness, or community partnerships. The change is being driven from the communities, victims and from justice agencies. Justice agencies, from the top down and from the bottom up, are reaching out and inviting citizens and other agencies to join together in shaping communities and to have a positive impact on community safety. Communities are demanding nothing less.

Community Justice Concepts and Strategies is a guidebook to understanding the paradigm shift and the systems approach to developing community justice as well as examples of community justice in current operation. Is it time to invite the community to be an active participant in justice? What will the future look like in your community? Maybe it is time to simply ask the question and see where it leads.

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Module I: Concepts and Theory for Community Partnerships and Crime Prevention

Community Justice an Emerging Concept and Practice

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United by Prevention

National Crime Prevention Council

Promising Practices in Community Justice: Restorative Justice

Kay Pranis, Restorative Justice Planner, Minnesota Department of Corrections

The Victim's Role in Community Justice

Tracy M. Godwin, Research Associate, American Probation and Parole Association

Restoring the Balance: Juvenile and Community Justice

Gordon Bazemore, Florida Atlantic University and Susan E. Day, Florida Youth Restoration Project

Mobilizing the Community

Adapted from *Restoring Hope Through Community Partnerships: The Real Deal in Crime Control*

Module II: Community Justice - Practical Applications in Non-correctional Settings

Community Policing

Carl Harbaugh, Community Policing Consortium

Bringing the Public in: Collaborations Between Courts and Community

Hilkey S. Elkerman and David B. Rottman, National Center for State Courts

Community Prosecution

Heike Gramckow and Rhonda Mims, American Prosecutors Research Institute

Module III: Transitions to Community Justice - Personal Perspectives

Juvenile Justice: Amazing Grace (and then some)

Ronald P. Corbett, Jr., Second Deputy Commissioner, Massachusetts Probation Service

The Vermont Reparative Probation Program

Lynne Walther and John Perry, Vermont Department of Corrections

The New Role of Probation and Parole: Community Justice Liaison

Michael J. Dooley, National Institute of Corrections/Academy

From Community Corrections to Community Justice

Dennis Maloney, Director, Deschutes County, Oregon, Department of Community Justice

Building Hope Through Community Justice

Mark Carey, Director, Dakota County, Minnesota, Department of Community Corrections

For a copy of *Community Justice Concepts and Strategies*, please call the American Probation and Parole Association at (859)-244-8207.

Pranis Kay, Building Community Support for Restorative Justice Principles and Strategies by, Director of the Restorative Justice Program of Minnesota <http://members.aol.com/fcadp/archives/Community.htm>

Karp, David R. and Todd R. Clear Community Justice: A Conceptual Framework in [Policies, Processes and Decisions of the Criminal Justice System](http://www.ncjrs.org/criminal_justice2000/vol_2/02i2.pdf), Volume 2, p.323-368, 2000 http://www.ncjrs.org/criminal_justice2000/vol_2/02i2.pdf

Initiatives Paper presented to the International Conference on Justice Without Violence: Views from Peacemaking Criminology and Restorative Justice Albany, New York, June 5-7, 1997 Community Service Foundation <http://www.restorativepractices.org/Pages/albany.html>

7. Relevant Documents, Studies and Practices – International

7.1. Restorative Programs in Australia- 2001⁶⁵

Up scaling problems

- There is considerable variability between Australian jurisdictions in the uptake of restorative justice programs, though all States and Territories now have them to a greater or lesser extent.
- But independent of the level of uptake, there is remarkable consistency across Australia in the pattern of administrative and implementation problems, some of which may derive from the need for carefully and sensitively managed change across the justice system and in the community at large.
- Usually the program begins with a pilot undertaken by a small group of enthusiasts who perform well: the program is usually evaluated positively with a recommendation for wider use.
- The reasons for not upscaling the program usually relate to:
 - o cost (though both formal evaluations and government departments making the decisions are often vague on this subject).
 - o concerns about responsibility or 'turf'.
 - o a generalised sense of uncertainty about the value of the program and
 - o a kind of cultural resistance to the restorative approach: this last is as evident in schools and other settings as it is in 'justice'.

7.2. Adult Restorative Justice in New Zealand - 2000⁶⁶

Following the introduction in New Zealand about a decade ago of a new model of youth justice, an initiative was taken late in 1994 to extend the basic concept into the area of adult offending (i.e. 17 years and over)

Late in that year, the Rev. Douglas Mansill attracted a small group of dedicated volunteers who formed themselves into an Auckland based group called "Te Oritenga" (which in the Maori language embraces the idea of balancing). Whereas the process in the youth court was the result of a change in legislation, there was and still is no N.Z. statute which expressly allows the concept of restorative justice to operate in the case of adults. However, a number of judges have supported the concept of restorative justice in suitable cases and were able to operate within a general provision of the existing legislation.

The Te Oritenga Restorative Justice Group pioneered the establishment and development of a process suitable for adult offenders. Other groups were formed around the country, each with its own model, but all operating in the same informal way and depending on the goodwill of the local judiciary. Late in 1999, the Te Oritenga Group resolved internal ideological issues by winding up and spawning separate groups which are continuing the work in their preferred styles.

Following a change of government (an earlier initiative by the previous government had been cancelled), the new administration announced in mid-2000 that significant funding would be allocated to make the restorative justice option available in three locations on a court directed pilot basis and also to support other privately run groups in other areas.

⁶⁵ Criminology Research Council, Heather Strang, Director, Centre for Restorative Justice, Research School of Social Sciences, Australian National University A Report to the Criminology Research Council, Restorative Justice Programs in Australia, March 2001, <http://www.aic.gov.au/crc/oldreports/strang/adult.html>

⁶⁶ Cropper, Bruce, Adult Restorative Justice In New Zealand, 2000 <http://www.adls.org.nz/public/restorative.html>

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Adult restorative justice had become "official"; an occurrence which brings its own challenges (see concluding comments).

What is restorative justice? One possible way of answering this question is to look at the traditional system. Essentially, that system pits the offender against the state, an idea which has its roots in English medieval history. It is only as recently as 1987 that the victim of a criminal offence has had any formal input into the sentencing process. The input is still indirect in that a "victim impact statement" is made available to the sentencing judge (representing the power of the state). The victim is not in the statement permitted to express any opinion as to how the offender should be dealt with.

The underlying concept of the restorative justice process involves one or more fac-to-face meetings between a victim and an offender who has admitted his or her responsibility (it is not a trial process), together with their respective "communities" (who are often secondary victims) and representatives of the community at large, including often a police officer. Those present at the facilitated meeting look at the needs of the victim, and also at how the offender can be made accountable so that the likelihood of future offending is minimised.

The intended outcome of the meeting is to begin the process of "restoring" both victim and offender as far as possible to a condition of "wholeness" in their environment(s). The greater community is also likely to be restored to greater wholeness. It is a healing process and one which recognises that the "offender" is frequently a victim too at some level. Most if not all volunteer restorative justice workers are motivated by a belief that the present penal system does not work. New Zealand has a very high imprisonment rate in relative terms, the rate of repeat offending is high, and the proportion of Maori and Polynesian jail inmates far exceeds their proportion in society. It costs about \$50,000 a year to keep a prisoner in jail. Our jails are now stretched beyond their designed capacity. The official answer has been to build more jails, and many in the community call for longer sentences.

Te Oritenga members believed that the alternative approach would find a valuable place within the criminal justice system, that large sums of money would be saved in the long run, and people would be empowered, rather than be disempowered by the remote, paternalistic traditional system - traditional that is in pakeha terms. Realism dictates that restorative justice will exist alongside the existing system rather than supplant it, because voluntary participation of those principally involved is required and may not be forthcoming.

It should not be thought by those who demand longer jail sentences that restorative justice is a "soft" option. Programmes which are negotiated and put in place following a community group conference commonly place far more stringent demands on the offender than the simple serving of time. At an emotional/psychological level, it is considered much harder for an offender to face the victim in the conference setting than to stand impassive in the dock and face a judge who of course has nothing to do with the crime.

In contrast against the present system, the process is consensual - the offender as well as the victim and the communities will usually agree on an outcome (which may still contain a punitive element). It is fundamental human psychology that people will tend to go along with a process they have helped to design and have agreed to, and conversely will resist what is imposed on them.

As a safeguard against unrealistic outcomes or manipulation by supporters of the people involved, the sentencing judge is not bound by the recommendations of a conference. Feedback to date from the process confirms that a measure of significant healing does take place when victim and offender can meet and communicate in a safe environment, and may well continue well into the future. A crucial need has been identified to provide follow up and monitoring following the community group conferences.

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7.3. Restorative Justice: The Public Submissions - 1998⁶⁷

FOREWORD

In recent years there has been interest in new ways of doing justice. Part of this has stemmed from a belief that the existing justice system may not be working to prevent crime and reduce the numbers imprisoned. There has also been some desire to return to more traditional systems of justice which give greater prominence to the victim and emphasise redress.

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

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

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

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

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

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

- To what extent are the objectives of restorative justice consistent with each other and the way New Zealand should best respond to offending?;
- What is the evidence or potential for the effectiveness of restorative justice in achieving those objectives?;
- In what ways might restorative justice enhance the cultural responsiveness of the criminal justice system?;
- What are the cost implications of any such approach taking account of any savings that might be created and any benefits that might be realised?

EXECUTIVE SUMMARY

⁶⁷ Ministry of Justice – New Zealand - Restorative Justice: The Public Submissions First published in June 1998, © Crown Copyright
http://www.justice.govt.nz/pubs/reports/1998/restorative_justice/ex_summary.html

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General

This document is an analysis of submissions received by the Ministry on restorative justice. The analysis identifies key themes and responses to specific issues, and also considers perspectives in relation to Māori, Pacific peoples and victims.

Overview of submissions

One hundred and thirteen submissions representing diverse interests were received. The views represented ranged from being highly supportive of to highly critical of the idea. Overall, the submissions were supportive of restorative justice.

Opposition to restorative justice

Nine submissions were strongly opposed to restorative justice. Reasons included a view that it was too lenient, concern about the return of serious offenders to the community, a belief that it would not improve the situation for victims and the need for criminal justice processes to provide general deterrence.

Views of the existing criminal justice system

Many felt that the present justice system was unsatisfactory. It was seen as failing victims and offenders, generating excessive costs, being overly adversarial and punitive, and being too "soft" or failing to prevent reoffending. Some felt that it also inhibited existing opportunities for restorative processes.

Defining restorative justice

Some felt that the definition of restorative justice was unclear, or that it had been used too loosely, serving to dilute its meaning. Many provided their own understanding of restorative justice.

Societal factors and restorative justice

Some submissions placed their understanding of restorative justice into a broader context. Societal factors that it was thought could impact on restorative programmes included unemployment levels, working conditions, knowledge about restorative justice, health issues, poverty, welfare and the economy.

Can it work in today's society?

Of those who answered this question, most thought that restorative justice could work in today's society, although many added provisos. It was also recognised that restorative justice was unlikely to work for everyone. Examples of conditions for the successful implementation of restorative programmes included government agency co-operation, gradual implementation, and restorative justice being conceived as one part of an integrated approach to offending.

Compatibility with the existing system?

Some saw aspects of restorative justice in the existing system. The family group conference was often mentioned in this context. Others argued that restorative justice was already occurring in some communities. While some felt that the current retributive system could not deliver restorative outcomes, another perspective was that categorising the present system as retributive was unhelpful and overly simplistic.

Should restorative justice aim to replace the current system?

Most submissions that addressed this issue directly did not promote the replacement of the present system. The existing system was seen as a safety net, and necessary for those who pleaded not guilty. Restorative justice was instead seen as

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expanding the options available. However, a minority saw restorative justice as ideally replacing all or some of the present system.

Will restorative justice improve the current system?

It was thought by many that restorative justice would, or had the potential to improve the current system. Others had no confidence that this would be the case. Often views of the success or otherwise of the family group conference system determined opinions on this issue.

Consent

The consent of the parties, principally the victim and offender, to any restorative process was seen as an important element in many submissions.

The role of the community and volunteers

Restorative justice was believed to put more responsibility for the causes and effects of crime onto the community. Some saw this as positive, while others had concerns about the increased pressure on community and volunteer resources that were already strained. There was uncertainty as to the exact nature of community involvement, and whether cohesive communities existed. The importance of consultation with the community was reinforced. Some stated that if communities' responsibilities increased, power needed to be devolved.

Research

There was a belief that inadequate information relevant to restorative justice was available. There was particular concern that the youth justice system had not been fully evaluated. Some submissions suggested other areas where useful research could be carried out.

The need for caution

Many submissions urged a cautious approach when implementing any restorative justice initiatives. Some called for adequately resourced, monitored and evaluated pilot programmes.

Funding

Some strongly expressed the view that restorative justice had to be adequately resourced, particularly in terms of the funding and training of restorative justice practitioners. Some were of the view that the effectiveness of family group conferences had been impaired by inadequate resourcing. Restorative justice was seen by some as an investment the benefits of which would be realised in the long-term.

Public education and information

Public knowledge of and support for restorative justice was identified by some as important to its success. Some noted that without public education programmes, restorative justice might be perceived to be a soft option. Current punitive attitudes were noted. Some believed that a "paradigm shift" or major change in public opinion would be necessary for the full implementation of restorative justice programmes.

Cultural issues

Some had reservations about the consideration of cultural issues. These submissions tended to be concerned whether defendants would be assured of equal treatment. Others believed that for the justice system to be effective, it must be

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culturally appropriate. Some saw restorative justice's flexibility as providing for a more appropriate system for all the cultures represented in New Zealand.

Maori

A common theme was that the current system was perceived to be inappropriate for and failing Māori. The over-representation of Māori in a number of adverse criminal justice statistics was noted. Restorative processes were believed to be (potentially) more sensitive to the needs of Māori as they would enable cultural diversity to be recognised. Some stated that much could be learnt from traditional Māori processes as they have parallels with restorative justice. Restorative justice was also seen as a mechanism for affirming and strengthening the power of Māori communities. Although difficulties were anticipated by some when victims and offenders came from different cultures, others thought any difficulties could be successfully overcome.

Other submissions rejected restorative justice as something less than tino rangatiratanga. From this perspective, restorative justice was a criminological advance but not an institutional expression of the Treaty partnership. Some argued that Māori should be free to develop their own justice systems or seek justice on the marae.

Pacific peoples

Important considerations for Pacific peoples were the involvement of the extended family and a holistic understanding of restorative justice which incorporated many aspects of daily living.

Victims

Submissions were received from individual victims and victims' organisations. Victims were thought to be inadequately provided for at present. Some argued that victims needed more resources, information and support, and a real voice in current proceedings. They were often retraumatised by court processes which provided little or no opportunities for healing. Reform of the existing system could therefore improve outcomes for victims. Many felt that the present system focused too strongly on the offender. Most believed that restorative justice at least had the potential to remedy this, although others were cautious or had little confidence that this would happen. It was strongly felt that victim participation in any programme must be voluntary. Some concerns were expressed about the dynamics between victims and offenders in any restorative processes. A key concern was that any restorative justice programme needed to have victims' needs as its central focus.

Some expressed satisfaction with current practice concerning victims of family violence. There was concern that these gains may be eroded.

Purchase priorities

The Ministry's discussion paper listed six possible purchase priorities and invited those making submissions to state their own. Many stated that all those suggested were important. Those most consistently seen as priorities for Government spending were expanding restorative justice programmes for adult offenders, and parenting skills programmes and early childhood education as a general contribution to a crime prevention strategy.

Objectives for restorative justice programmes

Of the possible objectives listed in the Ministry's discussion paper, making good the suffering caused by crime was the most frequently supported, followed by helping victims and the reform of individual offenders. Many other objectives were suggested. Some were hesitant to choose between objectives or felt that more than one could and should be pursued. A few had concerns regarding the objectives listed, suggesting for example that they were too vague to be of

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use. Although some were willing to rank cost minimisation along with other objectives, others felt that this was inappropriate.

Parallel or integrated restorative programmes

Of those who addressed this issue directly, most preferred restorative programmes to be integrated with the criminal justice system. A variety of reasons for this were given, including greater consistency, fairness, oversight by the State, and perceived legitimacy of the programmes. Reasons for favouring parallel programmes were that restorative outcomes were otherwise unlikely to be achieved or the risk of government agency capture. Others thought that both options could be pursued.

Stages of intervention

Some argued that restorative programmes should occur prior to conviction. This would allow more offenders to be diverted from the court system. If the restorative programme dealt adequately with the issue, no conviction need be entered. Others favoured intervention prior to sentencing but after conviction. The outcomes of the restorative programme could then inform the sentencing process and form part of the sentencing options. Others preferred intervention at any stage of the criminal justice process, thus ensuring maximum flexibility and the earliest intervention possible. No submissions supported interventions only at the post-sentence stage.

Type of approach

There was more support for a system of conferencing than victim/offender mediation, although some submissions supported both. Advantages of community group conferences included the fact that secondary victims and a variety of people relevant to addressing an adult's offending could take part, and that conferences could proceed without a victim. Victim/offender mediation was seen as more practical if nobody had time for voluntary community involvement. The use of mediation in some cases, especially in the context of family violence, was questioned by some. Flexibility was the main reason suggested in submissions which wanted both approaches available.

Type of case to be dealt with

Many supported universal eligibility for restorative programmes. The advantage of this was that each case could be judged on its own merits and circumstances. Other submissions thought that restorative initiatives should be targeted. Possible criteria suggested included the age of the offender and the type of offence. Some preferred to exclude family violence, violent or sexual offending, victimless crimes, white collar crime, and indictable offences.

Some submissions focused on the use of restorative justice for family violence. Divergent views were expressed. Some saw restorative justice as expanding options available. Others urged further consideration of victim safety, possible power imbalances, whether truly free consent could be given by victims of family violence, and gender issues. There were some concerns that restorative justice might effectively decriminalise family violence, and that the gains made in the present system could be lost.

Referral of cases

Automatic referral of cases was thought by some to enable a fair and consistent approach. Others felt discretion should be exercised, and a wide range of possible referral agencies were suggested.

Co-ordination and delivery of programmes

The use of government agencies to co-ordinate programmes was in general supported. The establishment of a new government service, responsible for the initiation and implementation of a restorative process was suggested in one

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submission. Others however felt that co-ordination and delivery was better done by community organisations. Again, some opted for the middle ground, advocating a joint government/community approach. Resourcing was thought to be an important issue in this context, with some arguing that more important than who delivered the programmes was that they had the necessary support and expertise.

Status of mediated agreements

Most comments on this issue favoured the involvement of the court. Some argued that elements of the agreement should be undertaken at the court's direction so that the agreement would have the status of a court order. Others saw the court system as a back-up if agreements between the victim and the offender were not honoured. Some submissions favoured aspects of the agreement operating as a private arrangement between victim and offender.

Monitoring of mediated agreements

Some suggested that public officials should be responsible for monitoring and enforcing mediated agreements. Reasons for this included maintaining public confidence in the criminal justice system, or avoiding over-burdening under-resourced community groups. Others suggested that monitoring could be undertaken at the community level, or that this could be shared between the State and other parties.

Legislation

Some argued that restorative programmes should be a compulsory stage in criminal proceedings in some or all cases to reinforce their authority and legitimacy. Others (with respect to mediation processes), argued that it should be a discretionary option with specific statutory authority. Some also suggested that existing legislation could be used to implement restorative initiatives.

CONCLUSION

A total of 113 submissions were received. They represented diverse interests and expressed broad ranging views. Overall, the submissions were supportive of restorative justice, albeit with many expressing the need for caution and trials. Nine submissions expressed opposition to restorative justice.

7.4. Restorative Justice: International Perspectives - 1996⁶⁸

This book describes well the recent international experience with restorative justice through this collection of mostly original papers written by scholars from around the globe. The thirty articles, five of which focus on Aboriginal initiatives, deal with a wide range of restorative justice issues and depict the considerable diversity of restorative justice thinking and projects.

In a brief introduction the editors identify some common themes.

- They indicate that at the core of restorative justice, as reflected in this book, is victim-offender reconciliation.
- Three elements are seen as fundamental, namely that crime is primarily conflict between individuals, that the goals of justice processes should be reconciliation and reparation, and that justice processes should facilitate the active participation of victims, offenders, and other community members.

⁶⁸ Galaway, Burt, and Joe Hudson (eds.). *Restorative Justice: International Perspectives*. Monsey, NY: Criminal Justice Press, 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>

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- The centre-piece of the restorative justice experience is considered to be "the offender expressing shame and remorse for his or her actions, and the victim taking at least a first step toward forgiving the offender for the incident".
- The editors list numerous desired outcomes for victims (e.g. a sense of closure), the offender (e.g. reintegration), and community (e.g. humanizing the justice system).

Yet, while advocates, the editors are realistic, noting that "little research is reported in these chapters", and "little rigorous evidence is available to support the extent to which these [purported outcomes] are actually achieved".

7.5. Restorative Justice And A Better Future - 1996⁶⁹

In this talk Braithwaite contends that the criminal justice system has been a large failure, with class bias, ineffectiveness and an over-reliance on imprisonment. Of course his chief argument for this failure is its basis in stigmatization rather than reintegrative shaming as a guiding principle. He advances the model of restorative justice and discusses it in relation to victims, offenders, the community, and control by citizens rather than professionals. He acknowledges that restorative justice is micro-level (i.e. inter-personal relationships) but contends that at least it should take into account underlying injustices that represent the macro or societal level. In his view there is a universality of restorative traditions and these traditions now constitute a more valuable resource than the equally universal retributive traditions. Since cultures shape their restorative values and traditions differently there will be diverse social movements. Braithwaite outlines a path for culturally diversified justice based on restorative principles and practices in schools, churches, and indigenous peoples' communities, and the transformation of state criminal justice in urban neighbourhoods through developments such as family conferencing. He cautions against a romantic notion of simply going from state justice to local justice which might result in even greater abuse of power. He is optimistic about blending the benefits of 'the statist revolution' (i.e. the development of the modern state and its justice systems) and the discovery of 'community-based justice'.

7.6. Local Involvement in Legal Policy and Justice Delivery in Greenland⁷⁰

- The presentation began with a brief outline of the historical development of the legal system in Greenland, which included:
 - the legal practices in pre-colonial times,
 - the loss of traditional law during the first century of colonization,
 - the period of the dual legal system (one for the colonial officials, and one for Greenlanders, where customary law was only applicable to Greenlanders) and
 - de-colonization and the postwar law reform.
- What follows from the postwar law reform is a Greenlandic Penal Code which places more emphasis on rehabilitation than the Danish Penal Code, and Greenlandic law which embodies Western concepts, such as the independence of the court, while conforming to Greenlandic Inuit culture in its day-to-day administration.

⁶⁹ Braithwaite, John. "Restorative Justice And A Better Future". Halifax: Dorothy J. Killam Memorial Lecture, Dalhousie University, 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>

⁷⁰ Finn B. Larsen (Denmark) *cited in* The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, *Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience* Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>

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- Today, nine out of ten people working in the Greenlandic justice system are Greenlandic.
 - It is a system which is based on the use of lay people and the indigenous language.
 - A system of lay assessors courts has become a central and unique system of conflict resolution.
 - Although it is not based on traditional Eskimo law-ways, Inuit culture comes in a more subtle way.
 - One may call Greenland law an example of "applied legal technology".
 - It embodies the principal of Western legal thought but the details and the day-to-day operations of the system have been stamped by Greenlandic culture.
 - Take for example the informal atmosphere that characterizes the court sittings, reflecting the Greenlanders skepticism and hesitation toward the exercise of authority.
 - The local judge would soon get a bad reputation in his community if he behaved in an arrogant or patronizing manner while sitting on the bench.
- It is interesting to note that in the transfer of powers to Home Rule in 1970, the administration of justice, which for decades had been in the hands of Aboriginal personnel, was one of the few issues which was not transferred to the Home Rule Government.
 - As a result the legal system was left behind while extensive reforms were launched in other spheres of the Greenlandic society, and the administration of justice came gradually "out of sync" with the rest of society.
 - In 1994, a Danish government commission was set up in cooperation with the Home Rule Authorities to remedy the situation.
 - Some of the issue tackled by the commission include the education of lay judges in response to the changing crime patterns, services to victims, transfer of correctional services to the Home Rule Government, and the building of a new prison in Greenland.
 - The basic system of use of lay people, however, remains unchanged.

7.7. Devolution of Justice in Papua New Guinea: Village Courts and Probation Services - 1995⁷¹

Prior to independence in 1975, Germany, Britain and Australia imported justice systems into the country. In colonial times justice was administered at the local level by patrol officers call the kiaps. Based in remote parts of the country, they exercised administrative and judicial powers. It was the kiaps who, recognizing traditional forms of dispute settlement, initiated the concept of some kind of village level adjudication of disputes and led to the introduction of the Village Court system in 1975. While there is no formal policy of devolution in PNG, the desirability of involving the community in the maintenance of law and order has been recognized primarily through Village Courts and Probation.

The laws of Papua New Guinea include both English common law and customary law. While custom is applied mainly in the Village Courts, in the Western style court system, it is usually only taken into account in the mitigation of a sentence. Each Village Court was created by proclamation and given jurisdiction over a specific area. They are usually created as a result of local initiative from the villagers and the local government council. In 1993, there were 1100 courts dealing with an estimated 500,000 cases annually. The village court system adjudicates by reference to custom and has criminal jurisdiction over prescribed offenses. If an offense is found to have been committed the court can recommend imprisonment. In most cases compensation and a fine are awarded. Impartiality is not considered an essential attribute in Melanesian dispute settlement and the expectation is that decisions will be made on the basis of self-interest and the

⁷¹ Cyndi Banks (Papua New Guinea) *cited in* The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>

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interests of the disputants (Lawrence, 1970; Wormsley 1985). Village court decisions are criticized by villagers but disputes which cannot be settled informally are usually dealt with satisfactorily by the system. Women have used the Village Courts as a means of airing their marital problems and as ways of promoting their concerns in a manner which would not have been possible in traditional society. The position of women appearing before the Village Court is dependent on the general level of respect given them in a particular society. The treatment of women by Village Court has recently become a concern and there have been a number of appeals to the Supreme Court.

Probation was introduced in 1979 but became operational in 1985. Probation can be ordered by all Courts except the Village Court for up to five years. Conditions can be imposed and it is through the use of conditions and supervision that the probation system has attempted to integrate the community and the probationer. At its inception Probation proceeded by way of support from community-based support committees in the form of housing, funding for support services and the provision of volunteers. In preparing the pre-sentence report, a Probation Officer takes into account the community's reaction to the offense and, in particular, whether the offense has offended against custom. Conditions imposed such as restitution, compensation and the performance of community service take into account community expectations and the demand for reciprocity. Volunteer Probation Officers who are members the village supervise probationers and this gives the community some control over the behavior its members. For the women of the community, the pre-sentence reports give them a voice in the justice process. Those who have been sentenced on probation are allowed the chance to stay in the community and maintain their position in the family.

7.8. Community Revitalization and the Devolution of Justice Services - 1995⁷²

Australia is in the early stages of its thinking about restorative justice and community healing programs for indigenous people. While the political climate is progressively more responsive to change, a sense of powerlessness still pervades interpersonal relationships within Aboriginal families and communities. This frustration manifests itself in expressions of rage, despair and apathy. The arbitrariness of events and of associations with government authorities and with wider society seriously affect race relations and community prosperity. The presentation focused on two examples of community revitalization involving non-coercive, community-based responses which tackle underlying social problems.

The "We Al-li" program, developed by two Aboriginal graduate students and influenced by the Canadian Indian sobriety movement, is a community-based psycho-social therapy program which targets trauma injuries and fosters healing through self-understanding. The program uses self-help community groups ("Lift the Blanket" workshops) to address family violence and addiction. It is through the recognition of the layers of pain that individuals could put an end to self destruction and ultimately turn to individual, family and community transformation. The aim of the program is reconciliation, across ages and across cultures. In addition to its work with community people, the program is now welcomed in maximum security prisons to assist violent men. There is also an adapted program for women shelters to facilitate the return of battered women to the community.

The Community Justice Safety Initiatives Program was designed as part of the attempt of the Queensland Government to address and implement the recommendations of the Australian Royal Commission into Aboriginal Deaths in Custody. The program involves targeted support for a variety of existing or planned community justice and community recovery initiatives, supported by training tailored to the specific needs of each group. The initial purpose of each group is of less importance than its potential to undertake broader responsibilities as its experience, confidence, and community acceptability grows. The program involves a focused effort to heal whole communities (rather than a "confetti approach" of widely dispersed short-term funding, which raises expectations but which ultimately fails). Crucial to the

⁷² Kayleen Hazlehurst (Australia) *cited in* The International Centre for Criminal Law Reform and Criminal Justice Policy and The School of Criminology, Simon Fraser University and with the support of The Department of Justice Canada and The Ministry of the Attorney General of British Columbia, Putting Aboriginal Justice Devolution Into Practice: The Canadian And International Experience Workshop Report, July 5-7, 1995 <http://137.82.153.100/Reports/Aboriginal.txt>

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conception is a requirement that government departments and agencies working in the selected communities co-ordinate their own policies and operations. Initially four communities were selected. The plan is to employ a technique of "forward-rolling" program funding each year to other communities so that, within three years, a network of twelve participating communities will be created.

After securing the support of the local communities, and a State-wide representative Aboriginal and Islander overview committee, the plan faltered as turf battles and internal bureaucratic conflicts delayed State implementation decisions. A change of ministers and departmental heads in the two major State departments concerned has since further delayed devolution initiatives strongly supported by Aboriginal community groups. The researchers are now conducting dialogue at the Federal level in order to continue this project.