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1. Key Themes (to be explored)

Reach - The individuals and organisations targeted and directly affected by a policy, program or initiative.¹ - Focus on the specific behavioural changes resulting from the program's outputs that we can observe for those “reached” by the program. This requires clearly identifying who the various clients of the program are and how their behaviour is expected to change.

A series of questions can be developed that community justice projects can ask to provide victims with the greatest opportunity for justice, based upon the six core rights of victims:

- Safety (a sense of safety for victims).
- Information/notification (answers to questions).
- Choice (the choice to participate or not participate).
- Testimony (a chance to testify to their truth).
- Validation (respect for and acknowledgment of the victim’s experiences).
- Restitution (the full and prompt payment of restitution).

Resources for Victims: Are the concerns raised about victims rooted not so much in the methods used by the committees or in the focus on offenders, but rather the lack of adequate resources and ongoing training provided to these committees to perform these tasks in a manner that protects and supports the victims and adequately addresses the underlying problems of the violence?

Is there viability, at least initially, for a separate community justice approaches to be used for victims (and their support groups) as well as offenders (and their support groups) and then over time a meeting of the two parties in a community setting? E.g. a victim’s circle, an offender’s circle?

Victimizer – Offender: The use of the word offender highlights the person who has created outrage because their act is judged to have transgressed the moral and legal code of society. This implies the action of the individual in the context of judged expectations. The central concern with the use of the word offender is the lack of acknowledgement for the victim. The very terminology of the criminal justice system ignores the victim and instead concentrates on the offense of a code. The use of the word victimizer centers the concern around the victim. The victimizer is linked in an unhealthy and destructive relationship with the victim. The length of the relationship may only be of short duration but its destructive effects can have great longevity and dire consequences. The words victim and victimizer complement each other and highlight the creation of an imbalance; an imbalance that must be addressed by the victimizer. The use of the term victimizer highlights an important distinction between the two systems and is the more appropriate term when discussing the restorative justice (Rupert Ross). This is a distinguishing point in the use of language. The difference between the statement, "X is good", and the statement "I think I liked X" portrays the difference in the use of language between Aboriginal people and non-Aboriginal people. The former statement, while more powerful, leaves no doubt and little room for another opinion. The later opinion suggests a preference of the individual and invites other opinions with the potential for confrontation. See chapter on “First Nations/Aboriginal Justice.”

¹ Adapted from Government of Canada, Treasury Board Secretariat, Guide for the Development of Results-based Management and Accountability Frameworks, August 2001, <http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/rmaf-cgrr-06-e.asp>

2. Research Questions

These questions provide a way to measure the effectiveness of community justice projects relevant to victim sensitivity, and respect for the victim's participation.

Outcomes:

- Safety (a sense of safety for victims).
- Information/notification (answers to questions).
- Choice (the choice to participate or not participate).
- Testimony (a chance to testify to their truth).
- Validation (respect for and acknowledgment of the victim's experiences).
- Restitution (the full and prompt payment of restitution).

2.1. Victim Profile

How many victims have been served by the community justice project?

Is victim information collected by the project?

What profile of the victims is served by the project?

- Gender
- Ethnicity/Diversity
- Age
- Disabled
- Group Home/Mission School
- Socio/Economic/Educational status
- Faith/Spiritual Roots
- Pre-victimization factors – previous experience with the justice system ²
- Type of crime
- Connection to the community
- Relationships in the community; with offender (family, neighbour, stranger)
- Previous type of participation in community justice process
- Satisfaction with community justice process

How does the community justice project define the victim? What is a victim? Who is the victim? Identifiable individual?

Is there a primary/direct victim?

Is there a secondary/indirect victim?

Does the project involve cases with multiple victims?

If so, what issues need to be addressed?

- possible differing or conflicting needs of victims
- amounts that an offender is able to pay to respective victims
- privacy issues
- delivery of community justice processes

If so, how does the project deal with this situation?

- Holding a series of meetings

² Pranis Kay, Director of the Restorative Justice Program of Minnesota DOC, Building Community Support for Restorative Justice Principles and Strategies
http://www.restorativejustice.org/rj3/Action/Tutorial.1/BuildingSupport_Pranis.html

<p>2.2. Gender - see chapter on <u>“Gender”</u></p>
<p>2.3. Culture-Tradition-Diversity - see chapter on <u>“Culture/Tradition/Diversity”</u></p>
<p>2.4. Elderly How does the project address elderly victims’ issues? How does the program give understanding to such issues as: dementia, isolation or other aging issues that may exacerbate the victims’ experience, leaving them feeling more vulnerable than before?</p>
<p>2.5. Youth How does the project address youth victims’ issues?</p>
<p>2.6. Disabled How does the project address victims with disabilities? Does the project have someone (working with the victim) who has knowledge of disability issues and/or has connections with other agencies that specialize in disabilities? How does the project address the needs of victims with cognitive disabilities, i.e., difficulty with verbal expression and understanding? Is there a way to bring in someone who specializes in communicating with these victims? How does the project amend its normal practices to meet the special needs of victims (for example, a disabled individual, a frail individual that is homebound and cannot travel to the designated site)?</p>
<p>2.7. Safety Does the project consider the safety of victims and their families as its highest priority? What safety measures does the project have in place to ensure the victim’s safety <i>before, during and after</i> his/her participation in the process? Are victims asked if they feel safe and what (if anything) would make them feel safer? What preventive strategies does the project suggest to victims to increase their safety? (NOTE: In cases involving domestic violence or stalking, there is no way that anyone can ensure safety.) Does the project consider the emotional, as well as the physical safety of the victim? For example, does the project try to understand the issues with which the victim may be dealing, and are workers sensitive to issues of trauma or other mental health diagnoses? What safety procedures are followed when both victims and their offenders are present in the same venue? What steps are taken when safety measures are violated during any community justice project process? Do facilitators intervene immediately if the focus of a community justice meeting becomes uncomfortable for the victim? Do they have training to deal with the emotional reactions that can result from this type of interaction? Do the physical environments of restorative justice venues consider the victim’s safety, i.e., parking, lighting, etc.? In processes involving face-to-face meetings, are the victim and offender scheduled to arrive/leave at different times, so that offender does not have the opportunity to harass, threaten or coerce the victim? Are escorts provided to victims into and departing the venue? How does the physical environment of community justice project office consider the victims’ safety?</p>
<p>In the project, who has responsibility for creating, implementing, reviewing, evaluating and improving victim-related safety measures? How does the project work with victims and victim assistance/support/service providers to ascertain the kinds of safety measures - to ensure the victim’s <i>safety before, during and after</i> his/her participation in the community justice approaches? E.g. Group/safe homes, victim services satellite Has the project considered safety measures for staff who are conducting victim-related or community justice approaches, or who are in the office?</p>

2.8. Information

How does the project provide victims with information/explanation that: outlines their options for involvement and describes what they can expect if they choose to participate? ie orally, writing, audio tape, video tape, brochure

How does the project give information on both the possible benefits and cautions associated with the community justice approaches?

If victims need help with referrals, how does the project tell them to advocate for themselves and help with the process, if needed?

Does the project have a list of services/resources to give to victims?

Does the project have a "glossary of terms" for victims that are utilized throughout justice processes?

Does the project provide information in different formats, i.e., local languages, Braille?

How does the project inform the victim about the status of their case?

Are project's staff who provide referrals and assistance trained in victims' needs and rights?

Are project staff familiar with local, territorial, and federal resources for victims so they can make appropriate referrals? If not, why?

Are any of them victims/survivors?

How does the project work with victims and victim assistance/support/service providers to determine the kinds of information (about the project and community justice approaches) victims need? Eg. About the crime, the offender, processes, outcomes

Is there a mechanism in place to check with victim advocates to see if they can offer any insight/support to the victim in community justice approaches?

Does the project have working collaborative agreements with domestic violence programs or other community/victim resources for referrals or assistance in planning for the victim?

2.9. Participation/Choice

Does the project inform victims that it is completely up to them whether or not they want to participate in community justice approaches?

Does the project inform victims of their options for varying levels/degrees of participation?

Does the project offer choices of dates, times and places?

Does the project offer a choice of venues, i.e., who can be present, who will not be present, etc.

Does the project offer the victim the opportunity to have an advocate, probation officer or other support person present during the community justice approach?

Does the project provide victims with a written list of the rights to which they are entitled when participating (or choosing not to participate) in your program?

Does the project understand that victims have the right to make choices, regardless of whether the staff agrees or disagrees?

Does the project inform victims that they can change their minds about any of their previous choices?

How does the project involve former victims in the development and practice of the project?

2.10. Testimony

What procedures are in place in the project program to ensure that there is always an appropriate environment for victims to tell their stories?

Does the project have a way to address the needs of victims with cognitive disabilities, i.e., difficulty with verbal expression and understanding? Is there a way to bring in someone who specializes in communicating with those victims?

Does the project provide assurance that everyone is "on the side" of the victim and will support her/him during and after the testimony?

Does the project let victims know that they only need to tell as much as they wish?

If a victim chooses not to participate, are there other options for the victim to provide testimony?

Are those options described in writing and given to victims?

Is there someone (a trained individual) who can assist the victim in preparing his or her statement and/or reading it, should the victim not be able to do it him/herself?

Does the project provide interpreters for those who are deaf, hearing impaired, speak English as a second language, speak another language? What are the project's confidentiality guidelines as they pertain to victim testimony and involvement?

Is there opportunity provided for the victim to ask questions of the offender? Does the project offer victims assistance in this process (writing questions down, offering to act as facilitator, etc.)?

2.11. Validation

What types of support does the project offer to the victim who are providing testimony in community justice approaches?

Has project staff gone through sensitivity /cultural training to be more effective in validation?

What does the project do to ensure that offenders and others will also validate victims' testimony?

What does the project do if offenders or others fail to validate the victim's testimony?

Does the project have a way to thank the victim for their testimony? E.g. "thank you" letter

2.12. Dispositions/Restitution/Compensation

Does the project provide the victim with assistance in documenting losses for the purposes of restitution?

Is the victim asked if there are other ways the offender can repay that would be more beneficial or healing than monetary compensation?

What procedures are in place in the project to ensure that restitution payment is the *first* financial responsibility of offenders (or a dual priority with cases that also involve child support)?

How does the project provide the victim with information about the offender's restitution schedule, amounts that will be paid?

Is the victim provided with information about remedies in cases where the offender does not fulfill his/her restitution obligation, and provided with assistance in seeking such remedies?

How does the project consider the victim's safety issues relating to restitution?

How does the project provide victims for financial resource assistance in obtaining emergency funds?

How does the project inform the victim about Victim Compensation and how to apply?

How does the project provide financial reimbursement to the victim for mileage to participate in any of the community justice approaches?

How does the project provide reimbursement to the victim for lost wages due to involvement with the project?

How does the project pay for victim counseling costs?

How does the project pay for legal/auditing costs incurred by the victim of a complex theft? Who will enforce the community justice agreement, or violations thereof, post-process?

2.13. Victim Follow-Up

Does the project have an evaluation process for the victim to assess his/her satisfaction with the community justice approach?

If so, what were the results?

2.14. Victim Questionnaire	Check answer
Did you take part in the community justice approach yourself?	
No, I sent someone to speak for me	<input type="checkbox"/>
OR	
Sent a victim impact statement.	<input type="checkbox"/>
Yes, I went myself	<input type="checkbox"/>
Why not? (can check more than one answer)	
Wasn't told about it; didn't know it was happening	<input type="checkbox"/>
Afraid of offender, offender's friends, or offender's family	<input type="checkbox"/>
Didn't think anyone would listen to my opinions	<input type="checkbox"/>
Wasn't important/couldn't be bothered	<input type="checkbox"/>
Other (specify)_____	<input type="checkbox"/>
If "yes" or "sent somebody else or a statement"	
Did you feel safe before/during/after participation in the community justice approach?	
No <input type="checkbox"/> Yes <input type="checkbox"/> Why or why not?	
What went well? What suggestion do you have to improve safety measures?	
Were you provided with information/explanation that outlined options regarding your involvement in the community justice approach – the possible benefits/cautions – referrals to community resources?	
No <input type="checkbox"/> Yes <input type="checkbox"/> Why or why not?	
What went well? What suggestion do you have to improve information measures?	
Were you informed about the voluntary nature of your participation in the community justice approach?	
No <input type="checkbox"/> Yes <input type="checkbox"/> Why or why not?	
What went well? What suggestion do you have to improve participation/choices?	
Did you understand what was going to happen in the community justice process and your responsibilities?	
No <input type="checkbox"/> Yes <input type="checkbox"/> Why or why not?	
Do you think you had an opportunity to express your feelings about the offence and its impact on you to the offender (or person sent in victim's place) (or what your statement said)?	
No <input type="checkbox"/> Yes <input type="checkbox"/> Why or why not?	
What went well? What suggestion do you have to improve participation/choices?	
Do you think you were able to contribute your views about what is required to put things right?	
No <input type="checkbox"/> Yes <input type="checkbox"/> Why or why not?	
Do you think that agreement that was reached with the offender was a good one or not?	
No <input type="checkbox"/> Yes <input type="checkbox"/> Why or why not?	
What went well? What suggestion do you have to improve the testimony/validation?	
What do you think is the best way to handle this type of case?	
Court <input type="checkbox"/> Community justice approaches <input type="checkbox"/> Another way <input type="checkbox"/> (what way?_____)	
Why?	

Research Framework for a Review of Community Justice in Yukon
Community Justice – Victims

What affect did it have on you to go through the community justice process?

Is there anything else you would like to say about how the community justice approach was handled, or how it could be improved?

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Community Justice – Victims

2.15. Criminal Justice/Community Resources Assisting Victims - Questionnaire
<p>2.15.1. Number of Personnel How many personnel are working with the community justice project?</p>
<p>2.15.2. Personnel Demographics What is the profile of the personnel working with the community justice project?</p> <ul style="list-style-type: none"> - Gender - Ethnicity - Age - Disabled - Socio/Economic/Educational/Health status - Employment - Faith/Spiritual Roots - Pre-victimization factors – previous experience with the justice system - Reason for becoming involved with the community justice project (eg. serving/building the community, using skills and abilities) - Reason for ceasing to be involved with the community justice project
<p>2.15.3. Mission/Vision/Objectives/Goals - see also chapter on “Definitions/Principles” – “Results/Performance Measurement/Accountability” What are your stated mission/vision/objectives/goals with respect to community justice? Short term? Medium term? Long term? Do you have any suggestions as to what the mission/vision/objectives/goals/values of the other stakeholders should be with respect to community justice?</p>
<p>2.15.4. History - see also chapter on “History” What is the history of your role and participation in community justice?</p>
<p>2.15.5. Sponsor/Organization/Structure/Governance How do you support the work and decisions of the community justice projects? Do you have any suggestions as to how community justice projects should be structured? Do you have any suggestions as to how governmental/non-governmental organizations (that sponsor/support the project) could be organized/structured to support community justice?</p>
<p>2.15.6. Roles and Responsibilities What your roles and responsibilities with respect to community justice? Are there gaps in or duplication of victim assistance/support/services? Do you have any suggestions as to what the roles/responsibilities/activities of government/related organizations, councils or working groups should be in community justice?</p>

<p>2.15.7. Accountability - see also chapter on <u>“Results/Performance Measurement/Accountability”</u> What are your overall accountability mechanisms with respect to community justice? Do you have any suggestions as to what other accountability mechanisms should be in place for community justice?</p>
<p>2.15.8. Complaints - see also chapter on <u>“Results/Performance Measurement/Accountability”</u> Do you have any suggestions as to what kind of mechanism should be in place to respond to complaints about community justice projects?</p>
<p>2.15.9. Conflict Of Interest/Power Dynamics Do you have any suggestions as to how community justice should handle conflict of interest situations and power dynamics?</p>
<p>2.15.10. Decision-Making Do you have any suggestions as to how community justice projects should make decisions? Do you have any suggestions as to how community justice projects enhance its team-building exercises, workshops, training, advice or outside assistance to resolve the differences/disputes?</p>
<p>2.15.11. Interventions/Referrals/Diversions - see also chapter on <u>“Interventions/Referrals/Diversions”</u> Do you have any suggestions about interventions/referrals/diversions that should be handled by the community justice project?</p>
<p>2.15.12. Activities/Services/Approaches - see also chapter on <u>“Activities/Services/Approaches”</u> Does you have any suggestions as to what activities/services/approaches should be undertaken by the community justice project?</p>
<p>2.15.13. Offences - see also chapter on <u>“Offences”</u> Do you have any suggestions as to what offences should be handled by the community justice project?</p>
<p>2.15.14. Clients - see also chapters on <u>“Offenders”</u> Do you have any suggestions as to which clients should be served by the community justice project?</p>
<p>2.15.15. Human Resource Management What experience and skills do you have with community justice? What training/support do you have/received to work with the community justice project? How many hours per week do work with the community justice project? Do you take a break from these duties? Are you formally or informally recognized and rewarded for your work with community justice? By whom? How often? Do you have any suggestions as to who should be members of the community justice projects? How they should be selected? 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 Do you have any suggestions as to what kind or roles/responsibilities these members should have? Do you have any suggestions as to what kind of experience/skills these members should have? Do you have any suggestions as to what kind of education/qualifications these members should have? Do you have any suggestions as to what kind of informal and formal training these members should have? Do you have any suggestions as to what whether members should be paid or be volunteers? Do you have any suggestions as to how volunteers could be recruited? Do you have any other suggestions regarding human resource management in community justice projects?</p>
<p>2.15.16. Financial Resource Management - see also chapters on <u>Funding/Budgeting; Costs</u> Do you have any suggestions as to how funding should be determined for community justice projects? Do you have suggestions as to how much core funding should be available to the community justice projects? Do you have any suggestions as to what financial accountability mechanisms should be in place for community justice projects?</p>

<p>2.15.17. Material Resource Management Do you have any suggestions as to what material resources community justice projects should have?</p>
<p>2.15.18. Project Administration Do you have any other suggestions as to whether policies/procedures/standards should exist for community justice? <u>see also chapter on “Standards”</u> Do you have any suggestions as to whether community justice processes should be open to members of the public? Do you have any suggestions as to community justice project administration?</p>
<p>2.15.19. Community Services/Resources - see also chapter on <u>“Social Development Factors”</u> Do you 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>
<p>2.15.20. Audits/Evaluations/Reviews - see also chapter on <u>“Results/Performance Measurement/Accountability”</u> and chapter on <u>“Review Methodology”</u>; Do you have suggestions regarding the conduct of audits/reviews/evaluations with respect to community justice projects? How often? By whom?</p>
<p>2.15.21. Working Supportive Collaborative Relationships - see also chapter on <u>“Relationships/Partnerships”</u> Do you meet with the following stakeholders in the area of community justice? If so, how often? For what purpose? Do you have the support of the following stakeholders in the area of community justice? What is working well, in terms of your relationship with the following stakeholders in the area of community justice? What are the challenges in terms of your relationship with the following stakeholders in the area of community justice? How are disagreements or disputes between parties resolved? Do you have any suggestions on how to improve working collaborative relationships with the following stakeholders?</p>
Victims –
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
YTG –Crime Prevention
YTG –Victim Services/Family Violence Prevention Unit
YTG –Probation Services – see also chapter on <u>“Probation”</u>
YTG –Corrections – see chapter on <u>“Corrections”</u>
YTG – Health and Social Services (including Alcohol and Drug Secretariat)
YTG Women’s Directorate – see also chapter on <u>“Gender”</u>
YTG Education
YTG Housing
YTG Sports & Rec
Justice Canada

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Crown Prosecutors – see also chapter on <u>“Crown Prosecutors”</u>
RCMP – see also chapter on <u>“RCMP”</u>
Judiciary – see also chapter on <u>“Courts”</u>
Defense/Legal Aid – see also chapter on <u>“Defense Counsel”</u>
2.15.22. Other Issues Do you have specific concerns and/or issues about community justice?
2.15.23. Successes – see also chapter <u>“Successes”</u> According to you, what are the top (5) five best practices in community justice projects?
2.15.24. Challenges – see also chapter <u>“Challenges for Change”</u> According to you, what are the (5) five greatest challenges facing community justice?

3. Relevant Documents, Studies and Practices - Yukon

3.1. Yukon Justice - Victim Services/Family Violence Prevention Unit ³

- Support services are offered to victims of crime, and victims of family violence.
- Rehabilitative programs are also offered to offenders and abusive spouses.

3.2. Crime Prevention and Victim Services Trust Fund⁴

- The Crime Prevention and Victim Services Trust Fund awards money to projects designed to provide services and information to support victims of offences.
- The fund also is intended to help reduce the incidence of crime, address the root cause of criminal behaviour, prevent violence against women and children, and publicize information about crime prevention and how people can protect themselves from becoming victims.
- The Crime Prevention and Victim Services Trust Fund awards money to projects designed to:
 - Provide services and information to support victims of offences;
 - Help reduce the incidence of crime;
 - Address the root cause of criminal behaviour;
 - Prevent violence against women and children; and
 - Publicize information about crime prevention and how people can protect themselves from becoming victims.
- The fund is supported through a variety of sources as set out in the Act.
 - The public is invited to donate money to support community projects by contacting the trust fund administrator.
- Established in 1998, the Crime Prevention and Victim Services Trust Fund has funded Yukon community groups for crime prevention and victim services projects.
- The Board of Trustees review proposals twice a year.
 - Crime Prevention And Victim Services Trust - Board Of Trustees
 - Under the Crime Prevention and Victim Services Trust Act, Section 5(1), Interpretation Act, Section 3(3), this Board manages and controls the Crime Prevention and Victim Services Trust Fund. It creates bylaws for the administration of its affairs and establishes the procedure for applications of the funds. The Board considers proposals for funding submitted to it and approves expenditures on those community-based projects which serve the purposes of the Trust Act and places emphasis on the reduction of crime and the prevention of violence against women and children.
 - The Board consists of nine members who are appointed for terms that do not exceed three years. It meets possibly four to six times a year. Persons appointed to the Board serve without remuneration, but may be paid transportation and living expenses incurred in connection with the performance of their duties away from home.

3.3. Victims Compensation Board ⁵

³ Yukon Territorial Government, Department of Justice, Victim Services/Family Violence Prevention Unit, <http://www.justice.gov.yk.ca/prog/cor/vs/index.html>

⁴ Government of Yukon, Department of Justice, [Community Justice & Public Safety, Crime Prevention & Policing](http://www.justice.gov.yk.ca/prog/cjps/cp/funds.html), Crime Prevention Funding Programs, <http://www.justice.gov.yk.ca/prog/cjps/cp/funds.html>

⁵ Yukon Board and Committees Directory, January 2001, <http://www.gov.yk.ca/pubs/directory-Jan01.doc>

LEGISLATIVE AUTHORITY:	Compensation for Victims of Crime Act, Section 2
DEPARTMENT:	Justice
FUNCTION:	This Board has been reconstructed to specifically deal with outstanding claims previously filed under repealed Compensation for Victims of Crime Act. The Board hears claims by victims of crime for compensation and may make a monetary award.
MEMBERS:	Three
APPOINTMENT/TERM:	Two years. (The work of the Board has now been completed.)
MEETS:	As required
HONORARIUM:	Category D

3.4. R v. Bullen – Role of the Victim– June 2001⁶

[1] Introduction: The principal aspects of a joint sentencing submission were not in issue. The amount of compensation and the role of the victim in the process were. These reasons address: the scope of restitution and whether a victim can make sentencing submissions

[6] PART I - *Scope of Restitution Orders*: Both Crown and defence submitted that restitution for property damage is restricted by s. 738(1)(a) to the actual value of damaged property. For example, the cost of a new window is covered, but not the cost of labour to install it. The victim asked for much more.

[8] *Limited Scope of Criminal Process*: Counsel did not suggest the victim cannot seek restitution, but suggested that the best means to do so lies in a civil court. To engage a victim as a witness to secure a conviction in the interest of the state and then leave the victim to their own means to pursue their injuries in another process, in another court, raises questions of fairness and practicality. In many respects, victims' interests have been unduly subrogated to state interests in the evolution of criminal courts from their beginnings in civil courts.

[9] There are limits to what a criminal court can do to compensate victims of crime. Recent changes in law and policy warrant re-examining these limitations. The following changes are relevant:

1. Criminal Code amendments to restitution
2. Enactment of sentencing principles

3. Impact of restorative justice

[10] 1. *Criminal Code Changes* - The 1995 amendments clarified that restitution can be a stand-alone remedy enforceable in civil courts. An offender who defaults on restitution cannot be charged if restitution is not a part of probation. Whatever amount is ordered as restitution by a criminal court does not affect a subsequent civil action, except as a set-off. These amendments reduce many previous concerns arising from the use of criminal courts to compensate victims.

[11] 2. *Enactment of Sentencing Principles* - The codification of the fundamental principles of sentencing includes three objectives that directly relate to restitution.

[12] Section 718:

- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

⁶ Territorial Court of Yukon (before His Honour Chief Judge Barry Stuart) R v. Bullen, Reasons for Judgment, – June 2001, <http://www.canlii.org/yk/cas/ykctc/2001/2001ykctc504.html>

[13] Paying for damages enables an offender to take responsibility in a way that can directly promote forgiveness from the victim and engender an enhanced self-esteem for the offender. Both factors significantly contribute to rehabilitating offenders.

You know, at first I didn't even think about paying back anything, eh ... Not the first time I've done a B & E and been to jail. But when the circle came up with that idea, at first I still didn't think much of it. But after I did it -- felt good about it -- you know, good about doing it -- and good for me. Now, with them [the victims] accepting my apology, like, who could have ever believed that I'd get forgiven by them, eh? I feel like it's a new start with them -- and for myself. My family was proud I worked to pay them back -- so was I, eh! (Offender after circle at Kwanlin Dun, 1993)

[14] Long before the separation of the court into criminal and civil divisions, many of the wrongful acts now deemed to be crimes were redressed solely by compensation. Compensation has always been, as it is in this case, a primary concern for victims who suffer damages. In all 50 American states, the courts are mandated by statute to order offenders to reimburse victims for financial losses (M. Hook & A. Seymour, *Offender Re-Entry*, 5(3) Crime Victims Report 33). In the United States, restitution is widely recognized as "one of the only ways that crime victims can hold offenders directly responsible for the harm they have caused" (Hook & Seymour, *supra*, at 43). In compensating victims, offenders take direct responsibility for their action and openly acknowledge the harm they have caused.

[15] 3. Restorative Justice Principles - Parliament and the courts have acknowledged the importance of restorative and community justice initiatives (*R. v. Gladue*, [1999] 1 S.C.R. 688). Reconciliation and healing, both central objectives of community justice, are advanced by restitution. Community justice practices revive the importance of compensation and call for developing new ways to compensate victims for the adverse impacts of crime. In *R. v. Proulx*, [2000] 1 S.C.R. 61, the court recognized restorative justice practices make important contributions in reducing our excessive reliance upon incarceration.

[16] These changes combine to make restitution more readily accessible by criminal courts and a more important tool in realizing the overriding principles and objectives of sentencing. Some courts have been resourceful in stretching the reach of restitution to provide practical responses to the needs of victims. Offenders have been asked to pay the counselling costs of victims of sexual offences (*R. v. C.(A.)* (1993), 142 N.B.R. (2d) 217 (C.A.)) and to pay the legal and auditing costs incurred by a victim of a complex theft (*R. v. Arsenault* (1994), 123 Nfld. & P.E.I.R. 65 (P.E.I.C.A.)). In doing so, long before the current popularity of restorative and community justice, the courts were engaged in restorative practices. Significant restitution orders that have a realistic prospect of being paid can be an integral part of an overall sentencing plan that offsets some, if not all, of the need to rely on jail.

[17] Limitations of Criminal Courts in Ordering Restitution: Too much has been made of the criminal court's inability to deal with restitution. There are no significant limitations in a criminal court process to preclude most claims for restitution. At the federal level, the same judges do criminal and civil work. At the provincial level, where 95 percent or more of criminal cases are handled, claims for restitution will not exceed the experience or training of provincial judges. Criminal court procedures with few, if any, changes can be adapted to process claims for restitution. Within the following guidelines, victims seeking restitution should not be sent to another court to process their claims.

[18] 1. Ability to Pay - Before imposing a large fine, the courts are bound by statute to assess the offender's ability to pay. There is no such statutory requirement in imposing a restitution order. Unlike a fine, a restitution order, if not made part of probation, is only enforceable through civil remedies. Further, it may be paid off much later, when an offender can afford to do so. Accordingly, large restitution orders can be ordered, despite the current inability of an offender to pay.

[19] There is one important constraint on the amount and timing of a restitution order. If rehabilitation is part of a sentencing plan, the amount and timing of restitution must not significantly undermine an offender's will and capacity to pursue rehabilitation. However, demonstrating the ability to take responsibility for their

behaviour by compensating victims can be an integral part of a rehabilitation plan for many offenders. It is a direct, concrete action that gives meaning to an apology.

[20] 2. *Ascertainable Damages* - There is good reason to send the parties off to a civil court, if complex legal arguments are required to resolve the cause or amount of damage. There is not always good reason for the criminal courts to abandon the task of ascertaining damages just because damages are not readily ascertainable. This sets far too low a benchmark for what criminal courts can and should do. If victims choose to pursue their damages in a criminal court, the criminal court ought to provide restitution, if the cause and amount of damages can be reasonably ascertained. If the damages cannot be reasonably ascertained on the information immediately available, then at least one further hearing dedicated to determining damages should be held.

[21] 3. *Restitution Determined at Time of Sentence* - Since the amount of a compensation order must be taken into consideration in assessing the overall severity of the sentence, the amount should be ascertained at the time of sentencing. This may require adjourning a sentencing hearing as the police and Crown may not have the necessary information. The victim's interests cannot be ignored because the sentencing hearing moves ahead too quickly.^[1] To ensure sentencing takes place in a timely manner, victims must be notified and assisted in gathering the requisite information to substantiate a claim. Crown counsel, police and victim services all can help victims fully utilize restitution orders. As soon as possible, Crown should notify the offender about the nature and amount of restitution being sought.

Restitution Granted in This Case:

[22] Section 738(1): in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable (emphasis mine).

[23] Both counsel, in submitting that replacement value consists solely of the purchase price of replacing damaged goods would preclude labour and other costs related to replacing the damaged property and all other losses imposed by the crime. In responding to this submission, it is best to separate the victim's claim for damages into two categories:

- i) the claim for damages directly related to replacing damaged property; and
- ii) the claim for losses not directly related to replacing damaged property.

[24] I) Replacing Damaged Property: The Latin origin of "restitution" is "restitutio in integrum", which means restoring parties to their original position. In civil law, restitution for breach of a contract aspires to restore the plaintiff to the position that preceded the breach. Why should restitution orders be any different in criminal courts? Do we suppose victims will understand why a criminal court will order payment for a new window, but need to start a new action to pursue the costs of labour to install the new window?

[25] "Replace" is defined by the Shorter Oxford Dictionary at page 1798 as "to restore to a previous place ...to put back again in a place". "Replacement" means "the act or process of replacing". The Dictionary of Canadian Law at page 1060 defines "replacement value" as "the replacement in status quo ante". These legal and common usages support the full cost of repairing the damage, not just the cost of new parts. In this case, the keys taken by the offender required replacing all locks. Total replacement costs, including purchasing and installing new parts, amounted to \$690. All of these costs are within s. 738(1).

[26] ii) Losses Caused by Crime: The remaining costs, arising from time spent viewing the videotape and preparing the case for court, are not covered by s. 738(1). These costs do not involve property damage, but relate to the time the victims were called upon by the justice system to prosecute the crime through the system.

[27] Witnesses are modestly compensated for their time and travel expenses. Their participation is an inherent part of their responsibility as a citizen. A case could be made for covering some victim expenses beyond the coverage normally provided to witnesses. Based on the principles of restorative justice, the

offender should be the first place to seek compensation for a victim's expenses. What an offender cannot cover should be covered by the state, since the state relies upon a victim to successfully prosecute violations of state laws.

[28] **Conclusion - Restitution Orders:** Changes to the scope of victim compensation are needed to assist in the healing journey of victims and to foster their sense of fairness in the justice system. For instance, the legislative distinction between compensation for property damage and for bodily harm does not always work. For bodily harm, but not for property damage, restitution covers loss of income. In this case, the property damage to the hotel resulted in a loss of income that is not covered. Broadening the scope of restitution provides meaningful alternatives to jail and enhances victim participation in and respect for the justice system. Criminal courts owe victims the duty of making reasonable efforts to ascertain and award restitution for the losses caused by crime. Few victims will understand or accept the proposition that what they cannot get a criminal court to do, they might get a civil court to do. It must remain the victim's choice. Within reasonable limits, victims should be able to apply to either court. Why force them to take further civil action if all or most of the damages can be ascertained in a criminal court?

[29] Pursuing their damages in a civil court is not always easy. Victims must start all over again. They are entirely on their own in bringing the offender to court and in proving their damages. Victims of sexual abuse proceed without the protection of post-*O'Connor* legislated shields. Victims whose claims exceed the limits in small claims court face the formidable hurdles of civil action that cause even litigants with deep pockets to hesitate.

[30] In many respects, what appellate courts assume victims want does not accord with what researchers find that victims want (A. Sanders, *Taking Account of Victims in the Criminal Justice System: A Review of the Literature* (Edinburgh: The Scottish Central Research Unit, 1999) or with my experience of what victims want. While some victims want revenge, as expressed in harsh sentences, most victims want their losses covered. The more victims are involved in the system, in my experience, the more the focus shifts from revenge to compensation, from punishment to rehabilitation. If criminal courts had access to a more comprehensive means of addressing compensation, directly from offenders and indirectly through a victim compensation fund, for many victims compensation could be a more satisfactory part of a sentencing plan than harsh penalties. A comprehensive compensation option, in many respects, serves the interests of victims, offenders and the community.

PART II - VICTIM PARTICIPATION

[31] In the past decade, the victims movement has carved out an enhanced role for victim involvement in sentencing. For many, the gains are not enough. At least it is clear -- the question is no longer whether victims should participate, but how they will participate.

[32] The experience of the victims in this case, and in many other cases, both in the courtroom and in circles, warrants searching for ways to respond to the legitimate and compelling claims by victims for meaningful involvement in sentencing. We must find ways to do so that respect the fundamental principles of justice.

[33] In this case, the victims attended all sentencing hearings. They filed victim impact statements and made oral presentations. They wanted the court to know that on a previous occasion they had given the offender a break for a similar offence. In privately working out the previous incident, they had accepted the offender's apology and believed they had developed an understanding and trust. They wanted to share their sentiments and information about the offender. They had very definite ideas about an appropriate sentence. Most of their remarks were opposed by both counsel.

[34] The law is clear. A victim may address the specific harm suffered, but not express either their views about the offender or about the sentence (*R. v. Gabriel* (1999), 137 C.C.C. (3d) 1 (Ont. Sup. Ct.); *R. v. Frigijette* (1994), 53 B.C.A.C. 153; *R. v. Coeblo*, [1999] O.J. No. 2255 (Sup. Ct.) (QL); *R. v. Bremner* (2000), 138 B.C.A.C. 200). This limitation is imposed not by legislation, but by the courts. The *Criminal Code*, in s. 722, describes the procedures for completing a victim impact statement. Nothing in these provisions precludes or provides for any further victim involvement.

[35] Victims have been allowed to express their views about the offender and about the sentence in conferences, circles and in other restorative justice sentencing processes (*Gabriel, supra*, at 15). Victims have also been allowed to comment about the offender and the sentence when both counsel agree (*Re: Regina and Antler* (1982), 69 C.C.C. (2d) 480 (B.C.S.C.)) and, curiously, when victims are supportive of the offender (*R. v. Hardy* (1976), 29 C.C.C. (2d) 84 (Qué. Sup. Ct.)).^[2] These practices are exceptions to the clear line courts have drawn preventing victims from commenting on the offender or on an appropriate sentence. With respect, drawing the line at this point is untenable. After examining reasons for and against involvement, guidelines are proposed for more meaningful victim involvement in sentencing.

[36] **Factors Supporting Enhanced Involvement:** In this case, the victims listened silently as the offender was treated as a first-time offender. They heard a joint sentence submission that fell far short of their belief that "the maximum allowable sentence should be imposed". They left in the midst of legal submissions over whether they could participate. What more they may have said in court will now be said within the community. When courts shut down their voice, it is not difficult to appreciate why many victims, even those who do participate by way of victim impact statements, are dissatisfied with the justice process (*Sanders, supra*, at 2). Enhanced victim involvement, if properly supported and informed, can advance not just the interests of the victim, but also of the offender, community and justice system.

[37] 1. Victim Interests - Not all victims want to participate. Those who do not may have had, or heard about, a bad experience as a victim, or perhaps the system did not appear to sufficiently welcome their participation. Unfortunately, in some respects, the justice system continues to primarily function on attitudes and values that stem from a time when victims were largely ignored except to the extent they were essential for a trial. The justice system is just beginning to respect the interests of victims. When they are properly respected, more victims will become involved.

[38] Most do want to participate (E. Erez. & P. Tontodonato, "The Effect of Victim Participation in Sentencing on Sentence Outcome" (1990) 28 *Criminology* 451) and initially perceive themselves as a party in the process. They soon realize they are not. They hear the prosecutor, defence counsel, probation officer and court worker make submissions and interact with the judge about "their crime", while they are relegated to sit in the gallery as a spectator:

It is my pain, not theirs. It happened to me, not to them. It is my crime to speak about, not theirs. What do they know about my feelings? (Victim, after a sentencing hearing, Carcross, 1993)

[39] Victims often know more about the offender than any of the professionals entitled to participate:

What they don't know about [the offender] would amaze them. All that stuff they said in there [court] was crap. They know little about what is really happening in his life. The process is a joke -- a very bad joke -- because it doesn't deal with the real world. I know more than they do. Most people in the community know more -- know what's going on. The court hasn't a clue. They rarely get it right because they [the courts] know so little. (Victim, after sentencing hearing, Haines Junction, 1994)

[40] Dispatched to a minor role, victims watch as the process fails to "get it right". Victims believe their pain gives them a right to speak.

[41] People facing difficult, distressing experiences may seek help, but most expect to retain control over how the help sought impacts on their lives. In the very least, they want to participate in shaping outcomes. Why do we think victims of crime are any different?

[42] Studies suggest a victim impact statement does very little to answer most victims' desires to participate in shaping decisions that directly affect them (*Sanders, supra*, at 40). Some commentators suggest that victim impact statements are only "successful in maintaining the time-honoured tradition of excluding victims from criminal justice with a thin veneer of being a part of it" (E. Erez, L. Roeger & F. Morgan, "Victim Harm, Impact Statements and Victim Satisfaction with Justice" (1997) 5 *International Rev. Criminology* 37 at 37). Victim impact statements serve a purpose, albeit a very narrow one. They detail specific damages and losses and provide a description of the impact of crime. Victims want more. They particularly want to influence outcomes. There is a widespread recognition that direct participation

offers the "greatest beneficial effects and the fewest detrimental effects", not just for the victim, but for the justice system (Sanders, *supra*, at 41).

[43] In telling their story, victims remind the court that crime is not just about breaking a law, but also about the harm done to a person:

I just wanna have a say. To be recognized as important -- you know, that my story can be heard.
(Victim, sentencing, Whitehorse, 1994)

[44] Telling their story in court can be therapeutic. Victim participation can enhance their self-esteem and assist in closure (K. Roach, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice* (Toronto: University of Toronto Press, 1999) at 292). By speaking directly to the offenders, judge and community they begin to tap their anger and pain. Significant therapeutic advantages for victims flow from having a voice, and harmful effects arise from feeling silenced (R.P. Wiebe, "The Mental Health Implications of Crime Victims Rights" in D.B. Wexler and B.J. Winick, eds., *Law in a*

Therapeutic Key: Development in Therapeutic Jurisprudence (Durham, N.C.: Academic Press, 1996)). Whether victims need to denounce or support an offender, the experience of being given a voice, of being heard and their interests recognized as important can, for some, be instrumental in their recovery.

Most of what I expected in the circle -- you know, that it would be difficult for me and that it wouldn't make much of a difference, eh -- was just plain wrong. But you know, I didn't expect to speak as much as I did -- didn't expect people would listen like they did, eh. And the biggest surprise -- as hard as it was in the circle -- was how it helped me get to a good or better place in my life, eh. (Victim, Circle Participant, Post-Circle Comments, 1993)

[45] How can filing a restricted victim impact statement and sitting as a silent observer in the public gallery be expected to promote closure or rebuild self-esteem? Currently, jurisdictions limiting a victim's participation to a victim impact statement enjoy much less success in meeting the objectives of increasing victim satisfaction than those jurisdictions which offer greater participation (Sanders, *supra*, at 41). If we intend the justice system, in the very least, to do no more harm to victims, we need to do more for victims. While all the needs of victims cannot be met in a court, the failure of other agencies to respond provides no reason for courts not to do more.

[46] Victims precluded from direct participation in shaping sentencing decisions regard the process as excessively focused on the plight of offenders. This emphasis on offenders is likely to intensify. As courts respond to the calls to minimize the use of jails and maximize community and other resources to rehabilitate offenders (*Gladue, supra*), the imbalance in the focus of the justice system between offenders and victims may worsen. This imbalance feeds their impression that the process is neither fair to, nor respectful of victims.

[47] A sense of fairness is often more related to process than to outcome. Meaningful participation in the decision-making process induces feelings of fairness and, in turn, fosters acceptance of outcomes. When victims participate directly in restorative justice processes, victims find the process fair and their emotional needs more effectively met than in court (Sanders, *supra*, at 15). Often just being invited to participate, even if they do not, regardless of the outcome, increases victim satisfaction with the process. Victim satisfaction is often more related to the degree of their involvement than the outcome of the process (Sanders, *supra*, at 31). The more participatory the process, the more satisfied the victims (A. Morris, "Giving Victims a Voice: A New Zealand Experiment" (1993) 32 *Harvard L.J.* at 304). The more victims know, the more they want to know. However, it is not just more information, but more involvement in shaping sentences that improves their satisfaction with the process (A. Sanders, et al., "Victim Impact Statements: Don't Work, Can't Work" (2001) *Crim. L.R.* 477 at 452).

[48] My experience is anecdotal and selective, as most of the victims I have spoken to approached me. On this limited sampling, victims who have been able to speak, either in the courtroom or in a circle, are very appreciative for the opportunity. Most important, they begin to move beyond their anger, beyond the dark space the crime has driven them into, when their voice is heard and respected. For the most part,

judges do not hear the wrath, frustration and pain victims feel when shut out of the process. If we were more exposed to the impact of our processes, we might be a lot less content with how the process functions.

[49] The changes driven by restorative justice have largely been shunted off to community initiatives. Courts have accepted an expanded voice for victims in community initiatives, such as circles, conferences, and diversion, but not in the courtroom (*Gabriel, supra*). Is it that judges cannot appropriately respond to victims but communities can? Judges can and should take the time to hear from and respond to victims. Victims deserve a full explanation from the court about how the sentence imposed incorporates their interests or why the sentence they seek cannot be. The reasons given for a sentence must address all affected interests. To do so, all interests must be heard. In neither hearing nor responding to victims, the court engenders their disrespect for the process and may intensify the harm caused by the crime by failing to respect their interests. As in restorative justice processes, the court can do much more in addressing the needs of victims without undermining the rights and needs of offenders.

[50] 2. Offender Interests - When victims participate in the process, their voice has a salutary impact on offenders in two ways. First, their voice shifts the handling of crime from a legalistic and tactical, adversarial game to the intimate and difficult human interaction that it is. Offenders need to hear and experience the human dimension of crime. The pain, anger and suffering of victims leaves little room for offenders to gloss over their criminal behaviour. For example, in break-and-enter offences, offenders tend to diminish the severity of their actions by assuming it is "just about property ... they had lots of stuff in that house. What we took didn't amount to much. Besides, insurance will cover it." (Young offender, private discussion, 1994) When they hear the pain of victims, whose feelings of safety in their homes has been violated, their crime takes on a significantly different meaning:

I never thought about that -- man, when they started crying, I could see their pain, eh. Man, that got to me. Like, really, I never thought about that, eh. You know, they're right -- how can they even feel safe in their own home after what we did. (Young offender, private discussion, 1994)

[51] Whatever a victim impact statement may do to "bring home to the offender the consequences of criminal behaviour" (*Gabriel, supra*, at 11), victims speaking openly to an offender brings it all home to an offender in a way that cannot be ignored. Some victims want to confront offenders. In preventing these victims from doing so, we send a clear message that we are protecting offenders from facing their victims. No wonder victims feel "the system favours and protects offenders. They have a lawyer. We don't. They can speak to the court. We can't. Shit -- we can't even speak to our offenders in court. You protect them from our anger. This justice system is an offender's justice system. That's all it is." (Ex-victim and victim supporter after court, Carmacks, 1993)

[52] In the very least, offenders ought to face the pain of their victims. They cannot be forced to respond, but they ought to be forced to listen. It can be much more salutary for offenders to hear about the human dimension of their crime from a victim than from a judge.

[53] Second, the support, understanding -- even, at times, forgiveness -- of victims has an enormous impact on the ability of offenders to successfully pursue their rehabilitation plan.

Before, you know, other times in the court, eh -- no one from my community showed up, and all I saw from victims was, like, just anger. I know -- like, guessed -- I guess people hated me. That was a hard thing, but I learned, I guess, eh, not to care. Now, this time it really helped to know the community supported me, and I know [the victims] -- well, they kinda support me, too. Makes me feel good about myself. Like, I think I'm gonna do it this time -- like, make it sober. (Offender, Kwanlin Dun, 1992)

[54] In shutting down the voice of victims, their anger is intensified. Angry victims can undermine the ability of offenders to find and retain community support. Especially, but not exclusively, in small communities an offender's ability to reconnect to his/her community and to get on and stay on a healing journey can be affected by what a victim feels about the sentence and about the offender.

[55] My experience supports the experience of many other judges -- victims, when respected and given an appropriate means to be heard, are less inclined to reject outcomes and their participation impacts constructively, both on their healing and on the healing journey of offenders.

[56] 3. Community Interests - Victims' concerns, when denied expression in the court, do not just fade away. The voices shut down in court are intensified in homes, in community gatherings and in the media. By allowing and responding to victim inputs in

the courtroom, the courts enable a vital dialogue to occur. This dialogue enables the court to appreciate the victim's perspective and for victims to hear and hopefully appreciate the court's perspective. When victims participate, they are more likely to listen and to accept the court's reasons for a sentence. Victim participation enables the court, in giving reasons for a sentence, to speak not just to offenders, but to victims and the community as well. If we fail to do so, there is little chance the underlying rationale for our practices will be effectively explained in the community by anyone else.

[57] 4. Best Interest of Justice System - The justice system benefits in many ways from meaningful victim participation. The decision-making process is better informed. Outcomes are shaped to embrace a more comprehensive reach of interests. With a broader base of support, sentences are more likely to succeed. Overall, victim participation results in better decisions and in improving their understanding of what the justice system can and cannot achieve.

[58] Many years ago, the Ontario Court of Appeal suggested "the courts do not have to reflect public opinion ... perhaps the main duty of the court is to lead public opinion" (*R. v. Sargeant* (1974), 60 Cr. App. R. (Ont. C.A.) 74 at 77). To responsibly "lead public opinion" about sentencing, courts need to hear from and respond to victims. Courts cannot assume the Crown speaks for victims. The Crown speaks primarily for the state. The interests and perspectives of the state and victim can often be very different. Hearing from the victim is an important part in gaining community credibility for court decisions and for taking any leadership in precipitating an informed community dialogue about sentencing.

[59] Some fear that an enhanced victim's voice will generate "offender-bashing campaigns and 'get tough' criminal policies" (C. Ruby, "From Crime Policy to Victim Policy: Reconciling the Justice System" (1987/88) 13 Crim. L.Q. 126). Conversely, I fear that by limiting the victim's voice we fuel their frustration and anger, and leave them with no place to go except to the streets to press for harsher penalties. Giving victims a voice, giving their pain and suffering the respect it deserves, and allowing them to participate in the dialogue about "their crime" provides a more direct and meaningful expression of their interests. We need to have more confidence in our system and in victims. The system can be understood and accepted by most victims if they are not shut out. Victims can appreciate and respect the principles governing the justice system if we invest the time in supporting, explaining and involving them in a meaningful way. It is not by involving them, but by shutting them out, that "offender-bashing campaigns" are galvanized.

[60] **Summary:** The pressure from victims for a greater voice is both relentless and compelling. The advantages of including the victim in a more meaningful way are clear. By assessing the factors that have denied or restricted victim participation, the means for engaging victims in a more meaningful way can be explored.

[61] **Barriers To Increasing Victim Participation:** Many judges throughout Canada have gone much further than the appellate court boundaries allow. Judges who actively invite victims to speak about a possible sentence and the totality of their experience have not encountered the difficulties anticipated by appellate courts.

[62] Each step towards meaningful victim participation has not experienced inordinate difficulties. The alarms of fear set off by initial plans to introduce victim impact statements were all false alarms. If anything, victim impact statements have failed to live up to our expectations to provide a respectful and effective way to include victims. In *Gabriel, supra*, at 11, the court summarized what was expected of victim impact statements:

- providing direct evidence of the impact of the crime

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- bringing home to the offender the consequences of criminal behaviour
- giving the victim the satisfaction of being heard
- providing the victim with a sense of regaining control over his/her life
- alleviating the frustration of detachment when a victim perceives he/she is ignored
- ensuring in sentencing that the victim is not reduced to obscurity -- an intolerable departure from respect for the personal integrity of the victim

[63] Undoubtedly, victim impact statements serve some of these purposes. However, victims are not satisfied with the level of participation provided by victim impact statements (Sanders, *supra*). A more direct victim voice to speak not just about damages, but also about their perspective on the offender and sentence, realizes all of these purposes in a more substantial manner than a victim impact statement.

[64] The challenge is not to hold the line drawn by appellate courts, but to explore how to maximize victim participation without unduly undermining the fundamental principles of the justice process and without causing the problems flagged by appellate courts. Exploring how to enhance the victim's voice begins by assessing the barriers currently used to oppose more than the stilted participation granted by victim impact statements.

[65] The reasons commonly trotted out to deny victims the ability to speak about an offender and to express their view about an appropriate sentence are:

- Sentencing is a two-party process involving only the state and the offender
- Courts are not a social agency
- Victims will be disruptive to the court process
- Victim participation will produce sentencing disparities

[66] Two-Party System - Courts constantly remind victims seeking greater participation that sentencing "is not a tripartite proceeding. A convicted offender has committed a crime -- an act against society as a whole. It is a public interest, not a private interest, which is to be served in sentencing." (Gabriel, *supra*, at 12). In adhering to this notion, criminal courts shunt victims off to civil courts to redress their wrongs (Gabriel, *supra*, at 2).

[67] The notion that the criminal justice process is, for all purposes, exclusively a two-party system is a remarkable example of the arbitrary division of responsibilities that cripples government and, until wiser counsel prevailed, had stymied the growth of contemporary businesses. The more progressive corporations recognized their challenges cannot be divided and delegated to separate agencies to address (P. Senge, *The Fifth Discipline: The Art and Practice of The Learning Organization* (New York: Doubleday, 1994)). Those governments and businesses that continue to do so, continue to fail, regardless of how many additional resources they invest in truncated approaches. Successful corporations realize that an integrated collaborative approach that generates the capacity for a systemic analysis of the problem and wholistic responses is required (C. Argyris, *Overcoming Organizational Defences*, (New York: Prentice Hall, 1990)). Similarly, the challenges facing sentencing courts call for holistic responses that build on a systemic analysis of how many factors interact. Restricting the voice of victims diminishes the court's ability to integrate key factors that the victim can contribute to developing holistic sentencing plans.

[68] In a restorative justice process, participation is encouraged from all facets of the community interested in or affected by the crime and the resultant sentencing plans draw from the perspectives and resources of all participants. This is precisely as it should be.

[69] Any longstanding notion, such as the exclusivity of a two-party criminal process, must be regularly questioned to determine if its rationale remains relevant and if it continues to effectively advance current public interests. The longevity of any practice is not sufficient reason to retain it. There must be more. Incantations to "time immemorial" practices are often offered up as an emotional defence against pressing needs for change. As Hans Mohr, in his characteristically penetrating insight has warned: "References to 'times immemorial' contain as much forgetfulness as they contain memory and are largely used for the purpose of legitimation when other grounds cannot be found or cannot be disclosed." (J.W. Mohr, "Criminal Law: Is There a Legal or a Social Logic Left For Its Renewal?" in P. Fitzgerald ed. *Crime, Justice & Codification* (Toronto: Carswell, 1986) at 33). We seem to have forgotten the important role victims and communities played when they shared responsibility for dealing with conflict. At one time, victims had a paramount role in working through offences against their person or property. The reasons that supported the state's assumption of responsibility several hundred years ago, if valid then, may not be today. Certainly, the almost exclusive role of the state, and relatively minor role of the victim, warrant reconsideration.

[70] In the very least, exploring avenues for according victims and communities a more meaningful voice without granting full-party status can retain what is essential for court-based sentencing process and give way on what is not.

[71] From the perspective of victims, the question is not whether they should be granted a special status; they already have one. The question is whether this special status can be enhanced without undermining the fundamental principles of justice and without adversely impacting on the sentencing process. The answers to both questions, based on experience in the courtroom and in restorative justice forums, is yes. Many American states (35) have relied on legislation to grant victims the ability to submit their views about an appropriate sentence (R. Elias, *Victims Still*, (California: Sage Publications, 1993). These legislative innovations have not caused havoc with their two-party adversarial court process. There are ways to maintain the integrity of a two-party system in sentencing and grant victims a more meaningful participation. The right to call evidence, to cross-examine, or to appeal is not required to afford victims a more significant voice in sentencing.

[72] Court: "Not a Social Agency" - In justifying the limitation on a victim's involvement, the court in *Gabriel, supra*, at 12 noted that the trial court was "not a social agency". It is as if being regarded as a social agency demeans the purity of a legal response to what, in almost every sentencing, is principally a social problem. What is important is not the maintenance of truncated responsibilities, but an openness to what is required to "get it right".

I don't give a damn what the law says, what you say the law says, or what some appeal judges say it is. But if you don't get it right -- get it right for this offender, for this victim and for this community -- the mess this crime creates will get a lot worse. (First Nation leader, Haines Junction, 1993)

[73] "Getting it right" in very few cases calls for only legal responses. To "get it right", those with skills honed for courtrooms need to acknowledge their limitations and welcome collaboration with those who possess the skills and resources to ensure sentences contribute to "getting it right".

[74] Breaking the cycle of criminal behaviour that locks many offenders into recidivism and thereby to progressively longer jail sentences requires engaging resources that social agencies can bring to sentencing (treatment, training, housing, literacy, financial and other supports). These resources are often required to extract the full potential of sentencing as a catalytic force for change. While the court is not a social agency, it can provide the opportunity for many social agencies to combine their services with those of the court to forge a plan that serves the interests of offenders, victims and communities.

[75] Will Increase Sentencing Disparities - Some fear that giving victims a voice will produce harsher penalties (*Antler, supra*; *R. v. Robinson* (1983), 38 C.R. (3d) 255 (Ont. H.C.J.)). These concerns presume the vengeance and anger of victims will unduly influence judges. These presumptions portray an unflattering impression of victims and judges -- a portrayal that is not borne out by experience.

A study of victim opinion statements (includes victims' views of offenders and of appropriate sentences) used in sexual assault cases found little significant impact on outcomes (A. Walsh, "Placebo Justice" (1986) J. of Crim. L. and Criminology 126).

A broadly based survey of different types of victim input concluded that the fear sentences will be distorted and made more punitive as a result of victim participation was unwarranted (For research, see Sanders, *supra*, at 40; Erez, *supra*, at 457. For contra-opinion, see H. Rubel, *Victim Participation in Sentencing*, (1985-86) 28 Crim. L.Q. 226; Stuart, D., *Annotation* (1984), 38 C.R. (3d) 256).

[76] My experience with restorative justice practices here and in other jurisdictions principally indicates that victims, when given a full opportunity to participate, are not as interested in being as punitive as is commonly assumed. In circles, when offenders take full responsibility for their actions and demonstrate earnest attempts to be rehabilitated, victims are generally less interested in jail sentences and more interested in sentences that reflect, in a concrete manner, what offenders will do to take responsibility for past actions and to change future conduct. The more victims participate, the more they know about the offender, the offender's family and community, the more likely they will support a constructive sentencing plan that avoids or drastically reduces dependence upon jail.

[77] Often victims call for jail sentences because they are not aware of alternatives or of the costly ineffectiveness of jail (Rubel, *supra*, 236). In circles, victims apprised of alternatives often support sentencing plans that avoid or minimize dependence on jail.

[78] Introducing the victim's voice worries some that the neutrality of the court will be compromised (R. v. Porter (1976), 33 C.C.C. (2d) 215 (Ont. C.A.) at 220; Gabriel, *supra*, at 16). While many justice professionals seem to share this opinion, none of the research I found validates this assumption. Courts have not been swayed or compromised by victim participation (Sanders, *supra*, at 34). If anything, public perception of the court's neutrality may be more jeopardized by shutting out the victim.

[79] 3. Disruptive Effect of Vengeful Victims -In Gabriel, *supra*, at 13, the court suggests that a "runaway model" of victim participation would fill the court with victims, who cannot distinguish between vengeance and retribution. They will come to court screaming for offenders to be harshly punished.

[80] The screams for vengeance seem much louder, more insistent from victims shut out of any meaningful participation. What is not expressed in an emotional, but appropriate way in court can be shouted in anger and frustration in the streets. In both courts and restorative justice processes, the more victims participate, the more they manifest an understanding of the difference between vengeance and retribution. It is the insult of being shut down that inflames their pain into vengeance. It is this insult that contributes to galvanizing political pressures for change around single issues.

[81] The fear about a "runaway model" also assumes victims cannot understand or respect the court process. Again, my experience is quite different. My experience suggests that victims, if respected, act respectfully. Today, victims have access to professional victim services. This access helps victims appreciate the limitations of the court process and prepares them to effectively participate.

[82] Finally, the fear of victim participation generating a "runaway model" assumes judges cannot handle outbursts by angry, emotionally charged victims in the courtroom. Extensive training through the National Judicial Institute, and many other fine programs about victims' issues, about dealing with strong, difficult emotions, has prepared judges to deal with the strong emotions surrounding crime.

[83] In restricting the victim's view, we seem to assume sentencing can best be conducted by shutting out the emotions that permeate the process. For what purpose? So that the sanctity of the law will not be tarnished by emotions? Are we so focused on "head talk" that we cannot permit any "heart talk"? Stripped of all emotional aspects, sentencing discussions of crime in principally legal terms offends some victims.

I can't believe -- as lawyers battled over the law and spoke about what should or should not happen to [the offender] no one spoke of the human parts of the crime -- about what it did to my business, my family,

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and about what it did to me. I was hurt and offended that sentencing was not much more than a bunch of legal talk. (Victim, Private discussion, 1994)

[84] What makes restorative justice processes so much more successful, on many levels, than the court is the space created for hearts to talk. If we want sentencing to be a pivotal experience for change, we must engage all the dynamics surrounding sentencing. We fail to appreciate that embracing the emotional and spiritual dynamics surrounding sentencing enhances the capacity of the sentencing process to make a lasting, positive impact on the lives of all participants. Judges can handle the emotional expressions of victims. The process may take longer. Some victims may be disruptive. But allowing victims a voice, especially an emotional voice, can be a constructive learning experience for the offender, the victim and the court.

[85] **Summary:** The reasons stacked up against increasing victim involvement fail on several fronts to hold the line currently drawn by appellate courts. First, most of the reasons (vengeful victims, sentencing disparities, disruptive interferences) are based on assumptions, not research. Currently, most of the research substantially refutes the underlying assumptions shaping restrictions on victim participation. Second, the insistence on preserving a two-party process, although an unnecessarily restrictive view, has little to do with giving victims a voice. Victims are not seeking party status, just seeking to speak their mind about the offender and the outcome. Jurisdictions which have given the victim a voice have not experienced untold destruction of the process. Third, some courts suggest the legislation in creating victim impact statements has limited victim participation. That is simply not so. It is not the legislation denying the victim a voice, but the courts.^[3]

[86] Fourth, none of the reasons limiting victim participation address the impact on victims when their voices are ignored or shut down. Finally, there has not been a satisfactory assessment of how including the victim in sentencing could benefit the offender, the community and the justice system.

[87] **Enhancing Victim Involvement:** How victim interests can best be addressed ought to be primarily left to those who work with victims and whose expertise provides a more informed perspective than what judges and counsel can glean from their experiences. If the justice system aspires to do no more harm, and to at least function in a manner that respects those already harmed, any change must be informed by what actually happens, not by what is assumed to happen.

[88] In this case, as in many others, when a victim's voice is ignored, they feel disrespected. We not only fail to garner their support for the outcome, but we exacerbate their suffering and generate anger with the justice system. We must do better -- and we can.

[89] *The following guidelines ought to govern any new measures courts explore to increase victim participation:*

No Pressure to Participate - Victims must not be subjected to any pressure to participate. Each victim must be free of any pressure in choosing whether, how and when they might participate.

Informed Choice - Victims must be fully apprised of their options to participate.

Supported - Any participation must be supported by victim services, community justice workers or others qualified to provide the level of support each victim seeks or needs.

Respect - Their voices must be heard and responded to in a respectful manner.

[90] Within these guidelines, a victim can, if they desire to do so, speak about the offender and provide their view of an appropriate sentence if a victim:

has been fully briefed. Either a prosecutor victim services worker should brief the victim about:

- usual range of sentences for offenders
- relevant sentencing principles

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• what can and cannot be given weight in sentencing

has met with prosecutor. The prosecutor should brief the victim about the underlying processes for the specific sentencing submission he/she intends to make. It is not important that prosecutors represent victims. It is important that prosecutors hear their concerns, explain the position of the prosecutor in sentencing and assist victims in understanding the limits of the process. In some jurisdictions, the prosecutors are experimenting with directly communicating with victims (Erez & Tontodonato, *supra*, at 458).

In Yukon, the Crown aspires to spend time with victims and maximize their awareness of the process. Yukon prosecutors have created procedures to ensure the input of victims is sought with respect to major decisions and that victims are provided with clear and comprehensive information about the legal process. These procedures include:

• being available before court to speak to victims

• working with the victim service worker to ensure victims are aware of what is likely to happen in court

• communicating the victim's position, needs and concerns to the court; and

• meeting with the victim after court to explain what happened in court. (Taken from Crown protocol for DVTO Court)

is aware of overall circumstances. Preferably, victims who wish to speak should be in attendance for all of the sentencing hearing to be fully aware of the overall circumstances. If not in attendance, before participating a victim service worker should update the victim about what the offender has done and about any relevant evidence submitted to the court. "If more were explained, less would appear unfair, insensitive or incomprehensible." (Sanders, et al., *supra*, at 453). Victim services are filling in more of the enormous gaps in victim understanding of the process.

All *professionals* in the system must make an effort to explain the process and keep victims updated on all developments in the case. It is important to hear the perspective of the victim at the time of sentencing (Erez & Tontodonato, *supra*, at 546).

Victim inputs should reflect what has happened since the crime. Victims are significantly relieved when *informed* that offenders have made important strides towards accepting responsibility and acting responsibly. Knowledge can change their perspective on whether to participate and on what outcomes they wish to see.

I did want to participate. I did want to see him go to jail. But it did help me to get on with my life to know that he was in treatment -- really in treatment, not just talking about it -- and that people in the community were committed to see him through it. I got a long way to go, but knowing what he was doing, who was involved, helped me for sure. (Victim, Circle, Carmacks, 1993)

[91] In some cases, many of these preconditions will be readily waived by the court as the nature of the case will not warrant such elaborate precautions.

[92] **Conclusion:** The paramouncy of the public interest in determining an appropriate sentence need not preclude the victim's input (Contra, see *Coehlo*, *supra*; *Friginette*, *supra*).

[93] We risk little by exploring ways of expanding opportunities for victim participation. We risk more than we seem to appreciate by hiding behind ancient practices to deny the legitimate needs for an enhanced victim role in sentencing.

[94] Victims are much more capable than assumed by the courts of understanding the system and its limitations, of recognizing and respecting the values inherent in the sentencing process, and of making constructive contributions in an appropriate, albeit often emotional manner. Trial court judges are more capable of hearing from victims without being swayed by the emotional dynamics of victim participation and much more capable of explaining sentencing principles and practices to victims than contemporary jurisprudence acknowledges.

[95] While each crime is different, and responsibilities for the underlying causes and for resolutions different, everyone needs to regard crime as an invaluable learning experience. Crime teaches all of us what is remiss within our communities and families and offers up an opportunity for learning how to work together, to share responsibility for removing the conditions that render families and communities vulnerable to crime. No one should be shut out of the process; everyone should be encouraged to participate.

[96] Courts owe victims not just a chance to speak, but owe them a response. Our body of sentencing principles purports to encompass the values of our society. Complex and often conflicting, these principles must be examined and explained in each case. The explanation of a sentence in the context of these principles is owed to victims, offenders and the community. If the judge does not explain the application of these principles to the victim, who will?

[97] Holmes was right: "The life of the law is not logic, but experience." Within the legal community, we have fallen prey to self-supporting concepts and seem to believe that Holmes' "experience" embraces only the experience of law within the courtroom. We have increasingly failed to appreciate and learn from the impact of law on the larger community it is intended to serve. The logic of separating conflicts into civil and criminal courts is not understood by homeowners, whose sanctuary has been breached by burglars. Parents of young children brutally slain can neither accept nor respect why they can watch but not speak. We disrespect the victim's experience of loss when we shut down his/her voice in the sentencing process. If criminal courts shut out the voices of key participants, we cannot expect to foster either public respect for, or acceptance of the justice system.

[98] By stepping back from active interference with sentencing, appellate courts have encouraged trial courts to develop viable solutions to the specific challenges in each case. To generate viable solutions, courts must be open to appreciate and respond to the dynamics and needs in each case. Doing so will require pushing, bending and, at times, breaking longstanding attitudes and notions about sentencing practices, and especially about victim participation. For sentencing to generate pivotal changes in the lives of victims, offenders and the community, courts must be open to question longstanding legal practices. What ought to be continued is what continues to work -- not just to advance the purity of legal interests, but to advance the much broader interests of developing a constructive, relevant, effective sentencing process that serves all affected interests. No institution that ignores voices for change survives. If we exclude victims, if we fail to directly face and respectfully explain the principles and practices that shape our processes, we will not survive as a valuable contributor in responding to the harm crime imposes.

They done made themselves kinda useless by not payin' attention to what's goin' on. Shuttin' down on people or change -- soon enough and sure enough shuts you down. Any damn fool gotta see that. (Willie Can, 1968)

[1] Delegating to a probation officer the task of working out the amount of restitution with the victim and offender has been condemned by Appeal Courts (*R. v. Shorter and Shorter* (1976), 29 C.C.C. (2d) 528 (B.C.C.A.); *R. v. Hudson* (1981), 65 C.C.C. (2d) 171 (Ont. C.A.)). Given the choice (especially on circuit) of postponing a sentence for several months to acquire more reliable information that will readily resolve a dispute over the amount, and ignoring a victim's request for compensation, another option must be created. If only the amount of damages is unclear, but the range of damages is roughly known, a sentence can be imposed and restitution fixed at the high end of the range, leaving the exact amount to be determined at a review.

[2] Victims should not only be permitted to speak if the offender consents or if their input is supportive. This basis for victim input suggests only appeased victims can speak and that offenders have a veto over victim participation.

[3] While courts have been reluctant to open the door for victims to be heard, the Legislature, in the proposed new Act to deal with young offenders, seems to embrace the idea fully. Section 18(d)(iii): Victims should be provided with information about the proceedings and given an opportunity to participate and be heard (emphasis mine).

3.5. Restorative Justice in the Yukon - 1997⁷

- Seven (7) communities perceive that the services provided to communities should be increased.
- Among the suggestions were:
 - the possibility of opening more satellite offices
 - opening a group/safe home
 - addressing sexual abuse before it becomes a problem
 - *information*: increasing communication to victims regarding the outcome of trials.

3.6. A Framework for Community Justice in the Western Arctic – 1998⁸

- The Yukon has adopted a victim-centred approach as one of its main principles.
 - Any proposed action for an offender takes into account the impact of that action on the victim.
 - The approach is applied through an "Integrated Case Management Policy and Procedures" that encompasses correctional facilities, adult probation, batterer programs, women's counselling programs, victim services and the sex offender risk management program.
 - Based on a cognitive social learning model, offender programming has been implemented in the institutions and in the community.

3.7. Alternative Measures in Canada – 1998⁹

Role of the Victim

Depending on the victim's willingness to become involved, the victim may play a significant role in the alternative measures process.

Youth: The role of the victim in alternative measures programs is often largely defined by the victim's willingness to become involved. The interests of the victim are generally considered in the determination of the Crown Prosecutor to refer to young person to alternative measures and if the victim is involved, the alternative measures agreement may reflect measures designed to provide restitution or reparation to the victim.

⁷ In December 1998, the Minister of Justice tabled a draft discussion paper on Restorative Justice in the Yukon as part of the government's goal of fostering safe and healthy communities. To focus the consultation process, the draft Restorative Justice in Yukon paper and information pamphlets highlighted a number of issues and questions dealing with correctional reform, crime prevention, policing policy, victim services and community and aboriginal justice projects. In May-June 1999, the Minister of Justice, the Commanding Officer of the RCMP and members of their staff visited most of the Yukon communities to hear what Yukon people had to say about the future direction for Justice in the Territory. During the months of July-August 1999, the comments heard at the public consultation meetings were included in "Restorative Justice in the Yukon, Community Consultation Report." Copies of the report were made public.

⁸ 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

⁹ Statistics Canada, Barry Mackillop, Correctional Services Program, Canadian Centre For Justice Statistic Alternative Measures in Canada – 1998, Feb 1999 <http://dsp-psd.pwgsc.gc.ca/Collection-R/Statcan/85-545-XIE/85-545-XIE.html>

Yukon Justice policy regarding alternative measures clearly identifies the importance of the victim in the goals enumerated for the program. The alternative measures program is seen as a means of providing an informal (out of court) way of solving problems involving young people in ways that address the interests of the victim, the young person, parents, and the community. Another goal of the program is to provide a meaningful and direct remedy to victims of offences and to encourage young people to accept responsibility for their actions.

It is the responsibility of the youth worker or the diversion committee to contact the victim prior to the interview with the young person, to determine the impact of the offence upon the victim, the victim's wishes about the most appropriate mode of reparation, and to invite the victim to participate in the parent/youth interview.

According to alternative measures policy, compensation in the form of either cash or service for the victim shall be required in full or to the victim's satisfaction, where reasonably possible.

In cases where the victim agrees, compensation may be made directly by the young person to the victim.

Adult: There are currently no alternative measures programs for adults. Yukon Justice is, however, in the process of developing a program with the intent of modeling the program on existing alternative measures programs for youth.

3.8. Building Community Justice Partnerships – 1997 ¹⁰

3.9. Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon – 1992 ¹¹

Family Violence

- Family violence issues are presented in a fairly consistent manner in all communities.
 - In non-professional interviews, respondents initially claim that few family violence incidents exist.
 - During the course of an interview, however, there is often a return to the subject and a statement that family violence was worse when more people were drinking but it exists still and is rarely reported.
- Victims reporting of sexual assaults is similar in communities except in Teslin where discussions and disclosures of sexual assaults are more frequent.
 - A greater tendency to report was also indicated in Ross River.
 - It would be useful

Victim-Related Research

- The Victim Assistance Programs should be monitored and evaluated regularly to ensure that it is meeting its objectives and the objectives are still relevant.
 - Any victim components of community justice projects should be assessed.
 - Research should be conducted by community into nature and extent of victimization, and the implications of alternative dispute resolution mechanisms for victims, particularly women should be assessed.

3.10. A Review of the Justice System in the Yukon –1986 ¹²

¹⁰ Stuart, Barry, Building Community Justice Partnerships, 1997, Available from Aboriginal Justice Learning Network and Department of Justice Canada <http://canada.justice.gc.ca/en/ps/ajln/res.html>

¹¹ Laprairie, Carol, Report to Department, Yukon Territorial Government, First Nations, Yukon Territory, Justice Canada, Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon, September 1992.

¹² Wright, John and Joanne Bill – A Review of the Justice System in the Yukon, 19 December 1986 – The Government of the Yukon, in response to concerns expressed about the justice system, appointed a panel to review the Justice System in the Yukon.

Community Justice – Victims

- The topic of “Victims of Crime” was the most poignant topic discussed during this Review.
 - o Needs not addressed: There was a great number of observations around this subject which established the common theme that the problems of victims were not addressed by the justice system.
 - o This theme extends to the victim’s family, community and to other witnesses of crime.
 - Safety/Fear: In regard to witnesses the feeling was expressed that there was a growing reluctance to testify against accused persons because of fear of retaliation.
 - Family Violence: The subject of family violence was addressed during the discussion of victims.
 - o It was a subject greatly commented on during the meetings in the communities.
 - o Women and children are being subjected to violence by large numbers and the submission made by the Status of Women’s Council and the Report of the Task Force on Family Violence confirmed the communities’ observations.
 - Recommendations
 - o Staff and financial resources be committed to implement the recommendations made in the report of the Task Force on Family Violence.
 - o Victims of Crime Compensation Program with Workers’ Compensation Board be broadly advertised throughout the Yukon and that persons be encouraged to make application for compensation to that Board.
-

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

4.1. Victim Questionnaire – NWT¹³

- Did you take part in the (community justice) process yourself?

No I sent somebody to speak for me; Yes, I went myself
OR sent a victim impact statement.



- Why not? (can check more than one answer)

- Wasn't told about it; didn't know it was happening
- Afraid of offender, offender's friends, or offender's family
- Didn't think the committee (or forum) would listen to my opinions
- Wasn't important/couldn't be bothered
- Other (specify) _____

- (If "yes" or "sent somebody else or a statement") Do you think the committee (or forum) listened to what you (or person sent in victim's place) had to say? (or what your statement said)?

No Yes



Why not? _____

- Do you think the agreement that was reached with the offender was a good one or not?

No Yes Why or why not?

- What do you think is the best way to handle this type of case?

Court Community justice process Another way (what way? _____)

Why? _____

- Is there anything else you would like to say about how the community justice process was handled, or how it could be improved?

¹³ Northwest Territories Community Justice Evaluation Framework

4.2. Federal Prosecution Service Review – The North - 2001 ¹⁴

Unique Prosecution Environment

- Prosecutors in the North spend a great deal of time doing witness preparation, explaining the process, reviewing statements, and keeping witnesses informed.
 - The assistance that Victim Witness Assistants (VWAs) provide to the Crowns in Whitehorse, Yellowknife, and Iqaluit is invaluable both in terms of cross-cultural awareness and insight into the special needs of victims.
 - Expanding the number of VWAs, and actually locating these people in the communities, would produce significant benefits.
 - Victims would be better prepared for court; Crowns would have some valuable time freed-up; Crowns could be confident that the victim/witness was receiving the time and attention required; and, hopefully, the victim would feel less hostile to the process.
 - Further, involving Inuit, First Nations, or Métis VWAs in the prosecution often provides some level of comfort for a victim, a benefit that cannot be measured.
- The daily direct involvement with victims is unique to prosecutions in the North. Crown counsel have an important duty to victims of crime as well to the other community members who find themselves before the courts as witnesses.
 - While the prosecutor is neither a victim's advocate nor the victim's counsel, in small Inuit, First Nations, or Métis communities, this fine distinction is not well understood.
 - The reality is that the Crown and the RCMP are the link between the justice system and victims and witnesses.
 - Victims must be informed of the progress of a case and, especially in cases of sexual abuse, there must be follow-up with the victim.
 - Victims of crimes should be informed of victim services that are available and be encouraged to use them.
 - Unfortunately very limited community services are available for victims in small communities.
 - Victims frequently report a lack of comfort with the services that may be available due to the closeness of the community members.

4.3. Inuit Women and the Nunavut Justice System – 2000 ¹⁵

- Adequate support and services for JPs and justice committees also includes supports and services for women and children who are victims, especially those who decide to participate in JP court or community justice initiatives. 101
 - For these reasons, all victims who have the choice of participating in community-based initiatives, at a minimum, require support to make an independent decision regarding their involvement.
 - Anything less than a fully supported right to decide, has the potential to make the community based initiative as coercive as, and therefore no better for them than, the Euro-Canadian justice system can be.

Victims/Complainant Consent¹⁶

- Please notice that we are not making a recommendation that the section regarding alternative measures include a condition that states the victim/complainant must be fully informed and consent to the alternative measure.

¹⁴ Department of Justice Canada, Federal Prosecution Service Review, Part Six: The North, <http://canada.justice.gc.ca/en/dept/pub/fps/rpt2.html#PART6>

¹⁵ 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 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>.

- We have specifically avoided this recommendation, although it is one we see appearing judicial decisions as conditions for conducting a sentencing circle.
- To place the onus once again upon the victim, isolates her and may result in her being further victimized should her wishes differ from those of the accused.
- Such a condition, ignores the reality facing women and children who are victims of abuse, it ignores the power imbalance that exists between the abuser and victim and, in many instances in our communities, the power imbalance between the victim and her community.(p: 85:15)]
- In making this a condition, the judges are assuming that all members of the community have equal access to information and equal opportunities to speak out.
 - This is not the case.
 - The barriers preventing women from fully participating in these decisions must be addressed if all members of the community are to participate in a meaningful way. (p: 85:15)
- Without proper consideration of the interests and needs of the victim, the offender and the community, committees may increase the vulnerability of women and girls.¹⁷
 - To date, justice committees have been perceived by Inuit women to inordinately focus on the offender.¹⁸
 - This perception reflects the point of the NSDC that committees have been used as a tool by defence counsels.

Advocacy support and confidential protections¹⁹

- The issue of lack of support and protections are indirectly addressed in this comment to ensure aboriginal women and men requiring the same level of services available to other victims and offenders in Canada.
 - This reference, which implies that women and men now have the same level of services and that these should not be diminished, minimizes one of the major criticisms raised by Pauktuutit with respect to these community-based initiatives.
 - Pauktuutit is very clear that unless services are in place to provide support to both offenders and victims and do not rely on these services being provided without additional resources - to train and pay those involved-alternatives are not welcome.
- It is important to identify the success of the implementation of these alternatives is conditional upon the necessary infrastructure being implemented or already in place- such as victims service workers, male batterer counselling program, in addition to the social worker and addiction's counsellors in the communities.
 - This point again relates to the earlier one on credibility and accessibility of alternatives.
 - The issue of credibility of an alternative will arise if it is poorly funded and not accountable; these issues must be addressed so that the choice between the existing system and alternative does not come down to which is better funded and able to support, assist and protect the woman.
 - If this is the basis of the decision, the alternative will never be seen to be credible in the eyes of the woman, young girls and children who are the victims in these cases.
- The women working with Pauktuutit on the Justice Project have been very clear in stating that one of the reasons the existing system is not working is because they don't have the advocacy services available in other parts of Canada, and other services available to victims and offenders found elsewhere.
 - This raises a general point/issue that I think is missing and perhaps a separate paragraph under the Aboriginal Women section is required.
 - Any alternative, be it traditional or a community-based conventional initiative, must have the necessary infrastructure in place to sustain this alternative, including trained and skilled community service providers who are paid for their services.

¹⁷ Griffiths et al., *Crime, Law and Justice Among Inuit in the Baffin Region, NWT, Canada, 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-e.pdf>.

¹⁸ Nightingale, "Just Us" and Aboriginal Women, 1994..32. 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>.

¹⁹ Pauktuutit, Memorandum from Pauktuutit Justice Project Coordinator to General Counsel of Aboriginal Justice Directorate, David Arnot, Comments on the Justice Memorandum, November 7,1995 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>.

- If an alternative is reliant upon a significant volunteer component, it will be unreliable and can vary considerably in level of services, it also means that existing, over-utilized community resources will be further taxed.
 - In the new Corrections legislation dealing with early release, there is an express provision dealing with the need to establish within aboriginal communities, half way houses (s. 81).
 - This provisions is followed by a very explicit provision expressing the federal government's obligation to fund these initiatives.
 - This type of statutory commitment is needed for alternatives we are discussing as well I think.
 - The reference to "traditional systems" or "practices" implies there is something already in place, waiting to be implemented by people who are skilled and trained to do so.
 - We know this is not the case with respect to Inuit communities.
 - This terminology, furthermore, makes it difficult to argue and substantiate the need for funding to promote activities at a community level that provide opportunities for members of the community to design community-based initiatives and implement them and to provide training for community members to deliver these services.
 - We must address the need to have infrastructure and services in place prior to implementing a community-based program or initiative.
 - Furthermore, the requirement for funding of infrastructure and resources associated with the initiative can also be directly connected to the requirement of funding being conditional on these programs or initiatives having certain safeguards and protections in place for victims that are supported by organizations representing women before they are eligible for funding.
 - A victim must deal and resolve their own pain before they can help others. A victim support program is needed. (p. 14)²⁰
 - A need for independent victim advocates to provide support and information to victims. A victims advocated would also ensure that sensitivity to all the needs of the victim is given by all justice workers.(p. 14)²¹
 - There must be a balance between community diversion and the needs of the victim. Victims must be included in the process if they select to do so. (p. 16)²²
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4.4. Nunavut Justice Issues – 2000²³

Importance of liaison services

- Liaison services, such as the Native Courtworker program, victim-witness programs and Inuktitut-English interpreters are an important element of community-based justice initiatives.
- These services are essential not only because of the limited resources of the initiatives, but also because the community-justice initiatives will still have an interface with the Canadian criminal justice system.

²⁰ 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>.

²¹ 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>.

²² 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>.

²³ 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>

- This interface introduces legal obligations on the part of the community-based initiative.
 - These programs attempt to assist them in meeting those obligations and meeting their needs.
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4.5. A Framework for Community Justice in the Western Arctic – 1999²⁴

Concerns

Protection of Victim Rights

- The literature has noted that the rights and needs of vulnerable groups such as women and female adolescents may not solicit adequate attention in community justice decision-making models.
 - In practice, the needs and rights of these vulnerable groups have often been ignored.
- Aboriginal women have voiced concerns about the high rates of abuse in their communities and have questioned whether it is possible for community justice initiatives to provide adequate protection for victims.
- In the Northwest Territories, a study of violence against women found that *-Aboriginal and Inuit women were concerned about the attitudes toward violence held by community residents and how this would impact the operation of community justice initiatives. ...there can be differences that develop along generational lines... older people may evidence a tolerance of violence against women that is no longer acceptable to young women...* - (Bazemore & Griffiths, 1997, p.10)
 - Failure to address these critical points has led to criticism by Aboriginal women and has resulted in some programs being discredited.
- Their concern is also about whether restorative justice initiatives will increase the intimidation and control of female victims and their families.
 - One example of this misuse of power and improper practices was reported in the Vancouver Sun with respect to the justice initiative of the South Island Tribal Council.
 - *Native women* say they live in fear of powerful members who pressure and intimidate women not to report instances of assault and sexual abuse. {There have been} several cases where powerful families pressured women to use the alternative system, which involves the band's council of elders, rather than bringing the sexual assault charges to court." (Vancouver Sun, 1992, July 31, p.B4)
- Every aboriginal community must ensure that all restorative justice programs are held accountable for misuse of power and intimidation of women.
 - Women must be treated equally in order for these programs to be successful.
 - This will be a challenge in some aboriginal communities since male-dominance continues to be part of their traditional practices.
 - The traditional practices that are incorporated into these restorative justice programs must, however, be healthy ones, thus excluding unequal treatment of women.. (Restorative Justice, 1997, from internet, p.7)
- The experience of other jurisdictions, as well as that of the Northwest Territories, has demonstrated that justice programs can easily become driven by offenders' needs, which are great, sometimes to the detriment of addressing those of their victims

Victim Support Mechanisms

- The experience to date in operating alternative dispute resolution initiatives indicates that support mechanisms are not in place in many communities to assist the victim with counselling, with the tools

²⁴ 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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and supports to move through the healing process and with the information required about how the case and reparation are moving.

- Victims also require education regarding their rights and entitlements as well as to make them aware of resources available to them both within and outside of the justice system.
- The lack of support has been the subject of much concern and has overlapped with, and augmented issues about, victims' rights not being protected.
- This concern was also raised by some committees, RCMP and other justice system respondents in the Northwest Territories.

Well-Treated Crime Victims - Victims need support and counselling and to be kept apprised of the status of the charges as they wind their way through the justice system. Programs should establish criteria regarding victim preferences for offender prosecution, testifying and future contact.

4.6. Alternative Measures in Canada – 1998²⁵

Northwest Territories

Youth

The victim plays a central role in the restorative justice philosophy adopted by the Department of Justice of the Northwest Territories. The underlying philosophy is that solutions that repair, heal, and restore harmony must include the victim, the offender, and the community. The alternative measures program does not require that victims be involved in order to accept a youth into the program, however, their participation is encouraged.

The victim can have a role in the alternative measures proceedings if he/she chooses to be involved. At a minimum, the Community Justice Committee attempts to interview the victim prior to the hearing to gather information and determine what needs to be done in order to make things right (for example, restitution). The victim may also play various roles depending on the process chosen by the Committee. In the event of a justice panel hearing, the victim is often consulted before the hearing and their involvement at the hearing is not necessary. A victim's statement of their loss and concerns is often taken and used instead. When the Committee chooses to proceed by way of victim/offender mediation, the victim is provided an opportunity to meet face-to-face with the offender in a safe and cooperative setting mediated by a Community Justice Committee member. The victim, and the victim's family members, may also be asked to participate in a family group conference by the Committee. In this setting, the victim and his/her supporters are provided an opportunity to explain to the youth the impact that the offence has had on them and to participate directly in the determination of the measures to be agreed upon.

Adult

If the case is accepted by the Committee, the process by which the case is handled is the same as that for youth. Victims are encouraged to, and may choose to be, involved in the diversion proceedings. The role they play is often dependent on the process chosen by the Committee to handle the diversion.

Victims often do not attend justice panel hearings but rather provide a statement of their loss and concerns to be presented at the hearing by a member of the Community Justice Committee. In the case of victim/offender mediation and

²⁵ Statistics Canada, Barry Mackillop, Correctional Services Program, Canadian Centre For Justice Statistic Alternative Measures in Canada – 1998, Feb 1999 <http://dsp-psd.pwgsc.gc.ca/Collection-R/Statcan/85-545-XIE/85-545-XIE.html>

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family group conferencing, victims play a much more active role in addressing the offender, discussing the impact of the crime on themselves and their family, and in determining the measures to be completed. The restorative justice philosophy and approach is maintained in the way these cases are handled by the local Community Justice Committee.

4.7. Inuit Women and the Administration of Justice, Phase II - 1995²⁶

Victims/Complainant Consent

- Please notice that we are not making a recommendation that the section regarding alternative measures include a condition that states the victim/complainant must be fully informed and consent to the alternative measure.
 - o We have specifically avoided this recommendation, although it is one we see appearing judicial decisions as conditions for conducting a sentencing circle.
 - o To place the onus once again upon the victim, isolates her and may result in her being further victimized should her wishes differ from those of the accused.
 - Such a condition, ignores the reality facing women and children who are victims of abuse, it ignores the power imbalance that exists between the abuser and victim and, in many instances in our communities, the power imbalance between the victim and her community.(p: 85:15)]
 - o We must recognize that the term "community" must be all inclusive.
 - For Inuit women, this also means not using "community" to prevent organizations such as Pauktuutit from participating.
 - For many women, Pauktuutit is the only safe and non-threatening forum in which these issues can be discussed.
 - o We know from experience many women are often afraid to speak out in their communities about their specific concerns on these issues.(p: 85:15)
 - In making this a condition, the judges are assuming that all members of the community have equal access to information and equal opportunities to speak out.
 - This is not the case. The barriers preventing women from fully participating in these decisions must be addressed if all members of the community are to participate in a meaningful way. (p: 85:15)

Limitation of Jurisdiction

- Alternative measures for cases involving sexual assaults, child abuse and spousal assaults cannot be allowed.
 - o We know based on our experiences that where women inform the police of abuses or sexual assaults they have suffered and charges are laid against another community member, depending on who that member is, the community may or may not support the victim.
 - o In many cases where women have had charges laid against men for sexual abuses they sustained as children, these women are being isolated and ridiculed for bringing these cases forward by their communities.
 - o In specific incidents we have documented, women have not only not been given support, they have been threatened and intimidated for participating in the court process as witnesses. (p. 85:13)

²⁶ 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>.

4.8. Victim/Witness Assistance Programs – 1994 ²⁷

- In this article, a workshop compendium, the role of Victim and Witness programs in ensuring justice for the victims and witnesses of crime across Canada is explored.
 - Given the structure of the formal mainstream system, where the victim has a limited role, and their needs are often not addressed, such a support system is necessary.
 - The role of these programs in smaller, isolated, Northern communities is a bit different, but extremely important.
 - The challenges they present to the government and communities may seem insurmountable.
 - However, the formal system will remain for a while and support must be provided for these victims and witnesses.
 - As such, the article speaks to the Northern environment, the relationship that may be developed with the mainstream justice system, and the lessons learned.
- **General:** In this article the participants discuss the history, purpose and operation of the victim/witness programs in Kenora, Ontario and Yellowknife, NWT.
 - Through the recorded audience dialogue and their discussion of the programs and how they operate, a number of relevant and important issues emerge.
- **Underlying Themes:** Because women and children represent most of the victims and witnesses that the program assists, the issues and challenges they discuss directly affect the limitations of women and children, specifically, in small Northern communities to seek representation and justice.
- **Findings from the Presentations and Dialogue:**
 - **Objectives of the program:** Because the state takes over as victim in a crime, the real victim of a crime is often given little attention and a small role to play in the criminal justice system.
 - Similarly, witnesses are often not assisted in addressing the impact of what they may have seen (especially children and witnesses of violent crimes).
 - The Victim/Witness program recognizes this and acts as a support system by explaining the process and preparing them for trial.
 - The program helps to maintain an awareness of the special needs of victims in family violence, sexual assault and vulnerable witnesses.
 - In the Northwest Territories the focus is on communicating to the courts the special needs of the Northern resident and trying to make the system more understandable to the communities.
 - The program attempts to provide a form of victim participation in the process.
 - **Resources:** The limited funding available has resulted in the program only being able to focus on the most important cases - such as sexual assault, domestic violence and children.
 - They are unable to address victims and witnesses in other cases.
 - **Challenges of small Northern communities:** There are a number of challenges that the victim/witness program must overcome.
 - For example, one workshop participant stated that in many cases of sexual assault and violence against women, communities do not believe that what the female victim is saying is true.
 - As a result of this lack of community support the case gets dropped because the woman refuses to pursue the matter.
 - The participants also spoke about the referral system and how referrals come from the police and Crown counsel.

²⁷ Heatherington, Jackie and Alice Mackenzie. "Victim/Witness Assistance Programs in Kenora and Yellowknife", 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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- If the program is not taken seriously or the referral is not made, victims in small isolated communities do not get the limited support that may be available.
 - Another challenge is the low number of Victim/Witness assistants available in the Northwest Territories; a number too low to effectively meet the needs of the small, more isolated Northern communities.
 - In fact, there are only two Victim/Witness Assistants in the Northwest Territories: one in Iqaluit and the other in Yellowknife.
 - Those two have limited assistance they can offer someone in Pond Inlet or any other small community.
 - Finally, because of the isolated nature of the communities, the circuit courts, and the lack of responsive and efficient police services, the victim or witness is often left in the community with the offender with no support.
- **Responses to the challenges of operating victim/witness programs in small isolated communities:**
 - Community-based Victim/Witness programs are operating in communities such as Fortsmith, Northwest Territories out of the Friendship Centre.
 - While it is not necessary that the Department of Justice operate them, they do require community knowledge and ability.
 - Similarly, a videotape, at the time of this conference, was being put together (in Inuktitut) so communities can start their own voluntary training.
 - This will help address the above noted limitations and assist communities that are prepared to support the victim.
- **General limitations of the program:** There are some general limitations of the program addressed in the article:
 - that it does not really prevent the problem or attempt to resolve the issues.
 - Instead, the program responds to the problem by trying to make the journey through the existing system more comfortable.
 - Further, although the program makes referrals to the relevant social agencies for the victim or the witness, real follow-up is non-existent.
- **Conclusions:** Programs such as these require adequate funding so there can be an opportunity to do a proper job.
 - If community-based justice initiatives operate to represent, include and account for the needs of victims and witnesses of violent crimes, such programs will not be necessary.

5. Relevant Documents, Studies and Practices – Other Canadian

5.1. Aboriginal Canadians : Violence, Victimization and Prevention

5.2. Justice Canada’s Policy Centre for Victims’ Issues ²⁸

A Shared Responsibility

- The federal government and provincial/territorial governments share the responsibility to respond to the needs and concerns of victims of crime and to articulate the victims' role in the criminal justice system.
- Both levels of government collaborate through the Federal Provincial Territorial Working Group on Victims of Crime.
 - The Canadian Statement of Basic Principles of Justice for Victims of Crime, jointly endorsed by Federal, Provincial and Territorial Ministers Responsible for Justice in 1988, continues to guide the development of policies, programs and legislation.
- In recognition of the United Nations Declaration of Basic Principles of Justice for Victims of Crime, Federal and Provincial Ministers Responsible for Criminal Justice agree that the following principles should guide Canadian society in promoting access to justice, fair treatment and provision of assistance for victims of crime.
 1. Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
 2. Victims should receive, through formal and informal procedures, prompt and fair redress for the harm which they have suffered.
 3. Information regarding remedies and the mechanisms to obtain them should be made available to victims.
 4. Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings.
 5. Where appropriate, the view and concerns of victims should be ascertained and assistance provided throughout the criminal process.
 6. Where the personal interests of the victim are affected, the views or concerns of the victim should be brought to the attention of the court, where appropriate and consistent with criminal law and procedure.
 7. Measures should be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation.
 8. Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims and guidelines developed, where appropriate, for this purpose.
 9. Victims should be informed of the availability of health and social services and other relevant assistance so that they might continue to receive the necessary medical, psychological and social assistance through existing programs and services.
 10. Victims should report the crime and cooperate with the law enforcement authorities.
- The federal government's role focuses on criminal law, as set out in the *Criminal Code*.
- The provinces are primarily responsible for enforcing the law, prosecuting offences, administering justice in general, within the provinces and providing services and assistance to victims of crime.

²⁸ Department of Justice Canada, Policy Centre for Victims’ Issues, <http://canada.justice.gc.ca/en/ps/voc/index.html>

- The Federal, Provincial and Territorial governments are committed to exploring approaches to improve the victim's experience in the criminal justice system.
 - o For some victims restorative approaches may have the potential to meet their needs.
 - o The movement for Restorative Justice is an attempt to engage victims, offenders and communities in the search for a more meaningful resolution to problems of crime.
 - o The Federal/Provincial/Territorial Working Group on Restorative Justice has published a discussion paper entitled Restorative Justice in Canada: A Consultation Paper.
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5.3. FACT SHEET – Restorative Justice ²⁹

How do victims of crime benefit from restorative justice programs?

- The restorative justice process provides victims with the opportunity to express their feelings about the harm that has been done to them and to contribute their views about what is required to put things right.
 - o Some studies of restorative justice programs show that victims who are involved in the process are often more satisfied with the justice system and are more likely to receive restitution from the offender.
 - o Involvement can also help victims heal emotionally as well as lessen their fear of the offender and of being a victim of crime again.
- However, restorative justice programs can be time-consuming and emotionally draining.
 - o For some crime victims, meeting the offender is difficult.
 - o The criminal justice system is working out ways to make sure that restorative justice programs give victims a voice in the process without pressuring them to participate or causing them more distress.

Does a victim of crime have to participate in restorative justice?

- No. A victim's participation is voluntary.
 - o To help a victim decide whether or not to participate in a restorative justice program, the victim should be given complete information about the restorative justice process, possible outcomes, her or his role, the role of the offender and other process participants, as well as information about the criminal justice system options.
 - The fundamental principle is that restorative justice must not re-victimize the victim in any way.
 - o The process and the outcome should not cause further harm.
 - Whether or not a victim of crime participates in a restorative justice program, she or he is entitled to all the victims' services that are available in the community.
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²⁹ Department of Justice Canada, Policy Centre for Victims' Issues, <http://canada.justice.gc.ca/en/ps/voc/index.html>

5.4. The Criminal Justice System: Significant Challenges – 2002 ³⁰

- **Maintaining fairness:** Victims. In 1983, a federal-provincial task force conducted the first study of justice for the victims of crime.
 - It concluded that often the victim is "twice victimized: once by the offence and once more by the process."
 - A report in October 1998 by the Standing Committee on Justice and Human Rights, *Victims' Rights—A Voice, Not a Veto*, called for a co-ordinated strategy at all levels of government to address the needs of victims.
 - In its May 2000 report concerning the *Corrections and Conditional Release Act*, the Committee reiterated its 1998 recommendations for addressing victims' needs.

- **Changing the boundaries of the system:** Victims. Governments continue to take measures to address victims' concerns.
 - The Criminal Code has been amended, for example, to do the following:
 - ensure that victims are informed about opportunities to prepare victim impact statements and to read them aloud in court if they choose;
 - require police and judges to consider the safety of victims in all bail decisions; and
 - make it easier for victims and witnesses to participate in trials by protecting young victims and witnesses from cross-examination by defendants who represent themselves in court.
 - In May 2000, the Subcommittee of the Standing Committee on Justice and Human Rights recommended that a victim receive more information on the offender's conduct and movement within the system and be allowed to participate in decision-making.
 - The government agreed to act on the recommendations if consultations with crime victims and providers of victim services indicated that the proposed changes would help.
 - In response to the Committee's 1998 report, *Victims' Rights—A Voice, Not a Veto*, the Treasury Board in June 2000 approved \$25 million over five years for the Department of Justice to develop a crime victims initiative and establish a policy centre for victims.
 - In April 2001, Correctional Service Canada established a Victims Unit to provide organizational leadership.
 - As of July 2001, victims of crime have an opportunity to present a prepared statement at National Parole Board hearings.
 - The RCMP has established a Crime Prevention and Victims Services Branch.

- The expansion of the victim's role is intended to balance the rights of victims and offenders.
 - It has also raised the concern that the principles that guide sentencing, conditional release, and parole decisions could be compromised.

³⁰ Office of the Auditor General of Canada, *The Criminal Justice System: Significant Challenges*, Chapter 4, April 2002, <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/0204cc.html>

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- In July 2001, Solicitor General Canada reported the results of consultations with crime victims and providers of services to victims.
- The consultations indicated that victims' perceptions have not changed much since 1983.
- Victims still feel that offenders have more rights than victims; they want a larger voice in the justice process; they want respect; and they continue to live in fear.

Programs aimed at significant groups

Women as victims. Justice programs for women are also changing in significant ways. In 1991 the government created the Canadian Panel on Violence Against Women. The Panel recommended a policy of "zero tolerance" for violence against women.

The *Criminal Code* has been amended to protect women more effectively. For example:

- Provisions added in 1993 address criminal harassment and stalking.
- A 1995 amendment precludes the use of extreme intoxication as a defense in crimes of violence.
- A 1996 amendment restricts access to medical, counselling, therapeutic, and other personal records of complainants in sexual offence prosecutions.

The government has also spent significant amounts of money on various initiatives to counter the abuse of women, children, and the elderly—about \$176 million from 1988 to 1996.

5.5. Restorative Justice and Women Who Are Victims of Violence – 2002 ³¹

5.6. Effectiveness of RJ Practices – 2001 ³²

Victim Satisfaction

- Participation in a restorative justice program resulted in higher victim satisfaction ratings when compared to a comparison group in all but one of the 13 programs examined.
 - It should be noted that the one negative result was found in the only program that operated at the post-sentence (or corrections) entry point.
 - Compared to victims who participated in the traditional justice system, victims who participated in restorative processes were significantly more satisfied.
 - In addition, VOM models tended to display higher victim satisfaction rates than conferencing models when compared to the non-restorative approaches.
- Another issue that future studies may wish to explore is the effect that offender compliance with restitution agreements has on victim satisfaction.
 - The restrictions of meta-analytic procedures preclude such an analysis.
 - Morris and Maxwell (1998), however, did report that the reason most frequently reported for victim dissatisfaction in an evaluation of a family group conference program in New Zealand was a failure to receive the appropriate restitution.

³¹ Julie Devon Dodd and Kristin Lund, *Restorative Justice and Women Who Are Victims of Violence, Justice Options for Women – Phase Two*, Sponsored by the Restorative Justice Network, PEI Conflict Resolution Coop with funding from Status of Women Canada, March 2002

³² Department of Justice Canada, Research and Statistics Division, Jeff Latimer, Craig Dowden Danielle Muise, "The Effectiveness Of Restorative Justice Practices: A Meta-Analysis", 2001, <http://canada.justice.gc.ca/en/ps/rs/rep/meta-e.pdf>

- Moreover, the same type of analysis could be completed on restitution conditions and victim/offender satisfaction.
 - And finally, there is no research in the literature that examines the longer term effects for victims who participate in a restorative justice process.
 - o An examination of whether victims still feel that they have experienced some closure and healing six months or a year after the restorative process would be beneficial.
 - The addition of restorative justice programs has enhanced victim satisfaction in a process that was, by its very nature, rather unsatisfactory.
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5.7. Victims and Criminal Justice – 2001³³

5.8. The Role Of The Victim In The Criminal Process – 2001 ³⁴

Document Brief

Recognition of the plight of the victim first emerged in the 1960s with disturbing revelations concerning the treatment of rape victims in the criminal process. The 1970s was a decade of significant reform with respect to compensation for injury from crime and the 1980s was a decade of the institutionalization of victim participation in the process through the creation of rights and entitlements for victims. The 1990s was a decade of taking stock of the rapid changes in the status of the crime victim, and this report serves to outline the academic literature produced during that decade. The literature review produced in this report is not intended to be a sterile catalogue of articles and books, but rather it is intended to be a compendious summary of recurring themes found in the literature. The ultimate objective is to review the literature with the intent of discovering if victims' rights reform has had any meaningful impact upon the criminal process and its unfortunate side effect of secondary victimization. The report will attempt to identify goals which have been achieved, goals which have not been realized and recommendations for enhancing the effectiveness of victims' rights projects.

[View remainder of document on line](#)

5.9. Justice Canada, Performance Report – 2001 ³⁵

- The Department of Justice is implementing the Federal Victim Strategy as promised in the 1998 Government Response to the Fourteenth Report of the Standing Committee on Justice and Human Rights, *Victims' Rights, A Voice Not A Veto*.
- **Policy Centre:** The Policy Centre for Victim Issues has been established within the Department to coordinate the federal victim initiative, to monitor the implementation of Criminal Code amendments (C-79, SC 1999 c. 25) proclaimed in December 1999 to enhance the role of victims in criminal proceedings, and to ensure that the perspective of victims is considered in the development of federal victim-related policy and criminal law reform.
 - o The Policy Centre is mandated to, among other things,
 - consult with victims, victim advocates, service providers and provincial and territorial officials,
 - conduct research on the effectiveness of law reforms and other initiatives,

³³ Ross, Rupert, (Assistant Crown Attorney, District of Kenora), *Victims and Criminal Justice: Exploring the Disconnect*, A Discussion Paper prepared for Presentation at the 27th Annual Conference of the National Organization for Victim Assistance, August 22, 2001, at Edmonton, Alberta

³⁴ Department of Justice Canada, Alan N. Young (Osgoode Hall Law School), Policy Centre for Victims Issues, Research and Statistics Division, *The Role Of The Victim In The Criminal Process: A Literature Review — 1989 To 1999 Victims Of Crime Research Series*, August 2001, http://canada.justice.gc.ca/en/ps/rs/rep/victims_role-b-e.html

³⁵ Department of Justice Canada, Performance Report, For the period ending, March 31, 2001 http://www.tbs-sct.gc.ca/rma/eppi-ibdrp/est-bd/p3dep/dpr_i-m_e.htm#j

- develop and disseminate information regarding the criminal justice system and the victim's rights and applicable legislation, services and assistance available to victims of crime.
 - *Victims Fund*: provides grants and contributions to non-governmental organizations for innovative projects and to provinces and territories to assist with the implementation of victim-related *Criminal Code* amendments and the Canadian Statement of Basic Principles of Justice for Victims of Crime.
 - In 2000-01, the department provided \$1.3 million in grants and contributions.
-

5.10. FPT Meeting Of Ministers Responsible For Justice – Meeting - September 2000 ³⁶

- Victims of crime remain a high priority for Ministers.
 - Ministers agreed to examine proposals to enhance the protection of victims and their families throughout the criminal justice process, noting that any amendments should carefully balance the interests of the victims, the accused rights and the proper administration of justice.
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5.11. From Restorative Justice to Restorative Governance- 2000 ³⁷

What about the victim?

- By the time a crime has been committed, it is too late to protect the victim.
 - The focus for the treatment of the victim should be on restoration.
 - Restore the victim to a position of strength.
 - Endow the victim with power, show respect,
 - provide needed services: healthcare, mental health services, and financial compensation, where possible.
 - Inform and involve (where possible) the victim in the trial and sentencing processes.
 - It goes without saying that the victim should not be re-victimized by the criminal justice system, but healing the victim cannot possibly be the responsibility of that system.
 - Only an all-encompassing approach that marshals all society's resources – a restorative governance approach bringing to bear the many sectors and agencies of the public sector and civil society – can help a victim of crime.
 - Communities are victims, too.
 - They require healing as much as individuals do. And the same argument applies.
 - Restore the community, as much as possible, by allowing people to participate in denunciation and sentencing.
 - But we can expect the prosecutor or the defence lawyer to focus on this – they are busy serving another agenda.
 - It would be too much to expect the criminal justice process to have the resources (personnel or financial), the experience or the understanding to assume this responsibility.
 - Judges cannot wave wand and make the victim whole again or an unemployable drug addict well.
 - But they can, as Gladue suggests, look for ways to contribute to the healing process that takes place outside the courtroom.
 - The correctional system may make a small contribution to mitigating the damage of, say early childhood neglect, but it cannot prevent it – that responsibility must fall on other shoulders.
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5.12. Restorative Justice in Canada – 2000 ³⁸

³⁶ Federal-Provincial-Territorial Meeting Of Ministers Responsible For Justice – Meeting - September 2000 Department of Justice Canada, News and Events, http://canada.justice.gc.ca/en/news/nr/2000/doc_25613.html

³⁷ Shereen Benzvy Miller (Correctional Services of Canada) and Mark Schacter (Institute of Governance), Canadian Journal of Criminology, July 2000

³⁸ Federal-Provincial-Territorial Working Group on Restorative Justice Restorative Justice in Canada: A Consultation Paper (May 2000) available from the Department of Justice Canada, <http://canada.justice.gc.ca/en/ps/voc/rijpap.html>.

- *Victims*: The growing use of restorative justice in Canada was also highlighted in the October 1998 report of the Standing Committee on Justice and Human Rights concerning victims of crime.
 - The Standing Committee's report, *Victim's Rights, a Voice Not a Veto*, reviewed the role of the victim in the criminal justice system.
 - The report discussed victims' concerns relating to restorative justice and recommended that the proposed "Office for Victims" assess restorative justice initiatives in Canada and develop principles or guidelines to ensure respect for victim's interests.
 - The government's Response, tabled on December 16, 1998, agreed that restorative justice principles should ensure respect for victims and protection of their interests.
 - Restorative justice processes provide victims with the opportunity to express their feelings about the harm that has been done to them, and to contribute their views about what is required to put things right.
 - o Studies have indicated that victims who are involved in these processes are often more satisfied with the justice system and that they are more likely to receive *restitution* from the offender.
 - o However, restorative processes may also present some challenges to victims; for example, they may feel that they have been pressured into *participating*.
 - Involvement in restorative justice processes can give victims the opportunity to express their feelings about the offence and the harm done to them, and to contribute their views about what is required to put things right.
 - o Involvement can also help victims with emotional healing and lessen their fears about being re-victimised.
 - o Many victims even find themselves willing to give the offender another chance (more than 90% according to Chatterjee's survey of the RCMP community justice conferencing approach).
 - Nonetheless, some victims remain concerned about restorative processes.
 - o *Validation*: Victims groups have expressed concern that programs tend to focus on the offender and do not recognize the needs of victims.
 - o *Choice*: There is a danger that victims may feel pressured into taking part, even if they feel threatened by the thought of meeting the offender.
 - o They may also find meetings inconvenient and time-consuming.
 - It is important to involve victims right from the beginning in developing restorative policies or programs.
 - o The importance of victim participation in restorative justice processes was stressed by the report of the Standing Committee on Justice and Human Rights as well as the Government's Response³⁹ to it.
 - o Many jurisdictions have also developed victims services programs that provide victims with support, referrals to other programs, information about the criminal justice process, and other services.
-

5.13. Aboriginal Justice Strategy (AJS) Evaluation – 2000 ⁴⁰

5.13.1. Victims

- There has been a shift in how victims are addressed by many community justice projects, from including victims in the process of addressing the offenders' issues to development of services for victims.
- The case studies revealed that victims voluntarily participate at the level they are comfortable with, which usually means they can participate in person, through a representative, or through a victim impact statement.
 - o Many dispositions for offenders incorporate victim feedback.
 - o In some projects, victims are assigned for their own support worker, who assists them throughout the process, by ensuring they understand the proceedings, and by providing them with counseling or referrals to other services as needed.

³⁹ Report of the Standing Committee on Justice and Human Rights, Victims' Rights, "A Voice Not a Veto" including Government response - 1998

⁴⁰ Department of Justice Canada, Evaluation Division, Final Evaluation Aboriginal Justice Strategy, Technical Report, October 2000

- Case studies indicated that some projects have carried out victim satisfaction surveys.
 - o Overall, there has been a good response as most victims felt:
 - the process was fair
 - they were appreciative of the opportunity to have input into the disposition
 - that the outcome was appropriate.
 - o For those directly participating in the project, many indicated
 - they came away with a better understanding of why the offence occurred
 - what circumstances were in the offender’s life to lead to such an incident, and
 - could see how the plan would address the offender’s situation.
 - o One survey found victims appreciated the
 - respectful nature
 - informal, private atmosphere, and
 - ability to bring a support person with them.
 - o Many victims also indicated that
 - their perceptions of the offenders had changed
 - they were no longer afraid, and
 - many felt closure.
- Representatives of businesses as victims also expressed their satisfaction with the projects.
 - o They seemed appreciative of the opportunity to explain to offenders how an offence against a business does have an impact on the owner, the staff and the community.
 - o In one community, business representatives felt that the AJS-funded project provided a more appropriate response to theft than previous initiatives, as offenders seemed more sincere in their apologies and efforts to make amends.

5.14. Aboriginal Justice Strategy (AJS) Trends – 2000 ⁴¹

- There are common gaps in reporting by projects, gaps that need to be filled to have a more detailed and relevant ‘snapshot’ of a project organization and activity across Canada.
 - o Specifically lacking is victim information (the focus is on the offender, which is a common phenomena in alternative community-based justice systems).
- Much more attention to victim’s needs and their role in a community-based justice project is required.

5.14.1. Meeting the needs of victims

- Victims are an integral, but can easily be an ignored element of restorative community-based justice projects.
- Like the involvement of women in project development and operation, the AJS funding criteria requires the involvement of victims in the development and practice of the projects.
- In addition to the recognition that identifying this practice is difficult to capture, it is important to be aware that low participation of victims in the community-based justice program may stem from a number of factors, only one of which is attributable to the efforts of the program.
 - o Some of the other factors that contribute to low participation of the victim include:
 - Victim does not desire to get involved,
 - Victim is not involved,
 - The crime was one that did not involve an identifiable individual to define as a victim (this can often be the case as a result of the types of offences referred to the program).

	# of Programs		
	1996-97	1997-98	1998-99
Role of victim in the community justice program	13 (50%)	24 (57%)	55 (88%)

⁴¹ 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 -

- - o National Perspective (Shared Concerns): while not every AJS project articulated this concern, a large number across Canada did.

5.14.2. Low victim participation

- in the project was reported by a number of communities.
 - o The low participation of victims in the community-based justice project may stem from a number of factors, only one of which is attributable to the efforts of the project.
 - o Some of the factors that contribute to low participation of the victim include:
 - Victim does not desire to get involved
 - Victim not available
 - The crime was one that did not involve an identifiable individual to define as a victim (this can often be the case as a result of the types of offences referred to the project).

5.14.3. Role of the victim:

- The role that victims play in the project as the victim’s desired role requires attention.
- The role of the victim refers to whether or not the involvement of the victim in the community-based justice process is *‘necessary’ or ‘consulted’*.
 - o If it was ‘necessary’ then diversion would not take place, without the consent or the involvement of the victim.
 - o If it was ‘consulted’, the project indicated that although the victim’s opinions are influential they are not influential enough to affect the decision to divert.
 - o Most of the projects see the victim’s role in the process to be ‘consulted’.

Role of Victim	# of Projects Reporting the Role of the Victim		
	1996-97	1997-98	1998-99
Consultation	6	11	22
Necessary	2	4	10

* Note: In Nunavut and British Columbia, as of 1998-99, at least half of the projects report the role of the victim to be ‘necessary’.

5.14.4. Presence of victim services worker/program

- As of 1998-99 the presence of a victim services program or victim services worker was reported in only 4 projects representing 3 jurisdictions: British Columbia, Saskatchewan and the Yukon.
- However, a number of projects report that they are working on employing or accessing a victim services worker in the near future.
- It is a concern for a number of projects, however they do not have the resources so adequately to address it.

5.15. Restorative/Criminal Justice–Identifying Some Preliminary Questions, Issues & Concerns – 1998 ⁴²

- At the same time as some qualified support for these initiatives was expressed, there was a host of questions, issues and concerns raised, including:
 - o the lack of consultation with victim service providers, women’s equality-seeking organizations at the initial stages of policy development
 - o absence of representation from victim service providers and women’s equality seeking groups at key decision-making tables

⁴² 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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- A number of questions emerge when contemplating the use of this set of principles as a guide to policy makers and program administrators. For example, further examination of the following is necessary:
 - The quality of voluntariness of the victim

5.16. Alternative Measures in Canada – 1998 ⁴³

National Overview

Role of the Victim

Although victim participation is not a prerequisite to a person's participation in alternative measures, the victim's input is usually sought by the person/organization responsible for delivering alternative measures

The extent of victim participation in the alternative measures process and the role they play differs across the country and often within jurisdictions.

Quite often, the process used to negotiate an alternative measures agreement in part defines the role of the victim.

In Saskatchewan, for example, victim-offender mediation is often the process chosen to arrive at an appropriate measure. In such cases, the participation of the victim is significant and necessary, and in **fact**, should the victim choose not to participate, a surrogate victim may be used so that the alleged offender still derives the benefits of experiencing this type of mediation and victim awareness.

In other jurisdictions where the process of negotiating an alternative measure consists of an interview with the alleged offender, the victim may not be required to be present.

Across the country, there are some common policies with respect to the role of the victim(s). Generally, the person/organization responsible for delivering the alternative measures program assumes the responsibility for contacting the victim. This is often done to determine if the victim would like to participate in the alternative measures process and to identify the impact of the alleged offence, including financial or property loss, and any other implications the offence has had on the victim. Quite often, the victim may be asked for recommendations they may have for ways in which reparation may be made. Although victim participation is desirable in alternative measures, if the victim chooses not to participate this will not affect the eligibility of an alleged offender for the program.

5.17. Report of the Standing Committee on Justice and Human Rights, Victims' Rights, "A Voice Not a Veto" including Government response - 1998 ⁴⁴⁴⁵ ⁴⁶

- Victims: The growing use of restorative justice in Canada was also highlighted in the October 1998 report of the Standing Committee on Justice and Human Rights concerning victims of crime. ⁴⁷
- The Standing Committee's report, *Victim's Rights, a Voice Not a Veto*, reviewed the role of the victim in the criminal justice system.

⁴³ Statistics Canada, Barry Mackillop, Correctional Services Program, Canadian Centre For Justice Statistic Alternative Measures in Canada – 1998, Feb 1999 <http://dsp-psd.pwgsc.gc.ca/Collection-R/Statcan/85-545-XIE/85-545-XIE.html>

⁴⁴ Report of the Standing Committee on Justice and Human Rights, Victims' Rights, "A Voice Not a Veto" including Government response - 1998

⁴⁵ <http://canada.justice.gc.ca/en/news/nr/1998/victimsbck.html>

⁴⁶ http://canada.justice.gc.ca/en/news/nr/1999/doc_24276.html

⁴⁷ Federal-Provincial-Territorial Working Group on Restorative Justice, Restorative Justice in Canada: A Consultation Paper (May 2000) available from the Department of Justice Canada, <http://canada.justice.gc.ca/en/ps/voc/rijpap.html>.

- The report discussed victims' concerns relating to restorative justice and recommended that the proposed "Office for Victims" assess restorative justice initiatives in Canada and develop principles or guidelines to ensure respect for victim's interests.
- The government's Response, tabled on December 16, 1998, agreed that restorative justice principles should ensure respect for victims and protection of their interests.

Recommendation 4:

Assessing restorative justice practices in Canada

Response: A Federal-Provincial-Territorial Working Group on Restorative Justice has already been established. It will be encouraged to work in co-operation and consultation with the office or policy centre on victim issues and with the Federal-Provincial-Territorial Working Group on Victims of Crime to address the recommendation and to ensure that restorative justice initiatives respect and protect the interests of victims of crime.

5.18. Victims' Rights - A Voice, Not A Veto - 1998⁴⁸

EMERGENCE OF RESTORATIVE JUSTICE

In recent years, the traditional approach to the criminal justice system has been challenged by a series of ideas based upon 'restorative justice' principles. These alternatives for dealing with criminality and victimization have their roots in the traditions and philosophies practised and supported by faith communities and aboriginal peoples. Their more recent origins can be found in the mid-1970's development of a victim-offender reconciliation program in Kitchener-Waterloo, Ontario by the Mennonite Central Committee. As well, many aboriginal communities have reclaimed and revived circle-based approaches to victim-offender mediation and healing. In 1989, the concept of family group conferencing for young offenders, based upon Maori traditions, was adopted in New Zealand and has received wide application in Australia, Canada, and other countries.

There are different approaches to the application of the restorative justice philosophy, but its basic principles are:

1. To allow the victim to express to the offender the impact of the offending behaviour on him or her.
2. To allow the offender to take responsibility for the offending behaviour and for its impact on the victim.
3. To allow the victim, the offender, and their families and supporters to search for ways to repair the damage done by seeking out means of restitution, compensation, and community service by the offender.
4. To allow the victim, the offender, and their families and supporters to seek reconciliation, understanding of the factors leading to the offending behaviour, healing, and re-integration of the offender into the community as a law-abiding member.

These principles are applied differently across the country - there is no universal model to fit all circumstances. Restorative justice initiatives can be: pre-charge or post-charge alternative measures for young or adult

⁴⁸ VICTIMS' RIGHTS - A VOICE, NOT A VETO

Report of the Standing Committee on Justice and Human Rights Shaughnessy Cohen, M.P. Chair October 1998

<http://www.parl.gc.ca/InfoComDoc/36/1/JURI/Studies/Reports/jurirp14-e.htm>

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offenders; pre-charge, post-charge or sentencing family group conferences for young offenders; sentencing circles for young or adult offenders; or healing circles at any stage of the criminal justice process. Their common purpose is to involve the victim and the offender in seeking reconciliation and resolution.

The Committee has heard about a number of different approaches to the application of restorative justice principles. Carole Eldridge during her appearance told us about the Ottawa-Carleton Dispute Resolution Centre's mediation efforts in relation to criminal matters in an urban setting. Sgt. Randy Wickins of the Edmonton Police Service told us during the National Forum about the development of a victim-offender conferencing program in his city. Arnold Blackstar from the Federation of Saskatchewan Indian Nations, a participant in the National Forum, described to us the community-based restorative justice programming in his province. British Columbia has adopted a restorative justice framework as part of its criminal justice reform - within this context, the province in its written submission to us has described its approach to alternative measures.

The restorative justice approach to criminal justice issues has many supporters. They argue that the present adversarial, retribution-based system is inadequate to meet the needs of both victims and offenders. In their view, the current approach concentrates on the 'game-playing' associated with the judicial system, rather than focusing on the conditions underlying the offending behaviour and its resolution. They say that the present system marginalizes both the victim and the offender - the offender is not required to take responsibility for the offending behaviour or to repair the damage caused - and the victim is not able to confront the offender directly with the impact of the offending behaviour on him or her.

Restorative justice also has its critics and those who are cautious supporters. There are concerns that such programs have been brought to bear in relation to inappropriate criminal offences and offenders. Others believe that the sanctions developed by these types of approaches are not adequate to denounce and deter serious criminal offending. A concern has been expressed that in some circumstances, restorative justice approaches have been resorted to in the absence of the victim or in the presence of a victim who feels reluctant and coerced to participate. Finally, some victims' advocates have said that restorative justice initiatives are designed and implemented without taking into sufficient account the perspective of victims, thus further marginalizing them. They see these initiatives as primarily serving the needs of the offender.

This last point was made by the Canadian Resource Centre for Victims of Crime when it said in its January 1998 Report *Balancing the Scales: The State of Victims' Rights in Canada*:

'Victims' groups have raised concern about the initiative, not because they disagree with the concept, but because they have questions about its implementation. They fully support victims being given the option of participating in this type of program, but have apprehensions about victims being 'encouraged' to participate.

'It is really a question about who mediation programs are intended for. To date, it has largely been an initiative of the faith community within corrections and organizations that work with and support offenders. There has been little involvement of any person or group that is solely concerned with the victim. Victims groups, therefore, are apprehensive that the process is offender based and with too much of a focus on the offender's needs, making the victims' needs secondary. While this may not be the intent of those involved in the process, it is something that will have to be addressed in the near future.'¹¹

A similar point was made at the National Forum by Joanne Marriott-Thorne, Director of the Nova Scotia Victims' Services Division, when she told us:

'If those programs are going to work - and I think there are many cases indeed where victims can be better served by a restorative justice kind of forum rather than the traditional system - they have to be planned, operated, and implemented truly taking into account the victims' perspective.'

The Committee believes that restorative approaches to criminal justice issues must be fostered and developed. This should be based upon what has already been learned and achieved. Restorative justice initiatives cannot entirely replace criminal justice practices and principles that have been in place for many years. They can in appropriate circumstances, however, build upon and supplement the present process.

Although the Committee has come to this conclusion, it has done so with a sense of caution. The criticisms of restorative justice initiatives set out earlier must be taken seriously and addressed directly. This can be done by reviewing and assessing, from the victims' perspective, the experience so far in Canada with restorative justice in its various forms.

The Committee believes that this is a task that should be undertaken by the proposed Office for Victims of Crime and the Advisory Committee at an early point in their existence. In collecting information, data, and best practices, they will be able to provide the Minister of Justice with an overview and an assessment through the victims' lens of the state of restorative justice initiatives in Canada. They should also be able to determine whether restorative justice principles, guidelines, and legislative changes are required to ensure that victims' interests are fully respected. Finally, they should then be in a position to develop any such principles, guidelines or legislative proposals if they are deemed necessary.

RECOMMENDATION 4

The Committee recommends that the Minister of Justice request that the proposed Office for Victims of Crime and the Advisory Committee, as part of the Office's information-exchange, data collection, and best practices development functions, review and assess the state of restorative justice initiatives and practices, while respecting provincial and territorial jurisdiction. If they consider it to be necessary, the Office and the Advisory Committee should develop any restorative justice principles, guidelines and legislative reform proposals required to ensure respect for, and protection of, victims' interests.

5.19. Planning/Evaluating Community Corrections & Healing Projects - 1998 ⁴⁹

Do Victims Receive Justice?

Do victims receive satisfaction from the process?

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

Do victims receive appropriate compensation or restitution?

Do victims have an adequate chance to tell their stories?

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

Do victims receive proper apologies for the injustice against them?

Do victims receive protection against further harm?

Is adequate support provided to victims and their families?

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

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

Do victims feel they have been treated fairly?

Do victims become less fearful?

⁴⁹ 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>

Are offenders made aware of harm?

Do offenders experience remorse?

How many reparative settlement agreements are negotiated and enforced?

How many community service hours were worked?

How promptly are restorative requirements completed?

What is the quality of the community service work?

Does the outcome adequately reflect the severity of the offense?

Is the process a public one?

5.20. Restorative Justice and Criminal Justice Reform in British Columbia - 1998 ⁵⁰

Central Role for Victims in Restorative Justice Generally

- On its own terms, restorative justice is touted as a victim-centred approach – it is all about bringing the victim back into the process.
- How determinations are made about victims' and women's needs without any representation from individuals who have that expertise, namely victim service providers and women's equality-seeking groups.

Losing the Victim's Perspective – What Can We Learn From Other Jurisdictions

- The experience of Britain with the introduction of mediation services into the criminal justice system is instructive in this regard.
 - Helen Reeves documents some of the problems/issues for victim support services caused by the advent of mediation and reparation schemes in that jurisdiction.⁵¹
 - In the early stages the lack of information as to views or attitudes of victims of crime towards the proposed reforms was a significant problem for policy makers.
 - As a consequence policy makers were not ready to deal with the negative reactions of some victims to the reforms.
 - Similarly, there was an explosion of interest within the 'criminal justice community' with respect to mediation and reparation projects which occurred with the announcement of the availability of government funding.
 - As a result of the funding announcement, proposals came from probation services and other offender-focused agencies to set up programs – the lack of contact of these agencies with victims soon came to be recognized as a major obstacle to their success.
 - Further, some of the assumptions that had been made about the benefits of such services for victims were shown to be erroneous.
 - Finally Reeves points out, the focus on the offender meant that victims needs were not taken into account in the design of these programs.
 - The central questions which should be asked, therefore, related more to the victim than to the offender.
 - The length of time which has elapsed since the crime occurred is likely to have a major bearing on the victim's state of mind, as well the degree of severity which the victims attribute to the particular crime and the way in which they are managing to cope with the experience, including the amount of support which available...the cases referred to mediation projects so far have tended to be selected by the stage the case has reached in the criminal justice process and by the attitudes of the offender at critical points in that process.⁵²

⁵⁰ Goundry, Sandra A. prepared for BC Association of Specialized Victim Assistance and Counselling Programs, Restorative Justice and Criminal Justice Reform in BC – Identifying Some Preliminary Questions, Issues and Concerns, April 30, 1998

⁵¹ Helen Reeves, "The Victim Support Perspective" in Mediation and Criminal Justice, note 14, p. 44-55

⁵² Helen Reeves, "The Victim Support Perspective" in Mediation and Criminal Justice, note 14, p. 52-53

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- There are other indications in the literature that there is a propensity for victims to be marginalized in many of these programs – that the implementation of restorative measures can often leave the victims by the wayside.⁵³
 - o One New Zealand study found that victims attended less than 50% of a sample of family group conferences.
 - While some victims cited lack of interest and time constraints as reasons for not attending, the vast majority indicated that they had not attended because they:
 - had not been invited;
 - were unable to come at the designated time
 - had not been informed far enough in advance.⁵⁴

5.21. The Incorporation of Dispute Resolution into the Criminal Justice System: Playing Devil's Advocate -1998 ⁵⁵

Victim Participation

- It goes without saying that the efficacy of alternate dispute resolution methods in resolving criminal matters is compromised significantly in cases where victims refuse to participate.
- Studies on victim participation in various ADR forums have produced significantly different results.
 - o Montgomery (1997) found, in a survey of alternative measures participants, that victim participation was rated the most ineffective of all participants including, police, parents, youth and victims.⁵⁶
 - o Emery (1996), who studied the alternative measures program in the Halifax area, found that less than 13% of mediation sessions conducted in the Halifax area were attended by the victim.⁵⁷
 - o Montgomery's (1997) study indicates that the low rate of victim participation, overall, in alternative measures was related to the high percentage of shoplifting offences and the fact that *"across the province, the absence of corporate victims in the alternative measures process is virtually universal."*⁵⁸
 - o By way of contrast, Gehm (1998) suggests that research in the United States indicates a stronger likelihood of participation on the part of institutional victims (i.e., including corporate victims) as opposed to personal or individual victims.⁵⁹
 - Gehm surmises that the reason for this may be rooted in the personal nature of individual victim/offender mediation (as opposed to institutional corporate

⁵³ Balanced Restorative Justice Project, p.8

⁵⁴ Allison Morris, Gabrielle M. Maxwell and Jeremy P. Robertson, "Giving Victims a Voice: A New Zealand Experiment" (1993) 32 (4) *The Howard Journal of Criminal Justice* at 309

⁵⁵ Montgomery, Andrew N. Restorative, Justice Canadian Forum on Civil Justice, *The Incorporation of Dispute Resolution into the Criminal Justice System: Playing Devil's Advocate*, 1998 <http://www.law.ualberta.ca/centres/civilj/full-text/montgomery.htm>

⁵⁶ Montgomery, A.N. 1997. *Alternative Measures in Nova Scotia: A Comprehensive Review*. Report for the Nova Scotia Department of Justice, Halifax, at p. 64.

⁵⁷ Emery, Kimberley Christine, 1996. *Alternative Measures in the Halifax Area: The Presence, Involvement and Impact of Victim Participation in the Alternative Measures Process*. Unpublished MA Thesis, Dalhousie University, at p. 32.

⁵⁸ Emery, Kimberley Christine, 1996. *Alternative Measures in the Halifax Area: The Presence, Involvement and Impact of Victim Participation in the Alternative Measures Process*. Unpublished MA Thesis, Dalhousie University, footnote 58 at p. 66

⁵⁹ Gehm, John R., 1998. *Victim Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks*. Western Criminology Review, 1(1). Located on the internet at <http://llwcr.sonoma.edu/vnl/gehm.html>, at p. 9.

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victim/offender mediation) and the special issues of discomfort, fear of re-victimization that may accompany the former.⁶⁰

- However one is to interpret these differences in terms of research results, it becomes clear that *restorative justice* programs will have to monitor victim participation closely, analyze the patterns that emerge and, implement appropriate support programs that will encourage improved participation rates.
- Of more concern than the straight participation rates of victims, however, is the suggestion by researchers such as Gehm (1998) that ADR programs may discriminate against certain racial/ethnic groups by racially motivated victim refusal to participate⁶¹.
 - Racially or ethnically motivated refusal, on the part of the victim, to participate in ADR effectively denies certain groups the opportunity to be diverted out of the formal court process into an alternate dispute resolution forum.
 - In a 1990 study⁶², Gehm analyzed victim participation in 535 cases and focused specifically on the racial question.
 - Gehm found that common race/ethnicity of victim and offender was statistically significant in explaining the success or failure of referring a particular case to an ADR forum. This raises critically important questions for Gehm:
 - *"If subsequent more rigorous studies determines that when the victim is white and the offender is non-white the probability of a meeting declines, the logical next question would seem to be: what, if any, are the consequences of this disparity?... If the victim controls whether a meeting will occur or not, and if one of the controlling variables in the victim's decision is the race/ethnicity of the offender, then examining sentencing outcomes solely on the basis of meeting/ no meeting merits some attention.*
 - Although, Gehm's evidence is not conclusive of the matter, it does raise the specter of ADR, in the criminal justice context, being an alternative that favors the interests of one racial group over another.
 - If ethnicity influences who may be diverted, under particular circumstances, and who may not be diverted, then serious questions of discrimination, equity and fairness come quickly to the fore. It would indeed be an irony if, the "new" paradigm of restorative justice, which clearly bears much closer resemblance to aboriginal justice than traditional western justice, should somehow inadvertently become "white man's" justice to the potential detriment of native and other racial/ethnic groups.
 - A number of studies in the United States are already indicating that a higher percentage of white, middle-class offenders are diverted into ADR programs than other racial groups.⁶³

⁶⁰ Loc. cit., footnote

⁶¹ *Ibid.* footnote 60, at p. 10.

⁶² Gehm, John R. 1990. Mediated Victim-Offender Restitution Agreements: An Exploratory Analysis of Factors Related to Victim Participation. In *Criminal Justice, Restitution and Reconciliation*, edited by Joe Hudson, J. Galaway and B. Galaway. Monsey N.Y.: Criminal Justice Press.

⁶³ See for example: Kigin, R. and S. Novak, 1990. *A Rural Restitution Program for Juvenile Offenders and Victims in Victims, Offenders and Alternative Sanctions*, edited by J. Hudson and B. Galaway. Lexington, MA: Lexington.

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- At the very least, it behooves advocates of *restorative justice*, and other ADR forums, to monitor this potential problem closely and to take the necessary steps to remedy it.

Re-Victimization

- Belgrave (1996) summarizes succinctly, the basis of concerns that many victims have of re-victimization in ADR settings:
 - *"Many victims may find the thought of meeting the offender threatening, and not feel able to face them directly for a very long time, if at all... There may also be issues of personal safety for victims in respect of some offending or offenders. Victims may fear retaliation from the offender or the offender's supporters at the meeting or after the event.*
- One of the fundamental claims of *restorative justice* advocates is that the use of community-based ADR alternatives to the conventional justice system ensures that the needs of victims are more clearly recognized and provided for. Beigrave counters:
 - *"While restorative justice proponents argue that victim's needs can be better met through such a system... there is a risk that victims will be re-victimized by the process and actually end up feeling worse."⁶⁴*
- Maxwell and Morris (1993)⁶⁵, in a New Zealand study, report a 25% dissatisfaction rate amongst victims participating in family group conferencing related primarily to disappointment in outcomes and failure to meet anticipated needs.
- Beigrave (1996) adds further (and this concern appears lost on many advocates of *restorative justice*) that:
 - *"Restorative processes take time and may cause inconvenience to victims, particularly where programmes operate during working hours, and when victim participation is in addition to attendance at court hearings."⁶⁶*
- Fear of re-victimization can be expected to be exacerbated where the victim is personal/individual, as opposed to institutional/corporate, and where the offence becomes increasingly serious and/or violent.
- This has significant implications for the way in which *restorative justice* programs are designed and resourced and, it is not evident that many proponents understand this.
- When *restorative justice* initiatives envision the diversion of more than minor offences, time and resources will be at a premium if programs are to be effective in achieving stated objectives while, at the same time, capable of processing cases more efficiently than the courts. Price (1997) states:
 - *"The mediation of severely violent crimes is not commonplace. However, in a growing number of victim-offender programs, victims and survivors of severely violent crimes, including murders and sexual assaults, are finding that confronting their offender in a safe and controlled setting... returns their stolen sense of safety and control in their lives... Such violent offences are usually mediated upon the initiation of the victim, and only after many months (sometimes even years) of work with a specially trained and qualified mediator, collaborating with the victim's therapist."⁶⁷*

⁶⁴ *Ibid*, footnote 66, at p. 4.

⁶⁵ Maxwell, G. and Morris A. 1993. *Family, Victims and Culture: Youth Justice in New Zealand* Social Policy Agency and Victoria University of Wellington New Zealand, Institute of Criminology, New Zealand.

⁶⁶ Emery, Kimberley Christine, 1996. *Alternative Measures in the Halifax Area: The Presence, Involvement and Impact of Victim Participation in the Alternative Measures Process*. Unpublished MA Thesis, Dalhousie University, footnote 58 at p. 66.

⁶⁷ Price, Marty. 1997. *Crime and Punishment: Can Mediation Produce Restorative Justice for Victims and Offenders*. Victim-Offender Reconciliation Program Information and Resource Centre, located on the internet at <http://www.vorp.com/articles/crime.html>, at p. 3,

- In situations where program proposals do not make provision for adequate time and resources to prepare both victims and offenders for mediation, the *de facto* results will either be that:
 - o The risk of re-victimization and/or victim dissatisfaction will be high due to inadequate time and resources, which precludes necessary screening and preparation of victims and offenders, or
 - o Programs will bog down quickly because the time frames for dealing effectively with victim needs and support will, given the limited fiscal and human resources available, severely limit the processing of cases, or
 - o Unreasonable expectations of benefits will be raised, and lost, due to rapid processing times that will not allow for addressing root issues and causes.
-

5.22. Satisfying Justice, Safe Community Options – 1996 ⁶⁸

The Current Process Overlooks the Victim

- The implications and consequences of the offence hardly get any attention.
 - o Ironically, this is so despite the fact that the administration of criminal justice is initiated mainly because of the victim's complaint and the fact that the police investigation depends largely on the victim's information.
 - o The offender is confronted with the consequences of his or her action strictly in relation to legal definitions that could technically either get him off the hook or further incriminate him.
 - o Meanwhile, what the victim is now going through in the after-math of the crime is largely neglected.
 - The formulation of the official charge and the subsequent trial hinge on the exact knowledge of the facts and circumstances related by the victim.
 - o But the sentence which follows ignores the victim's needs and problems; sentences have consisted primarily of fines and prison terms to which offender-tailored variations have sometimes been added.
 - o The possibility of giving the sentencing process, and the disposition itself, a meaningful content and orientation in relation to the specific repercussions of the offence has almost completely been left aside.
 - An administration of criminal justice which merely enforces the law without affirming as part of its central task the need to attend to reparation for the victim and the community raises a serious question about whether it is contributing in any way to restoring peaceful relations between citizens.
 - Society is entitled to expect this from the criminal justice system. Many opportunities for quickly solving some of the problems the victim may be facing, some questions and needs for which only the offender initially holds the key, almost always get lost in the process.
 - The criminal justice process describes the complaint against an accused by laying a charge that is phrased in the language of the Criminal Code.
-

⁶⁸ The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

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- This categorizes, labels and “characterizes” the behaviour, often in a manner so broadly framed that it is suggestive of many more allegations than the offender may feel are fair. (Terms like “sexual assault” or “fraud” can cover a range of actual behaviours that vary considerably in terms of the degree of seriousness and stigma that is implied).
 - Within this current framework of the system, the offender quickly loses any sense of responsibility as he or she is soon encouraged to reinterpret the whole situation in order to protect oneself against the entire range of allegations.
 - The offender is unable to identify with this legal characterization of what happened, especially if he or she is already in a disadvantaged socio-economic position vis-à-vis the victim, or the rest of society as is often the case for those actually brought before the courts.
- At the same time, the accused is rarely confronted with the needs and problems of the victim, or with the emotions and concerns of members of the community who are disappointed in the behaviour, and worried for this person’s future. Instead, an adversarial legal system takes precedence, whereby the offender is expected to concentrate on a defence and to reduce his or her responsibility to a minimum.
- The offender becomes entangled in a battle against the administration of criminal justice.
- He or she wants to “get off easy” with the lightest sentence possible.
 - This of course does not foster a conducive context for the offender to think about the victim’s situation or feel confident that if he takes full responsibility for his actions he will find support and acceptance from the community, “a way back in”, or a way in, if he or she has in fact never “belonged” in the first place. When the offender is given a punitive sanction, and more particularly is sentenced to imprisonment, that person becomes even less likely to consider there is any obligation to the victim; the offender concludes he has already “paid” his debt through the sentence.
- This situation is of course very infuriating and doubly injurious for victims, and it can lead to escalating calls for tougher penalties as they are often perceived as the only satisfaction victims can get out of such a system.
- But a more repressive policy will clearly not fix these problems.

Punishment – Victim’s Perspective⁶⁹

- According to Peters and Aertsen, failure to sufficiently punish the offender is **not** the greatest problem facing many victims.
- They are much more affected and traumatized by the complete lack of interest and empathy for what has happened to them, especially by services like the police and the judicial system.
 - They have the right to expect that concern for the injustice and pain they have suffered will be an important part of what is attended to by all the officials with whom they have dealings, whether or not a judicial proceeding ever ensues.
 - In fact, how victims are treated by justice officials at every stage can have much more impact on public perception of the criminal justice system than how much or how little an offender is eventually punished.

Property Offences⁷⁰

⁶⁹ Peters, Tony and Aertsen, Ivo, Restorative Justice: In Search of New Avenues in judicial dealing with crime. The presentation of a project of mediation for reparation, K.U. Leuven, Belgium, 1995 *cited in* The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options that attempt to repair harm from crime and reduce the use or length of imprisonment 1996 <http://www.csc-ccc.gc.ca/text/pblct/satisfy/juste.pdf>

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- Alberta and Manitoba studies confirm international research that the public may not be expecting harsh penalties for property offenders and that practices such as mediation and restitution would receive considerable public and crime victim support.
- According to research by Burt Galaway, 90 per cent of a sample of 1238 persons in Alberta contacted in 1994 chose education and job training over prisons vis-a-vis where additional money should be spent for the greatest impact on reducing crime.
- Sixty eight per cent preferred repayment to a four-month jail sentence for someone who burglarized their house and took \$1100 worth of property. (the question also stated the burglar had one previous conviction for a similar offence and would be getting four years probation plus one of the above choices).
- Manitoba had almost identical results.

(Source: Howard Zehr, *Changing Lenses*, Scottsdale, Pennsylvania: Herald Press, 1990).

Do victims experience justice?

- Do victims have sufficient opportunities to tell their truth to relevant listeners?
- Do victims receive needed compensation or restitution?
- Is the injustice adequately acknowledged?
- Are victims sufficiently protected against further violation?
- Does the outcome adequately reflect the severity of the offense?
- Do victims receive adequate information about the crime, the offender, and the legal process?
- Do victims have a voice in the legal process?
- Is the experience of justice adequately public?
- Do victims receive adequate support from others?
- Do victims' families receive adequate assistance and support?
- Are other needs - material, psychological, and spiritual - being addressed?

⁷⁰ Galaway, Burt, *Alberta Public Views About Restorative Justice*, University of Manitoba, 1994; *Manitoba Public Views About Restorative Justice*, University of Manitoba, 1994 *cited in* The Church Council on Justice and Corrections, *Correctional Service Canada, Satisfying Justice, Safe Community Options that attempt to repair harm from crime and reduce the use or length of imprisonment 1996*
<http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

6. Relevant Documents, Studies and Practices - USA

Strang, Heather. (2001). "The crime victim movement as a force in civil society". In Restorative justice and civil society, eds. Heather Strang and John Braithwaite, 69-82. Cambridge, UK: Cambridge University Press.

<http://www.restorativejustice.org/asp/details.asp?ID=1697>

- In this chapter, Strang looks at different forms of the crime victim movement, the impact of this movement on the administration of justice, and its effectiveness in promoting the cause of victims.
 - To address these matters, Strang begins by noting various forms of the "victim movement" around the world and classifying them in two broad types – one is focused on victim rights, and the other is focused on victim support.
 - She also considers how useful and effective these two types are.
 - Then using the crime victim movement in Canberra, Australia, as a "case study" in congruencies between a non-punitive model of victim advocacy and restorative justice values, Strang suggests it may be a "third way" that offers more promise than the two dominant types of the victim movement.

Hook, Melissa And Seymour, Anne. (2001). "Offender reentry requires attention to victim safety. ". The Crime Victims Report 5 (July/August): 33-48. http://www.restorativejustice.org/rj3/Full-text/Offender%20Reentry%20Requires%20Attention%20to%20Victim%20Safety_.pdf

- In this article Hook and Seymour address issues concerning the rights and safety of victims when offenders leave prison and reenter society.
 - They contend for pre-release and post-release strategies for offenders that promote the rights and safety of victims as well as improve the success of offenders' reentry into society.
 - With this in mind, they discuss community participation in reentry partnerships, victims' rights and perspectives, and specific practices such as notification of victims and communities, development of safety plans, and restitution enforcement.

Susan Sheldon Crime Victims for a Just Society, June 2002

<http://www.restorativejustice.org/rj3/feature/June2002/Crimevictims.htm>, <http://www.crimevictims.net/>

Crime Victims for a Just Society is an advocacy and training group in Mason, Michigan that seeks to train community groups on their role of working with the justice system. Crime Victims for a Just Society provides information and expertise in restorative justice through a public-health model of outreach, education, and training.

The website provides information on the different programs offered by Crime Victims for a Justice society. The resources are broken down by audience and include:

Media-lists resources for educating journalist on how to better report on violence in our society.

The Community- describes the organizations work with community groups.

Community Policing-describes community policing and provides information on resource materials.

Restorative Justice- describes the concept of restorative justice and provides links to other sites for more information.

Training- gives a bulleted list of the training content for each targeted group.

Links- lists web resources for those interested in victims groups.

6.1. Organizational Self Assessment – Restorative Justice 71

VICTIM: Rank each of the following statements from one to seven, one being "strongly disagree," four being neutral, and seven being "strongly agree."

⁷¹ Carey, Mark, Director, Dakota County Community Corrections, Minnesota Organizational Self Assessment Restorative Justice: How Are We Doing? <http://www.ojp.usdoj.gov/nij/rest-just/ch3/selfassess.html>

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Victims and their families receive support and assistance (ie, emotional, physical, and spiritual)	Rank _____
Victims are made aware of the case throughout the entire process and are asked for their opinions	_____
Victims are directly and actively involved in the justice process (from early stages to the end)	_____
<i>Economic/Financial:</i> Victims are financially restored and restitution is given priority by the justice system	_____
Victims have the opportunity to shape how the offender will repair the harm	_____
Victims have the opportunity to meet face to face with the offender with a trained facilitator	_____
Victims are satisfied with the justice process	_____
Victims have the opportunity to offer guidance and feedback to justice professionals by serving on planning and advisory groups, and through other means	_____

Describe ways in which the program is restorative with victims, and practical ways the program could improve its restorative practices with victims. Doing Now? What Else Could Be Done?

6.2. Punishment-What's in it for the Victim? A Restorative Justice Discussion for Crime Victims and their Advocates⁷²

In our society's criminal justice system, justice equals punishment. You do the crime, you do the time. You do the time, you've paid your debt to society and justice has been done. But justice for whom? Certainly not the victim. Some background about the author and about victim-offender mediation will be helpful before proceeding with a discussion about crime victims and punishment.

I am one of the small minority of victim-offender mediators who work with cases of severe violence, including homicides. My qualifications for this work include training and experience as a social worker and as a lawyer, fifteen years as a mediator, trainer and program consultant, founding and directing a Juvenile Court-based Victim-Offender Mediation Program, training in work with trauma victims and last, but not least, my own victimization.

About victim-offender mediation....

The vast majority of victim-offender mediation programs work only with juvenile offenders and only with non-violent offenses. The mediation of severely violent crimes is not commonplace. Such offenses are usually mediated upon the initiation of the victim, and only after many months (sometimes even years) of work with a specially trained and qualified mediator, collaborating with the victim's therapist and/or other helping professionals. Participation must be completely voluntary, for both victim and offender. Every aspect of the mediation process has the safety of the victim as its foremost concern. Only offenders who admit their guilt and express remorse and a desire to make amends are candidates for mediation.

A growing number of victims of severely violent crimes are finding that confronting their offender in a safe and controlled setting returns their stolen sense of safety and control in their life. Victims (who are largely ignored by the traditional criminal justice system) have the opportunity to speak their minds and their feelings to the one who most ought to hear them, contributing to the process of healing and closure for the victim. Victims get answers to the often haunting questions that only the offender can answer. (The most common questions are, "why did you do this to me?" and, "was this my fault or could I have prevented this?") With their

⁷² Price, Marty, Punishment-What's in it for the Victim?, A Restorative Justice Discussion for Crime Victims and their Advocates http://www.wave.org/DataBase/PUNISHMENT_Victims_of_Crim.htm

questions answered, victims commonly report a new peace of mind, even when the answers to their questions were even worse than they had imagined or feared.

In mediation, crime is personalized as offenders learn the real human consequences of their actions. Offenders are held meaningfully and personally accountable to their victims. Most mediation sessions result in a restitution agreement to, in some way, make amends or restore the victim's losses. Obviously, there is no way to restore the lost life of a loved one. Restitution may be monetary or symbolic; it may consist of work for the victim, community service or anything else that creates a sense of justice between the victim and the offender. Sincere apologies are often made and words of forgiveness are sometimes spoken. Forgiveness is not "prompted," in recognition that forgiveness is a process that must occur spontaneously and according to the victim's own timing, if at all. For some victims, forgiveness may never be appropriate. In cases of severely violent crime, victim-offender mediation seldom if ever is a substitute for punishment and sentences are not typically reduced as a result of victim-offender mediation.

About the need for punishment...

I am not talking about the need to incapacitate the most violent of felons—those who seem to be intractably hazardous to our health and safety. Incapacitation, unfortunately, must continue until we can learn how to generate change in such individuals. However, the need for incapacitation must be understood as separate and distinct from the need for punishment. When we focus on punishment and incarcerate offenders who are not dangerous, including those who have committed victimless crimes, we consume precious correctional system resources which should be reserved for those offenders who must be incapacitated for our protection.

I am not talking about punishment as a deterrent to crime. The punitive approach to justice has resulted in the United States becoming the largest jailer (per capita) in the world, with a violent crime rate that is also second to no other country in the industrialized world. (Until just a few years ago, the United States was the number three jailer in the world, falling behind the former Soviet Union and the Union of South Africa.) Prisons have become one of our fastest growing industries and some states now have a punishment budget that is larger than their education budget. If punishment deters crime, then the answer to an out-of-control crime problem must be that we need to lock up more people still. How far should we go with this approach?

I'm not talking about punishment for the purpose of rehabilitation. That theory was abandoned by our criminal justice system in the 1980's. Relatively few offenders are rehabilitated in prison. Offenders are "warehoused" in institutions where violence, meanness, deceit, manipulation and denial are rewarded by the culture within. In most cases, offenders return to the community as individuals who are then even more antisocial than before they were incarcerated.

Then why punishment?

If punishment is not really about incapacitation, deterrence or rehabilitation, then what is it about? Punishment is primarily for revenge (or retribution.) Victims of heinous crimes commonly demand revenge. It seems like a natural response. Some may argue that the desire for revenge in response to victimization is "hard-wired" into the human animal. History suggests this may be true.

Our criminal justice system is a system of retributive justice. Our policy of inflicting pain (i.e., punishment or retribution) upon those who harm others commonly leaves offenders feeling like they are victims, then those "victims" may seek their own revenge. Unless they are executed or put away for life without possibility of parole, they will eventually come back to us, often with their need for revenge screaming for satisfaction.

So punishment does not work as deterrence or as rehabilitation and it often

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exacerbates the circumstances we are trying to fix. Still the public (sometimes) and the politicians (more often) cry out for more punishment and more prisons. (A well-known anthropologist once said that human beings are the only species on earth that recognizes what isn't working and then does more of the same.)

If not punishment, then what?

As I stated above, I think the desire for revenge may be a natural reaction to victimization. But, should we act on all of our natural impulses? I submit that when our criminal justice system begins to take the healing needs of victims seriously, and does a good job of meeting those needs, meaningfully addressing the victims' losses and injuries, at that time, victims may no longer be so concerned with how severely an offender is punished. Currently, victims receive little else. Our society tells us that justice equals punishment. But justice for whom? Certainly not the victim. I have asked many victim advocates, "How many victims/families of victims do you know who have felt satisfied, justified and healed when the offender was put to death or put away for a life sentence without possibility of parole?" The typical answer is that it helped a little. They felt like they got something. But overall, they still felt like they had been re-victimized by the workings of a criminal justice system that didn't give a damn about them. They needed much more than this kind of justice. The system told them they should feel satisfied, even lucky if they got this much.

I'm thinking about a victim advocate (I shall call him John) whose parents were murdered in his presence when he was a teen-ager. John and his sister were shot and left for dead. Some years later, after witnessing the execution of one of the murderers, John experienced no relief from the hate and bitterness which had been burning inside him for so many years. This disappointment led him to seek a mediated confrontation with the other murderer (I shall call him Ralph), who was serving two consecutive life sentences.

After months of preparation with the mediator, John came face-to-face with Ralph, behind prison walls. In a three hour mediation session, Ralph learned from the lips of his victim of the terrible devastation he had brought upon a family. He told John of his daily shame and pain, and his wish that he could have been executed along with the other murderer. John learned of the brutal victimizations Ralph had suffered throughout his childhood and teen-age years. They cried together. John reported that the mediation and the months he spent preparing for it changed his life, bringing him release from the thoughts and feelings which had seemed inescapable and freeing him to move on in his life.

Punishment is not for the benefit of victims. Our society exacts punishment in response to the notion that crime is a violation against the state and it creates a debt to the state. "The People of the State of California vs. John Doe." The prosecutor represents the state, not the victim. The system is offender-focused. Its attention is upon punishing the offender, while protecting the rights of the offender. The victim is typically nowhere to be found in the equation. Crime Victims' Bills of Rights, now law in most states, seem to affect the balance only slightly.

What is restorative justice?

If our system of retributive justice is not working and not meeting our needs, then what is more effective? Victim-offender mediation is but one of many approaches to restorative justice. Restorative justice sees crime as a violation of human relationships rather than the breaking of laws. Crimes are committed against victims and communities, rather than against a governmental entity.

Our offender-focused system of retributive justice is designed to answer the questions of, "what laws were broken, who broke them and how should the law-breaker be punished?" Focusing on obtaining the answers to these questions has not produced satisfying results in our society. Instead, restorative justice asks, "who has been harmed, what losses did they suffer, and how can they be made whole again?" Restorative justice recognizes that, to heal the effects of crime, we must attend to the needs of the individual victims and communities that have been harmed. In addition, offenders must be given the opportunity to become meaningfully accountable to their victims and must become responsible for repairing the harms they have caused. Merely receiving punishment is a passive act and does not require offenders to take responsibility.

The traditional criminal justice system treats offenders as "throwaway people." Restorative justice recognizes that offenders must be given opportunities to right their wrongs and to redeem themselves, in their own eyes and in the eyes of the community. If we do not provide those opportunities, the offenders, their next victims and the community will all pay the price.

Restorative justice is not just victim-offender mediation. It is not any one program or process. It is a different paradigm or frame of reference for our understanding of crime and justice. Some other restorative justice responses to crime include family group conferencing, community sentencing circles, neighborhood accountability boards, reparative probation, and restitution and community service programs.

About victim advocacy and victim-offender mediation....

Over the years, there has sometimes been an uneasy relationship between victim advocates and the growing restorative justice/victim-offender mediation movement. Victim advocates objected loudly (and rightly so!) when early victim-offender programs were overly persuasive or even coercive, in their well-meaning but misguided efforts to enlist the participation of victims. Victims' assistance programs are now co-training with victim-offender mediation programs, teaching mediators how to work sensitively and respectfully with victims.

Victim advocates have sometimes seen mediation as "soft on crime" and therefore,

not in the best interests of victims. Those victim advocates who have observed mediation sessions, taking note of the trepidation of offenders as they face their victims, know that mediation is not soft on crime.

The recognition of common ground between victim advocates and restorative justice advocates has led to alliances and partnerships. For example:

*In 1995, the National Organization for Victim Assistance (NOVA) published a monograph entitled, *Restorative Community Justice: A Call to Action*

*In 1996, NOVA and the Center for Restorative Justice and Mediation jointly published a thorough, comprehensible and extremely accessible educational document called, "Restorative Justice for Victims, Communities and Offenders." It is without a doubt the best restorative justice educational document I have seen.

*In 1995 and 1996, NOVA collaborated with the Center for Restorative Justice and Mediation at the University of Minnesota, to produce nationally-focused, advanced training programs for the mediation of seriously violent crimes.

*In 1996, NOVA, along with the U.S. Department of Justice Office for Victims of Crime convened a Restorative Justice Summit Conference in Washington, D.C., gathering leaders of the field to develop national restorative justice policy.

*In the fall of 1996, Mothers Against Drunk Driving (MADD) published in its

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quarterly, The MADDvocate, an article by restorative justice experts, Mark Umbreit and Gordon Bazemore (of the Balanced and Restorative Justice Project). The Winter 1996 MADDvocate published an article by a victim, who along with her family, chose to mediate with the drunk-driving offender who killed her sister.

*MADD's National Director of Victims' Services, Janice Harris Lord, a recognized authority who has written numerous books on working with victims, spoke at the 1996 Conference of the Victim Offender Mediation Association (VOMA) and presented workshops on working sensitively with crime victims. She also co-presented (with me) a workshop on the mediation of drunk-driving fatality cases.

A call to action for criminal justice reform....

I suggest to victims and victim advocates that you stop letting the criminal justice system sell you its party line; stop letting it sell you punishment as the cure for what ails you. In our mainstream criminal justice system, punishment is the "bone" that the system throws to victims, while offering little else. Victims and their advocates would do better to let go of their demands for more prisons and more punishment. Those demands are not serving the needs of victims or society. They are instead helping to perpetuate a system of retributive justice that is failing all of us. A restorative approach that focuses on righting the wrongs, repairing the damage and restoring the lives affected by crime has much more hope to offer us.

Marty Price, J.D., a "recovering attorney" and social worker turned to mediator, is the founder and former director of the Victim Offender Reconciliation Program of Clackamas County (Oregon) and is currently the Co-Chair of the international Victim-Offender Mediation Association (VOMA). He provides victim-offender mediation, consultation and training to courts, mediation programs and individuals, specializing in the mediation of drunk driving fatality cases and other crimes of severe violence. He may be contacted at: 2315 NE Mason, Portland, OR 97211, (503) 281-5085.

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6.3. Minority Community Victim Assistance: A Handbook - 2001⁷³

Introduction

This handbook results from a number of training programs, conferences and workshops that have focused on victims of crimes. One of the things that always struck us most about these activities was that the majority of the participants were white females. Yet, crime statistics show that the most typical crime victim is a young African American male.

We have worked with a number of police departments to try to assist them in improving their services to minority Victims, especially inner city victims. We have tried to encourage the law enforcement community to take a pro-active role in promoting the concerns of these victims. Our efforts have been successful in part.

⁷³ Elsie L. Scott Veda M. Shamsid-Deen Andrea Black-Wade National Organization of Black Law Enforcement Executives 908 Pennsylvania Avenue, S.E. Washington, D.C. 20003 Minority Community Victim Assistance: A Handbook 2001 <http://www.ojp.usdoj.gov/ovc/publications/infores/minor/welcome.html>

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After four years of developing police-based victim assistance programs, we realized that there are often few referral services accessible to minority community residents. We, therefore, decided to work with police departments in trying to develop more inner-city based programs and to inspire more minority persons to develop programs as well as advocate for more services from their local governments. We hope that this publication will serve as an impetus to minority community leaders, victim assistance and referral agencies and police departments throughout the country to achieve these goals.

We have designed the handbook to give minority community residents a practical approach to assisting crime victims in their communities and neighborhoods. Law enforcement agency and police department personnel will find this handbook instructive in that it introduces helpful activities that are both cost effective and feasible for community based programs.

The handbook is divided into five sections. Section I examines barriers that have traditionally restricted minority persons from becoming active in victim assistance programs. Section II provides information on becoming a victim advocate as well as demanding action from the court system. In Section III the various types of victim assistance services are discussed with suggested activities for establishing those particular services in a community. Section IV focuses on special needs of domestic violence, hate violence and elderly crime victims. Section V provides vital information for helping to maximize existing community resources.

See document online

6.4. Alabama Crime Victims Compensation Commission – 2001⁷⁴

- In addition, restorative justice must recognize and respect that each victim, and each case, is unique.
 - o While a substantial body of research offers a general understanding of what many victims might go through, it can be detrimental to "paint all victims with a broad brush."
 - o Pre-victimization factors, socioeconomic status, presence or absence of a support system, and treatment by the justice system all contribute to how a victim may--or may not--react to restorative justice initiatives.
 - o The unique aspects of victimization are critical, in that they can affect a victim's willingness or ability to participate in or appreciate restorative justice practices.

- Victims' most salient needs (based upon a rich body of research)—
 - o information about the status of their case,
 - o being believed, and
 - o not being blamed.

- One of the most significant barriers to victim involvement in, and acceptance of, restorative justice is the language that is sometimes used within a restorative context.
 - o Victims' concerns extend beyond mere semantics to the expectations some words imply--that victims will heal, or that forgiveness should be an end result of restorative justice.
 - o The word "*restorative*," for instance, is appropriate and powerful when describing a context or approach to justice.

⁷⁴ Alabama Crime Victims Compensation Commission, Criminal Offenders, Crime Victims, and Substance Abuse, What Next? The Language Of Restorative Justice, Oct 2001, <http://agencies.state.al.us/crimevictims/asads/justiceandtrauma.htm>

- When the term "*restoring victims*" is used, many crime victims and service providers express viable concerns.
- Rather, "*restoring justice to victims*" through comprehensive, meaningful services and implementation of victims' rights is a more appropriate reference.
- The term "*victim/offender reconciliation*" implies that there was a conciliatory relationship in the first place.
 - While this may be true in some cases--particularly those involving interfamilial offenses--it is not true for many others. As such, caution should be utilized with this word.
- The crucial concepts of "*healing*" and "*closure*" are frequently cited in restorative justice literature, policies, and programs.
 - It is important to remember and respect that healing is a journey, not a destination.
 - For many victims, "*closure*" is not only an unrealistic word; it is an unrealistic expectation.
 - Neither healing nor closure should be cited as expected outcomes of restorative justice.
- Perhaps the most inflammatory concept within a restorative justice framework is that of "*forgiveness*."
 - Again, forgiveness should never be expected. If forgiveness emerges through restorative justice processes, it is healthy and welcome.
 - Yet forgiveness from the victim--especially for offenses that cause horrendous acute and chronic trauma (both physical and emotional)--can be extremely difficult. Forgiveness without any display of remorse, sorrow, or rehabilitation from the offender can be impossible.
- Deschutes County, Oregon Chief Community Justice Officer Dennis Maloney emphasizes the importance of "*earned redemption*," that is, offenders must make diligent efforts to earn the victims' understanding that can lead them to mercy for the suffering and losses they have endured.
- An in-depth understanding of victim trauma is essential for restorative justice practitioners, including:
 - How participation in justice processes--criminal, juvenile, and/or restorative--can exacerbate victim trauma.
 - Victims' most salient needs (based upon a rich body of research)--information about the status of their case, being believed, and not being blamed.
 - The various needs victims may have immediately after a crime has occurred, as well as in the short- and long-term, and how best to meet those needs.
 - Supportive services available (both system- and community-based) for victims to help them reconstruct their lives in the aftermath of a crime.
 - An increased understanding of victim trauma emerges from comprehensive training and from speaking directly to--and soliciting feedback from--crime victims and those who serve them.
 - It is also important to recognize that the majority of victims do not report crimes to law enforcement; therefore, it is imperative that restorative justice values and practices incorporate approaches that attend to the needs of non-reporting victims.

- In addition, restorative justice must recognize and respect that each victim, and each case, is unique.
 - While a substantial body of research offers a general understanding of what many victims might go through, it can be detrimental to "paint all victims with a broad brush."
 - Pre-victimization factors, socioeconomic status, presence or absence of a support system, and treatment by the justice system all contribute to how a victim may--or may not--react to restorative justice initiatives.
 - The unique aspects of victimization are critical, in that they can affect a victim's willingness or ability to participate in or appreciate restorative justice practices.

6.5. Questions For Restorative Justice Practitioners To Consider When Creating/Implementing A Victim-Centered/Victim-Balanced Program – 2000 75

These questions provide a good "check list" to measure the effectiveness of a correctional agency's restorative justice programs relevant to victim sensitivity, and respect for the victim's participation.

- A series of questions that agencies can ask to "provide victims with the greatest opportunity for justice, based upon the six core rights of victims:
 - Safety (a sense of safety for victims).
 - Information/notification (answers to questions).
 - Choice (the choice to participate or not participate).
 - Testimony (a chance to testify to their truth).
 - Validation (respect for and acknowledgment of the victim's experiences).
 - Restitution (the full and prompt payment of restitution).

Safety

- Does your program consider the safety of victims and their families as its highest priority?
- Has your program worked with victims and victim service providers to ascertain the kinds of safety measures you can facilitate to ensure victim safety?
- What safety measures does your program have in place to ensure the victim's safety before, during and after his/her participation in the process?
- Are victims asked if they feel safe and what (if anything) would make them feel safer?
- Has your program considered safety measures for staff who are conducting victim-related or restorative justice processes, or who are in the office?
- In some cases, does your program contact allied professionals to get them involved in providing safety?
 - What preventive strategies does your program suggest to victims to increase their safety? (NOTE: In cases involving domestic violence or stalking, there is no way that anyone can *ensure* safety.)
- In your program, who has responsibility for creating, implementing, reviewing, evaluating and improving your victim-related safety measures?
- Does your program have a system for putting safety plans in place for victims with disabilities before an emergency arises? Does this person work with victims and victim service providers?
- How does your program present itself to elderly victims?
 - Is there effort given to understanding such issues as dementia, isolation or other aging issues that may exacerbate their experience, leaving them feeling more vulnerable than before?
- What assurances are given to them about protection if they are to meet with their offender?

⁷⁵ Russell, Susan, Victim Access Project Coordinator, Vermont Victim Services 2000, Questions For Restorative Justice Practitioners To Consider When Creating And Implementing A Victim-Centered And Victim-Balanced Program http://www.realjustice.org/Pages/t2000papers/t2000_russell.html The Vermont Center for Crime Victim Services (CCVS) has worked closely with correctional programs in its state to develop restorative justice policies and practices that are victim-sensitive.

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- What safety procedures do you follow when both victims and their offenders are present in the same venue?
- What steps are taken when safety measures are violated during any restorative justice process?
- How do you screen out inappropriate cases, i.e, domestic violence or sexual assault cases?
 - o If the screening is done by a committee, what type of training do its members receive?
 - o If cases are screened by the court, are there additional screening processes?
- Who will enforce the restorative justice agreement, or violations thereof, post-process?
- What are your program's confidentiality guidelines as they pertain to victim testimony and involvement?
- Does your program consider the emotional, as well as the physical, safety of the victim? For example, does your program try to understand the issues with which the victim may be dealing, and are your workers sensitive to issues of trauma or other mental health diagnoses?
- Do facilitators intervene immediately if the focus of a restorative justice meeting becomes uncomfortable for the victim?
- Do they have training to deal with the emotional reactions that can result from this type of interaction?
- Do the physical environments of restorative justice venues consider the victim's safety, i.e., parking, lighting, etc.?
- In processes involving face-to-face meetings, are the victim and offender scheduled to arrive/leave at different times, so that offender does not have the opportunity to harass, threaten or coerce the victim?
 - o Are escorts provided to victims into and departing the venue?

Information

- Has your program worked with victims and victim service providers to determine the kinds of information about your program and restorative justice processes that victims need, and have you prepared these materials?
- Are victims given a comprehensive explanation of the events to take place, i.e., orally, in writing, and/or by audiotaped or videotaped materials?
- Does your program provide victims with an information brochure that outlines their options for involvement and describes what they can expect if they choose to participate?
- Do you tell the victims about the possible "dangers or disadvantages" of this process and not just about the possible "benefits"?
- Is your program staff familiar with all local, state and national resources for victims so they can make appropriate referrals?
 - o Do you have a printed list of services/resources to give to victims?
 - o Do you have a "glossary of terms" for victims that are utilized throughout justice processes?
- If victims need help with referrals, do you tell them how to advocate for themselves and help with the process, if needed?
- Does your program have working collaborative agreements with domestic violence programs or other community/victim resources for referrals or assistance in planning for the victim?
- Does your program provide information in different formats, i.e., Braille or other languages?
- Is your program accessible for people with disabilities?
 - o Does your program provide assistance with paperwork ("reasonable accommodation") to those with disabilities?
- Is there someone working with the victim who has knowledge of disability issues and has connections with other agencies who specialize in disabilities?
- Are your program's staff who provide referrals and assistance trained in victims' needs and rights?
 - o Are they trained about resources in the community?
 - o Are any of them victims/survivors?
- Is there a mechanism in place to check with victim advocates to see if s/he can offer any insight/support to the victim in restorative justice cases?

Choice

- Does your program inform victims that it is completely up to them whether or not they want to participate in restorative justice processes?
- Does your program inform victims of their options for varying levels/degrees of participation?

Community Justice – Victims

- Does your program offer choices of dates, times and places?
- Does your program offer a choice of venues, i.e., who can be present, who will not be present, etc.
- Does your program offer the victim the opportunity to have an advocate, probation officer or other support person present during restorative justice processes?
- Do you provide victims with a written list of the rights to which they are entitled when participating (or choosing not to participate) in your program?
- Do you understand that victims, both with and without disabilities, have the right to make choices, regardless of whether the staff agrees or disagrees?
- Does your program inform victims that they can change their minds about any of their previous choices?
- Does your program amend its normal practices to meet the special needs of victims (for example, a frail individual who is homebound and cannot travel to the designated site)?

Testimony

- What procedures are in place in your program to ensure that there is always an appropriate environment for victims to tell their stories?
- Does your program have a way to address the needs of victims with cognitive disabilities, i.e., difficulty with verbal expression and understanding?
- Is there a way to bring in someone who specializes in communicating with those victims?
- Do you assure that everyone present is "on the side" of the victim and will support her/him during and after the testimony?
- Do you let victims know that they only need to tell as much as they wish?
- Do you assure confidentiality of the content of the victim's testimony?
- If a victim chooses not to participate, are there other options for the victim to provide testimony?
 - o Are those options described in writing and given to victims?
- Is there someone (a trained individual) who can assist the victim in preparing his or her statement and/or reading it, should the victim not be able to do it him/herself?
- Is there opportunity provided for the victim to ask questions of the offender?
 - o Does your program offer victims assistance in this process (writing questions down, offering to act as facilitator, etc.)?
- Does your program provide interpreters for those who are deaf, hearing impaired, speak English as a second language, or speak no English?

Validation

- What types of support does your program offer to victims who are providing testimony for restorative justice processes?
- Has your program staff gone through sensitivity /cultural training to be more effective in validation?
 - o Do they act interested in the victim's story and not try to cut him or her off?
 - o Do they make victims feel as though their input is valuable and express gratitude for their participation?
 - o Do they offer words of encouragement ("Take your time; focus on someone safe; take deep breaths;" etc.)?
 - o Do they understand the importance of body language (eye contact; nodding head; keeping arms open instead of crossed over chest; etc.)?
- Does your program staff ask the victim, "How can we help you feel validated?"
- What does your program do to ensure that offenders and others will also validate victims' testimony? What does your program do if offenders or others fail to validate the victim's testimony?
- Does the perpetrator get the clear message, "What you did was solely your responsibility and it was not okay to do that"?
- Does the victim get the clear message, "What was done to you was wrong; it was not your fault; you are justified in feeling afraid, angry and unforgiving"? (NOTE: In a domestic violence situation, it is important for both the victim and the perpetrator to hear that the responsibility for the violence rests solely with the perpetrator, and not at all with the victim. This must be stated up front; nods and body language are not enough.)

- Does your program have a standard "thank you" letter that you send to victims after they have testified?
- Does your program have a standardized evaluation process/form for victims to complete, and assess their satisfaction with and opinion of your program and restorative justice processes?

Restitution

- Do you consider restitution in *every* case?
- What procedures are in place in your program to ensure that restitution payment is the *first* financial responsibility of offenders (or a dual priority with cases that also involve child support)?
- Does your program provide victims with assistance in documenting their losses for the purposes of restitution?
- Who in your program is responsible for holding offenders accountable with regard to restitution?
- Does your program emphasize to offenders the role of accountability in not only repairing the harm they caused, but also as a component of holding them accountable to their victim and to their community?
- What are the consequences to the offender if he or she does not pay?
- Who in your program is responsible for verifying claims? Is restitution only owed for uninsured expenses?
- Who in your program provides victims with information about the offender's restitution schedule, amounts that will be paid, etc.?
- Does your program provide financial resource assistance in obtaining funds from other emergency funds?
- Do you ask the victim if there are other ways the offender can repay that would be more beneficial or healing than monetary compensation?
- Do you tell the victim about Victim Compensation and how to apply?
- Are victims provided with information about civil remedies in cases where the offender does not fulfill his/her restitution obligation, and provided with assistance in seeking such remedies?
- Do you talk with the victim, and those responsible for holding the offender accountable, about the victim's safety issues relating to restitution?
- Do you provide financial reimbursement to the victim for mileage to participate in any of your programs?
- Do you provide reimbursement for lost wages due to involvement with your program?

6.6. Toward a Mid-Range Theory of Restorative Criminal Justice – 2000 76

- **Types of Victims:** Some authors distinguish between primary from secondary victims and identify three types of secondary victims:⁷⁷
 - Those who suffer indirect financial loss because of a crime;
 - Those who suffer because of a close relationship with a victim; and
 - Society at large
- **Victims:**
 - Direct Victims – Those against whom the crime was committed and who suffered physical injury, monetary loss and/or emotional suffering as a consequence of the offense.
 - Indirect Victims – Those who suffered indirect financial loss because of their relationship to the victim or offender
- **Victims Needs Structure**

⁷⁶ McCold, Paul. (Director of Research, International Institute for Restorative Practices, Bethlehem, PA.) "Toward a Mid-Range Theory of Restorative Criminal Justice" is an abridged version of a larger article to be featured in *Contemporary Justice Review*. December 2000

⁷⁷ Van Ness, D. and K.H. Strong, (1997) *Restoring Justice*, Cincinnati: Anderson Publishing cited in McCold, Paul. (Director of Research, International Institute for Restorative Practices, Bethlehem, PA.) "Toward a Mid-Range Theory of Restorative Criminal Justice" is an abridged version of a larger article to be featured in *Contemporary Justice Review*. December 2000

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Injury	Need	Responsibility
Physical	Safety	Protect self and others
	Medical Attention	Seek necessary treatments
Economic	Restitution	Be realistic about costs
Mental/Emotional		
- loss of trust	Safety to disclose (confidentiality)	Find someone to trust
- loss of faith	Know justice will take place	Take the time necessary/be patient
- sense of isolation	Social support and acceptance	To ask for and accept help
- disbelief in experience	To tell their story, to be heard	To face their pain
	Deminimization	Expect others to take seriously
	Deprivatization	Willingness to break the silence/disclose
	Truth telling	Faith in your experience
Cognitive shock	Meaning	Seek understanding
	Answers to questions	To articulate the questions
Enmity	To forgive, but not forget	Acknowledge the pain under the anger
Loss of control	Empowerment over disposition of case	Take opportunities to exert influence
Self blame	Reassurance that it wasn't their fault	To forgive self
Indignation	Validation that it was wrong	Reaffirm value system
Fear	Strategies for the future	Take action to take control
	Assurance this will not happen again, to self or others	Participate in appropriate processes

- Crime victims have a variety of needs created by the crime which correspond to an injury and responsibility.
 - Most of the responsibilities of crime victims they owe to themselves for their own self-interest (healing).
 - Use of the term “responsibilities” in regard to victims is not meant to suggest that victims should be coerced to participate in their own healing or to have the pace of their progress determined for them.
 - Physical: For example, crime threatens the physical safety of victims and/or their property.
 - The first need of crime victims is safety.
 - Victims have the responsibility to act to protect themselves and others by disclosing and asking for help.
 - Victims have a responsibility to seek medical attention when needed.
 - Economic: Victims may experience financial loss and need to be compensated and are obliged to be realistic about these costs.
 - Mental/Emotional:
 - Victims may lose trust in others, need the safety necessary to disclose and have a responsibility to seek out someone trustworthy.
 - Victims often experience isolation and need social support and they owe it to themselves to accept the help when offered.
 - Victims may suffer a disbelief in their experience, a lack of understanding and a loss of faith.
 - Victims need to tell their story, to be acknowledged and the truth to be told.
 - Victims are responsible for forgiving themselves and seeking answers to their questions.
 - Finally the disposition of the case (to ‘own the conflict’)

- Victims have a personal responsibility to take constructive action and a social responsibility to participate in appropriate social processes to address the crime – when they are ready.⁷⁸
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6.7. Viewing Restorative Justice Through Victims' Eyes – 2000/1998 79

- I am often asked what victims hope for in the restorative justice process.
 - What do victims want and are they getting it?
 - I think it is helpful, when asking whether victims view something favorably, to ask, "Compared to what?"
- For the last 25 years, victims of crime and victim advocates have tried to make the criminal justice system more responsive to the needs and interests of victims.
 - Victims have worked hard, first to be *informed*, and then to be able to *participate*.
 - Over time, community-based organizations, police, prosecutors, courts, and corrections departments all began to provide victim advocates to help guide victims through the system— to advise them of their rights to be present and to participate in proceedings.
 - It is far more common these days for victims to hear about a plea negotiation, to speak at sentencing or parole hearings, or to learn about an offender's release from prison.
 - Yet many victims still feel ignored, excluded, and profoundly disrespected by the system.
 - There is no meaningful interaction with offenders, and victims' emotional, physical, and financial needs are rarely fully addressed, if addressed at all.
 - As a result, victims often feel further alienated and unsatisfied.
- Restorative justice, on the other hand, holds great promise as a set of values which promote healing and strengthen the social bonds which serve as the foundation of our communities.
 - Empathy, mutual understanding, restitution and accountability are key principles of restorative justice.
 - There is a high priority placed on maintaining or restoring individual dignity.
 - Crime is not depersonalized.
 - It is viewed as an experience between individuals, in the midst of a community.
 - All three - victims, offenders, and communities - should recognize the harm done to each through the crime, and all three should attempt to rebuild social ties and recreate "right relationships. "
 - Sounds like everything victims' advocates have been asking for. Right? Not quite.
- Let me explain how restorative justice falls short.
 - **1. Restorative justice programs leave out most victims.**
 - Most victims do not *participate* in any formal process to resolve the issues surrounding their victimization.
 - In the traditional criminal justice system, there are many reasons for this.
 - The victim may not report the crime to the police, the police may not find the offender, the offender may not be arrested, the district attorney may decide not to prosecute, or the case may never make it to trial.
 - As a result, only a small percentage of victims in this country ever make it to court.

⁷⁸ Bianchi, H. (1994), Justice as a Sanctuary: Toward a New System of Crime Control. Bloomington, Indiana University Press. *cited in* McCold, Paul. (Director of Research, International Institute for Restorative Practices, Bethlehem, PA.) "Toward a Mid-Range Theory of Restorative Criminal Justice" is an abridged version of a larger article to be featured in Contemporary Justice Review. December 2000

⁷⁹ Susan Herman, Executive Director, National Center For Victims Of Crime, Before The International Symposium On Victimology Montreal, August 10, 2000, http://www.ncvc.org/MAIN/Susan/rj_montreal.htm; also at Susan Herman, Viewing Restorative Justice Through Victims' Eyes, Executive Director National Center for Victims of Crime (Formerly the National Victim Center) at the International Conference on Restorative Justice for Juveniles, Ft. Lauderdale, FL November 7, 1998 <http://www.ncvc.org/main/susan/rj.htm>

Community Justice – Victims

- To the extent that restorative justice models depend upon an arrest or some other official complaint to trigger the process, they will suffer from the same limitations and the vast majority of victims will not be able to take advantage of their benefits.
- Furthermore, as I understand it, restorative justice typically requires an offender who has admitted culpability and wants to participate in the process.
 - For these reasons, the number of cases eligible for restorative justice processes is even smaller.
- At its best, then, as currently applied, restorative justice is only able to help a very small number of victims of crime.
- Please do not misunderstand me. It could be that for those few victims and offenders, restorative justice may present a far more appealing option than the traditional criminal justice system.
- But for those who talk about restorative justice as a preferred approach and one which could replace the traditional system, it is important to remember that the doors to restorative justice do not yet open as wide as the doors to the courthouse.
- **2. Restorative justice does not address many critical needs of victims.**
 - Unlike the traditional criminal justice system, restorative justice offers victims a highly participatory process. Restorative justice focuses on:
 - victims' need to tell their story and to be heard, to reconnect
 - their need to participate in discussions about how to resolve their "conflict,"
 - their need to experience empathy from the offender, the community or both,
 - their need for an apology and/or expression of remorse from the offender, and
 - their need for restitution.
 - Victims' needs often go way beyond that.
 - Repairing the harm is often far more complicated than apologies and restitution and relationship-building.
 - It can require long-term sophisticated counseling, assistance with safety planning, relocation and any number of services required to rebuild a life—emergency day care for the parent who needs to get a job to handle new crime-related expenses, substance abuse treatment for the traumatized victim who has turned to drugs, an escort service for the victim now too afraid to leave home or go to the store alone, employment counseling or training for the victim who no longer can perform their old job—or even something as simple as new locks or windows at home.
 - Many of victims' needs cannot be met by individual offenders or small communities because there is only so much they can do.
 - The "restoration" that restorative justice programs offer seems limited to the resources that an offender and a community of stakeholders bring to the table.
 - From a victim's point of view, then, it is disappointing that a new paradigm that uses the word "restorative" does not address critical crime-related needs.
 - Harm caused by an offender in a moment can impact a lifetime and the reparation can have very little to do with an ongoing relationship with an offender or a community.
 - So, when a victim walks into a restorative justice process, the question that should be asked is, "What do you need to rebuild your life?"
 - Instead, the focus is on offender and community accountability, and the offender and community doing something to acknowledge the harm caused to the victim and helping restore the victim as much as they can.
 - It is certainly appropriate for offenders and communities to be asked to help make victims whole again.

Community Justice – Victims

- However, in this model, the extent to which a victim can be "restored" is limited by the capacity of the offender and the community.
 - As long as victims' needs are addressed only with the resources of offenders and communities, restorative justice will ultimately be unsatisfying.
 - To the extent victims need more than empathy, restitution and relationship building, restorative justice, like the traditional criminal justice system, will fall far short.
 - Again, this is not to say that restorative justice does not offer something of value, it's just often of limited value.
- **3. Restorative justice processes could offer enormous promise for victims.**
 - I would like to see restorative justice take another big step.
 - As I understand it, restorative justice is still very offender oriented, even though we often refer to it as victim centered.
 - As I outlined above, this offender orientation significantly limits the applications of restorative principles— first, the process is limited to those cases with an offender who admits culpability and wants to participate, and second, the remedies are limited to what the offender and, secondarily, the community can provide.
 - If we were really asking what do victims need to repair the harm caused by crime, we would not be constrained in these ways.
 - If the process and the remedies were more victim-oriented, restorative justice procedures would kick in with the occurrence of a crime and would attend to the needs of all victims.
 - The community would be asked to help victims rebuild their lives -- to help with physical repair of the crime scene, to provide the support and counseling victims need, and to overcome isolation and fear and reintegrate victims back into productive community life.
 - If the offenders are apprehended, and acknowledge responsibility for the crime, and want to participate in a restorative process, all the better.
 - They can contribute enormously and in a way nobody else can.
 - They can offer an apologies, remorse, and empathy.
 - They can give victims a more complete understanding of the events.
 - My hope for a new restorative justice paradigm is that the community would ask every victim, "What do you need to help repair the harm?"
 - I have often read that restorative justice processes can occur with or without the victim as long as you have some form of representation.
 - I actually agree with this--my hope would be that some day restorative justice can also take place with or without offenders.
 - One final observation. I believe that there is a role for society at large, represented by the state, in repairing the harm done to victims.
 - Currently, only the state has the authority to marshal the resources necessary to address some of victims' long-term, complicated problems.
 - The day care, the employment counseling, the substance abuse treatment, or the long range housing needs of victims, usually cannot be adequately addressed by offenders and communities alone.
 - In these cases, society as a whole should be asked to play a role.
 - From a victims' perspective, one of the reasons the traditional criminal justice system is inadequate is that it does not have authority to call upon the full range of governmental resources necessary to meet the needs of victims.
 - I fear that restorative justice practitioners, in a commendable effort to humanize the justice system and keep the state in the background, will make the same mistake.

- My hope would be that someday, when a crime occurs, in addition to holding offenders accountable, we would also ask,
 - "What do victims need?" and
 - "How can offenders, communities and society at large help them?"
 - From a victim's point of view, that would be restorative justice.
-

6.8. Building Community Support for Restorative Justice Principles - 80

- There is also great risk that the existing system, with its overwhelming orientation to offenders, will be unable to shift to a truly victim centered approach to resolving crime.
 - The habits of the system are strong.
 - Even in jurisdictions committed to shifting to restorative justice, corrections practitioners frequently forget to involve victim representatives in their planning at the beginning.
 - It will take great vigilance to insure that victims issues are given proper consideration.
 - Victims groups vary in their reaction to restorative justice.
 - Some see potential for a much better system for victims;
 - some are watching and withholding judgment;
 - some are adamantly opposed, believing that in the process of implementation distortions of the philosophy will result in practices which are harmful to victims.
 - They fear that the system will use victims to rehabilitate offenders or that the court will order 'restorative' activities without asking victims what they want.
 - Even if asked, they fear victims may not feel free to express their real feelings.
 - These fears are grounded in previous experience with a system that regularly re-victimizes and disempowers victims and doesn't even know it.
-

6.9. Community Is Not A Place: A New Look At Community Justice Initiatives – 1997 81

- *Who is the victim:* A fundamental principle of restorative justice is that society is not the victim, government is not the victim, the victim is the victim⁸²
 - Principle of ownership reminds us of the danger that the conflict is easily "stolen" from the victim by defining the society as the victim.⁸³
 - The question for restorative justice is "Can the principle of private ownership co-exist with public ownership of crime?"
 - The current solution to this dilemma has been to order the two principles. For example, first principle of RJ, "Crime is primarily an offense against human relationships and secondarily a violation of a law."⁸⁴

7. Relevant Documents, Studies and Practices - International

⁸⁰ Pranis Kay, Director of the Restorative Justice Program of Minnesota DOC, Building Community Support for Restorative Justice Principles and Strategies

http://www.restorativejustice.org/rj3/Action/Tutorial.1/BuildingSupport_Pranis.html

⁸¹ McCold Paul and Benjamin Wachtel Community Is Not A Place: A New Look At Community Justice 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>

⁸² McCold, P. (1996). The role of community in restorative justice. In B. Galaway & J. Hudson (eds.). Restorative Justice: International Perspectives. Moneys, NY: Criminal Justice Press, p85-102 cited in McCold Paul and Benjamin Wachtel Community Is Not A Place: A New Look At Community Justice 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>

⁸³ Christie, N. (1977). Conflict as property. The British Journal of Criminology 17(1):1-14 cited in McCold Paul and Benjamin Wachtel Community Is Not A Place: A New Look At Community Justice 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>

⁸⁴ Claassen, R. (1995). Restorative justice principles and evaluation continuums. Paper presented at National Center for Peacemaking and Conflict Resolution, Fresno Pacific College, May cited in McCold Paul and Benjamin Wachtel Community Is Not A Place: A New Look At Community Justice 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>



7.1. Restorative Justice Programs in Australia – 2001⁸⁵

- *Safety*: There is also a potential for victims to be 'revictimised' by taking part in conferences, leaving them more fearful or anxious than before (Strang unpublished).

7.2. Diversionary Programs in the South Australian Criminal Justice System/ Their Effects on Victims – 2000⁸⁶

Abstract

The introduction of specialist courts in South Australia has changed the current administration of criminal justice in this State to a significant degree. Their presence has added to the diversionary options available to sentencers, extending them in specified circumstances to police, prosecutors and legal counsel. Specialist courts are underpinned by the view that focusing on offenders' needs and treatment will aid crime prevention efforts. At the same time, South Australia is a jurisdiction that takes pride in its history and enlightened attitude on the subject of victim concerns. Now that some aspects of the criminal justice system, into which the victims' movement has been able to establish itself, have shifted the focus to offenders, what may be the effects on victims? This paper reviews first some historical reflections on victims' rights in South Australia, then describes briefly some of the specialist programs that have been implemented or are being piloted in this State. Finally, the paper offers thoughts on areas where victim issues and offender issues can find some common ground. It

⁸⁵ 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>

⁸⁶ Rick Sarre, Diversionary Programs in the South Australian Criminal Justice System and Their Effects on Victims, Associate Professor of Law and Legal Practice, University of South Australia, Presentation at conference "Victims of Crime: Working Together to Improve Services" in Adelaide, May 2000 http://www.victimsa.org/conference/rick_sarre.htm

maintains that it is not a foregone conclusion that victims and their needs will be forgotten in the rush to individualised, offender-based justice, especially if policy-makers and administrators explore the possibilities alive in promoting the principles of ‘restorative justice’.

Victim considerations in South Australian criminal justice

Detailed research into the needs of victims and the offender-victim relationship only began, worldwide, as recently as the 1940s. Even then, research was conducted merely as part of an effort to gain a better understanding of the causes of crime. Prior to the 1970s, in our common law tradition, the Crown’s decisions about proceeding with a prosecution, negotiating with defence counsel, protecting the community at large and rehabilitating offenders occurred, for the most part, outside of considerations of victims’ interests. The Crown could not have been seen to be representing the victim, it was determined, lest there be allegations by defendants that their rights had been compromised unfairly (see generally Grabosky 1987; Whitrod 1986).

Specific victim-centred initiatives in South Australia had their origins in August 1979. In that year, the government established a Committee of Inquiry on Victims of Crime. The Tonkin Liberal government report (South Australia 1981) made a number of recommendations that laid the foundation for legal and administrative reforms over the ensuing years. In 1985 South Australia became one of the first jurisdictions in the world to endorse the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power by promulgating a specific Declaration of Rights for Victims of Crime. This document was designed to state a range of principles relevant to victims at a number of key stages in the justice process, essentially in relation to access to the courts, fair treatment, restitution, compensation and assistance (Erez *et al* 1996, p206; Cook *et al* 1999, p84; Zdenkowski 2000, p168). The then SA Labor government Attorney-General, Chris Sumner, in his second reading speech for the *Statutes Amendment (Victims of Crime) Bill* in that year, listed the seventeen ‘rights’ that had been endorsed at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan, Italy, during August 1985 (Sumner 1987; Sumner and Sutton 1990). Governments were encouraged to incorporate the rights into policy and practice as far as possible, and the South Australian government was quick to do so.

The seventeen rights are as follows, in an abridged form. (See also Findlay *et al* 1999, pp344-5; Hansard 1985). The victims of a crime shall have the right to:

1. be dealt with at all times in a sympathetic, constructive, dignified and reassuring manner;
2. be informed about the progress of investigations;
3. be advised of the charges against the accused;
4. have a comprehensive statement taken at the time of the initial investigation of the harm done and the losses incurred;
5. be advised of justifications for accepting a plea of guilty to a lesser charge;
6. be advised, with sensitivity and tact, of any justifications for the withdrawal of charges;
7. have property held by the Crown as evidence returned as soon as possible;
8. be informed about the trial process and the rights and responsibilities of witnesses;
9. be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
10. not have their address disclosed unless it is deemed material to the defence;
11. not be required to appear at any preliminary hearings unless it is deemed material to the defence;
12. be entitled, during a bail application, to have their need for physical protection put before a bail authority by the prosecutor □ as enacted in the *Bail Act (SA) 1985*, section 10;
13. be advised of the outcome of all bail applications and be informed of any conditions of bail;
14. be entitled to have the full effects of the crime upon them made known to the sentencer □ the ‘victim impact statement’ (VIS) □ as enacted in the *Criminal Law (Sentencing) Act (SA) 1988*, section 7;
15. be advised of the outcome of any criminal proceedings and the sentence;
16. be advised of the outcome of any parole deliberations;
17. be notified of an offender’s impending release from custody.

Have victims reason to feel that these rights have been compromised, or potentially compromised, by the newly emerging diversionary practices and justice initiatives, such as specialist courts, being introduced in South Australia currently? At this stage, evaluations have not been completed, and thus answers informed by

empirical evidence are not yet available. What follows is simply a discussion that explores in theory how these shifts in criminal justice choices may affect victim issues.

- The task of assessing whether diversionary options have had a beneficial or deleterious effect upon victims generally is made difficult, however, by the inconclusive and often contradictory benchmarking of victims' interests in the traditional criminal justice setting, a setting that has struggled for decades to reconcile victims' concerns with concerns for offenders' rights (Sarre 1999a).
 - It is also hampered by the fact that many offenders are victims as well. It is simply not appropriate to adopt a theoretical position that cannot accommodate some overlap between those who cause harm and those who are on the receiving end of it.
 - Finally, any theoretical overview is likely to be perceived as locating all 'victims' into some form of homogenous group.
 - This is clearly not intended, and every endeavour is made in the discussion that follows to recognise that victims' interests are as broadly diversified as the circumstances that prevailed to create the victimisation in the first place.

A new-found focus on offenders in diversion and specialist courts

There are pragmatic and philosophical difficulties facing any jurisdiction attempting to develop consistent and plausible diversionary strategies for offenders, while remaining cognisant of victims' interests. When designing specialist courts and other diversionary programs and practices, policy-makers are likely to have, in the forefront of their minds, offenders' interests, not the interests of their victims. Indeed, not one of the traditional justifications for punishment, let alone those inspiring the 'new' diversionary themes, makes victims' interests a matter of principal focus. If the purpose of punishment is to rehabilitate the offender, rehabilitation reviews the offender's future prospects, not those of the victim. If the purpose of punishment is deterrence or denunciation, then the sentence is to be certain and predictable, not subject to the evidence of any specific impact of the offence upon victims. If the purpose of punishment is public retribution, then the punishment must, as far as possible, fit the crime as prescribed by the state, and not be subject to the whim (forgiveness or vengeance) of the victim. Although restitution and incapacitation are sentencing considerations that may have a bearing on some victims, these are not factors that dominate the sentencing process in the same manner as rehabilitation, deterrence and retribution (Tomaino 1999, p165; Sarre 2000).

Offender-based, diversionary practices are designed to remove defendants from the intimidation of formal court settings, if that is at all possible. The impetus for such 'de-structuring', White and Perrone (1996, p177) suggest, came from a combination of factors, including high remand numbers, high recidivism rates, high costs, and the negative impacts of conventional methods of punishment □ if not the system itself (Feeley 1979) □ on rehabilitation and reintegration of offenders into wider society. Keeping people out of the system at the 'front end' became the catch-cry of diversionary policy-making. These themes have been heightened under the current moves towards specialist courts and other diversionary practices.

It is now worth reviewing some of these models. While the evaluations have tended to suggest that the reforms have not always achieved their sometimes lofty aims □ sometimes people are merely diverted into a less formal, bureaucratic apparatus rather than away from the system entirely (Cohen 1985) □ nevertheless it has generally been agreed that diversionary programs can bring about lower recidivism rates than the employment of other more formal hearing and sentencing options (Sarre 1999b). One can draw from the examples that follow a consistent theme: that offender-focused, less traditional programs of diversion or specialisation have great potential for preventing some criminal activity. Of course, many of these schemes are still in their pilot stages and one needs to question, of course, their long-term viability, especially in relation to persistent and habitual offenders. Be that as it may, some of the various projects are presented here for discussion.

Drug courts

Drug courts provide the first example of the trend towards diversionary justice structures referred to by one commentator as 'new rehabilitationism' (Zdenkowski 2000, p162). The South Australian pilot commenced in May 2000 and is funded for two years. The court's attention is focused on treatment and the rehabilitation of the offender who appears before it. Prosecution and defence teams work cooperatively rather than in an

adversarial fashion. Advised by the Director of Public Prosecutions (DPP), a drug court magistrate makes a decision about whether a person is to be diverted to a program (methadone, group therapy etc) or not. The presiding judge, in the American experience at least, is not an independent arbitrator, but becomes actively involved as a ‘confessor, taskmaster, cheerleader and mentor’ (Inciardi *et al* 1996, p71, cited in Makkai 2000, p81). There are still a range of implementation problems to overcome before the effects of such courts on crime rates and victimisation rates can be assessed accurately in Australia (Makkai 1999). But American evaluations show good success rates in terms of less drug use and lower recidivism rates (Makkai 2000, p81).

Aboriginal Court Day (the ‘Nunga’ court)

The A\$40 million Royal Commission into Aboriginal Deaths in Custody (Royal Commission 1991) was a milestone down the continuing road of justice reform in this country. The key conclusion to come out of this report was that too many Indigenous Australians are coming into the formal justice setting. Its key recommendation, therefore, was to encourage jurisdictions to consider ways to reduce Aboriginal rates of imprisonment (Cunneen and McDonald 1997). The notion of a Nunga court day, while not being mooted in the 1991 report specifically, is an example of a contemporary idea that would have received acclaim from the Commissioners as involving a significant degree of Indigenous input in its planning and execution (South Australia 1999a). The court in South Australia, which commenced in 1999, sits one day per fortnight, for sentencing, not trials. The magistrate is guided by input from a range of sources, and sits not above the court but at the bar table, with an Aboriginal elder.

Similarly, the memorandum of understanding, signed in September 1999 between the South Australian State government and the elders of the Anangu Pitjantjatjara Lands, to enable the Umuwa community to self-supervise offenders on community service orders, parole and probation, is another example of a less formal justice setting designed to encourage attendance at court by Aboriginal defendants and to reduce re-offending (South Australia 1999b).

Family conferencing

The well-researched ‘family group conference’ juvenile justice model provides another example of a justice forum separate and apart from the formal system that has shown encouraging evidence of success (eg. Strang 2000, p24). The offender(s), their extended families and advocates (if appropriate), the victim(s) and their supporters, and the police are brought together with an independent facilitator. In South Australia the independent facilitator is a trained justice coordinator. Offenders are urged to confront their wrongdoing (for the most part, in South Australia at least, the less serious offences) while being allowed to develop their own negotiated outcome (Sarre 1999d). The aim of the process is to bring about reconciliation and reparation, not to exact punishment. It has been found in evaluative studies that offenders are more likely to respond to their justice experience positively when they perceive it to be fair, and the evidence is clear that conferencing programs do give rise to favourable perceptions (Strang 2000, p27).

Family Violence Court

The family violence court is, as piloted since 1997 in South Australia, an interventionist court. Essentially, magistrates (all male, by design) in these courts use their powers under the *Bail Act (SA)* to ensure that recipients of bail orders or restraint orders are not inflamed into further acts of violence thereby. Police refer to the court all family matters that appear to have a family violence component. At the first hearing, guilt and innocence are irrelevant. Men who are a danger to their families are referred to an appropriate agency to deal with violence issues, such as anger management programs and substance abuse treatment. Final orders are made when the matter is returned to court, at which time the magistrate is better able to consider the alleged offender’s future prospects in light of the immediate history of the matter.

Mental Health Court

A joint initiative of the South Australian Department of Human Services and the Department of Justice, this court, which commenced operation in 2000, takes referrals from police, legal counsel and magistrates. It is designed to, amongst other things, prevent persons who may border on being unfit to plead from being drawn inextricably into the legal system (Sarre 1983). Matters are selected on the following criteria: the cases must be able to be finalised in the summary courts, the accused must admit the objective elements of the offence, and he or she must not be suffering from severe mental incapacitation nor be facing a serious charge. In the final analysis, a person is only given an order of the court if the magistrate is satisfied that the program set out for

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the accused can achieve something, and that he or she can cope with whatever regime is prescribed. Once the accused is admitted to a program, the matter is adjourned until called on again, if at all.

Drug Assessment and Aid Panels

The South Australian Drug Assessment and Aid Panel, established in 1985 under the auspices of the *Controlled Substances Act (SA) 1984*, is a pre-court diversionary program designed to divert people caught with possession of illicit drugs for personal use away from the courts and to the Panel, placing pre-eminence upon the medical, rather than criminal, nature of the problem. There has been, in this context, specific attention given to Aboriginal offenders (ADCA 1996a, p8). Unless offenders wish to defend the matter in court, fail to adhere to the requirements of the Panel or are found unsuitable by the Panel, their matters are not referred to the courts and no conviction is recorded (ADCA 1996b, p14). The continued operation of the Panel bears testimony to its practitioners' perceptions of its ability to reduce criminality through an offender-focused treatment regime.

Victims' interests and offender-based initiatives: some common ground

Common ground in a less formal justice setting

While it is possible that a focus on offenders may diminish official sensitivity to their victims, there is nothing mutually exclusive about the reform associated with diversionary programs and the development of specialist courts. In other words, just because one element of the criminal justice process receives pre-eminent attention, it is not axiomatic that, thereby, other aspects of the process are ignored. It is worth remembering that victims, too, are likely to find that a formal court environment often robs them of the outcomes they may be seeking. It was incontrovertible a decade ago that many victims were dissatisfied, unhappy with or upset by what happened to them in and around court. Although significant reforms – witness assistance programs, court environs improvements, victim impact statements read by the victim in open court – have occurred in the last ten years, the fact remains that courts can be highly inhospitable places for victims.

'[A] survey of 52 South Australian victims who had appeared as crown witnesses in 1990 ... found that victims were very unhappy. They resented the amount of time that they had to spend waiting in court as well as the facilities offered to them while they were there. In addition, many were distressed by having to encounter the offender or the offender's family and friends in waiting rooms, corridors, toilets or at the entrance to the court' (Israel 1999, p235).

Thus, reforms that endeavour to destructure the formal justice process may hold something for victims, too, in removing the potential for injustice that is likely in a 'one size fits all' approach. Just as specialist courts, for example, allow significant interplay between judges and the parties that appear before them, so greater levels of informality may be more accommodating to victims who feel that formality has denied them a voice and frustrated their comprehension of the process in the past. In other words, there is no fundamental incompatibility between the rights of victims and the rights of an accused person to participate in the proceedings and to understand what is happening (Grabosky 1987; Sarre, 1994, p204; Brown *et al* 1996, pp1366-68; Zdenkowski 2000, p169).

Common ground in 'restorative' theories and practices

There is great value also in seeking out the principles of *restorative justice* in order to find other common ground. These principles are often expressed in different ways, but some clear themes emerge. In models of restorative justice, there is

1. shared responsibility for resolving crime and for one another,
2. the use of informal community mechanisms in addition to the involvement of criminal justice professionals,
3. the inclusion of victims as parties in their own right,
4. an understanding of crime as injury, not just law breaking,
5. an understanding that a state monopoly over the response to crime is inappropriate (Sarre 1997, 1999c).

In a traditional model of criminal justice, crime is defined as a violation of the state, the focus is on blame, deterrence and punishment, and the offence is defined in purely legal terms, devoid of moral, social and political dimensions. In a restorative model, crime is defined as a violation of one person by another, the focus is upon problem-solving, dialogue and restitution (where possible), mutuality, the repair of social injury and the

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possibilities of repentance and forgiveness. The offence is understood in a range of dimensions, including moral, social and political.

Immediately, some parallels between offender-based practices and victim-sensitive practices become apparent. A judge, specialist magistrate or trained justice coordinator is not unlikely to seek a victim impact statement, or to divert the offender to a restorative option that may involve victim-offender mediation. He or she may be more ready to choose a family conference setting (if available) since that setting is likely to involve a victim, an apology, and a commitment to restitution. Evaluations of victims' reactions to 'restorative' models of justice in New Zealand, the United States, Canada and the United Kingdom indicate that there are high levels of victim satisfaction where restorative, rather than retributive, models of justice are used (Lederach 1999; Wilson 1999; Strang 2000, p26). Hence, it is possible to argue that victims' rights need not be compromised, indeed may be strengthened, in a system committed to restorative principles.

This is not to say that the trend towards individualisation is immune from criticism from those who seek to champion victims' interests. Laster and Erez (2000, p252) are of the view that diversionary practices that pursue 'neo-liberal' notions of individual responsibility, especially through the negotiated (and often private) outcomes of restorative models, co-opt victims into participating in a ritual that cannot deal with the causes of crime. That is too pessimistic a conclusion, however, since it assumes that current and traditional criminal justice administrations are assisting, to a significant degree, the criminological quest, which is simply not the case. It is possible, indeed, to assert that some individualised, offender-based justice initiatives not only confront the causes of crime, but do so in a way that allows victims to play a role in the quest. For example, a family conference arising out of a case of vandalism may uncover deep-seated frustrations that have marred the relationship between offenders and their targets. A family violence hearing may reveal a pattern of repeat victimisation that may be stopped by a particular intervention. Specialist courts, therefore, may reveal and allow solutions that are acceptable to offender and victim alike. In other words, diversionary options may promote a better outcome than a 'traditional' court order. Perhaps the appropriate way to proceed in light of Laster and Erez's caveat is to ensure that any evaluations of diversionary programs or practices, and especially specialist courts, insist upon the use of criteria that seek specifically to determine the impact of any initiative on victims' rights and victims' interests generally. That may include a consideration of whether involvement of victims frustrates or enhances the rehabilitation prospects of offenders, and frustrates or enhances the interests of victims. Moreover, evaluators should consider specifically whether diversionary practices allow for a better exploration into the causes of offending behaviour. It is not axiomatic that restorative models make victims into stooges. If that is happening, then evaluations should seek to find out why, and to make suggestions for change.

Conclusion

Will any of the legislative initiatives to give offenders more individualised, specialised and diversionary justice make any difference to, or have any adverse impact upon, victim concerns? A victimological commentator may have good reason, initially, to be pessimistic. Victims' interests in the criminal justice system have been high on the political agenda in South Australia for twenty years, but their niche was carved out before the latter-day diversionary emphases came into being, initiatives that pursue a very individualised focus upon offenders. Furthermore, although the official goal of the criminal justice system is to serve the public and thus the victim, the unofficial goal is to operate expeditiously to deal with offenders, and there may be a temptation in an individualised justice setting to down-play or omit extraneous factors (such as victims' interests, victim impact statements and so forth) from the process altogether.

There are signs of hope, however. It is not unlikely that a justice setting involving an activist facilitator, a specialist court or a more informal setting may be quite conducive to victims' concerns, especially if the process remains open and if the victim is kept informed of the process and invited to participate at strategic points. In other words, the moves towards greater informality are not exclusively beneficial to offenders. Moreover, in a world of 'restorative' justice, where offenders and victims may be brought together in a setting where crime is seen as injury, not just law breaking, and where administrators are committed to outcomes that lead to reduced offending overall, one may find much common ground.

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The final picture, in the absence of specific evaluative data, however, is not entirely clear. The fact remains that lawyers, judges, courts and the public at large are still unsure about how best to accommodate both the rights of the victim and the rights of an accused or convicted offender in a single justice process. Diversionary scheme practitioners are still coming to grips with the difficulties that are presented in theory and practice by the on-going processes of destructuring. The time is ripe not only for more diversionary initiatives to be explored and implemented, but for each initiative to be evaluated in order to discover the sorts of justice processes that deliver best the outcomes desired and required by victims, their supporters and families.

7.3. The Challenge Of Delivering Services Which Provide For Restoration To Rurally Isolated Communities– 1999⁸⁷

⁸⁷ Michelle Elding, Victims Assistance Program Coordinator, Loddon – Mallee Region, VIC. Jenny Donnelly, Victims Assistance Program Coordinator, Hume Region, VIC, Kathy Sanderson SW Crime Victim Services Coordinator, VIC The Challenge Of Delivering Services Which Provide For Restoration To Rurally Isolated Communities – The Victorian Example, Paper presented at the Restoration for Victims of Crime Conference convened by the Australian Institute of Criminology in conjunction with Victims Referral and Assistance Service and held in Melbourne, September 1999

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The Victims Assistance Programs otherwise known as VAP's were established in Victoria from July 1997, following the establishment of the Victims Referral and Assistance Service in November 1996. The programs are funded through the Department of Justice under the auspice of the Victims Referral and Assistance Service.

We are part of the integrated and co-ordinated approach to victims services, adopted from recommendations put forward following the inquiry undertaken by the Victims Task Force of the Victorian Community Council Against Violence in the period 1994-5. This inquiry had been referred to the Victim's Task Force by the Attorney General, The Hon. Jan Wade MP, and the Minister for Police, Emergency Services and Corrective Services, The Hon. Pat McNamara.

The three authors of this paper work within a community health setting in regional centres within the State of Victoria, that is Wangaratta, Warrnambool and Mildura. Within these settings the main approach adopted for health promotion and well being has been the 'Ottawa Charter of Health'. This Charter was established at the First International Conference on Health Promotion in Ottawa on November 21st, 1986 and called for action to achieve health for all by the year 2000 and beyond.

The basic prerequisites for health include peace, shelter, education, food, income, a stable Eco-system, sustainable resources, social justice and equity. The Charter promotes advocating for health. It encourages health organisations to ensure that the opportunities and resources are available to enable all people to reach their potential by providing a supportive environment, access to information and choice.

The Charter also encourages communities to work together. This includes the government and non-government sectors, voluntary organisations, industry and the media. It promotes identifying local issues and building appropriate public policy to deal with those issues. It is about creating supportive environments and strengthening community action. The Charter promotes personal development, encouraging the individual to develop skills that will assist them in their lives and to help them make appropriate health choices.

These principles are reflected in the Victims Assistance Programs through it's objectives as well as in its day to day operation. To demonstrate this I have linked the five main principles of the Ottawa Charter to the service provision of the Victims Assistance Program:-

1. *Strengthening Community Action* we do this through
 - Collaboration with other organisations from the Government & non government sectors and by having key community members as part of our reference groups. It is also about the
 - Development of support groups to meet the needs of our clients.We also conduct
 - Public Forums as part of service provision – allowing for community input into our service delivery. and we are supported in service provision by the.
 - Use of volunteers within our programs. We work towards

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2. *Building Healthy Public Policy* - by
 - Providing feedback to policy makers using a co-ordinated approach and by
 - Identifying issues and informing policy makers of gaps in services. We work at
3. *Creating Supportive Environments* - by
 - Ensuring our service is accessible to all within our service areas through the provision of outreach and 1800 numbers as an example, and by the.
 - Provision of interpreters and culturally sensitive programs where appropriate. We work towards
4. *Developing Personal Skills* through the
 - Provision of support and information to clients and through the provision of a client directed service allowing them to use their existing skills and to make choices based on accurate information. The last principle is that of
5. *Reorienting Health Services* and we do this by placing the
 - Focus of care on the needs of the individual and the altering of service provision to meet the needs of the communities in which we work.
 - Staff training appropriate to staff needs that will enhance and develop staff skills promoting improved and appropriate service delivery is provided through our agencies &, the Victims Referral & Assistance Service .

The Victims Assistance Programs provide an accessible service to all victims of crime across the State be it by use of the telephone or face to face contact. As part of our service agreements we are mandated to provide a service through the following four objective headings of:

1. Direct client services
2. Community education
3. Network development
4. Policy development()

We aim to reduce differences and ensure that the opportunities are there for our clients to go down the path of recovery and to put them in control. We work very closely with existing services. We provide information, support, and with the support of our volunteers practical assistance. We also provide counselling to our clients and undertake an advocacy role when that is required.

We link our clients with appropriate supports that we may not be able to provide such as emergency housing, legal advice, and food parcels, clothes or what ever else may be appropriate. Sometimes this is easier said then done, however we work in communities where we have a knowledge of local supports and networks and often we know those we are approaching on a personal as well as professional level. Where there has been a need identified, support groups have been established and we provide through a variety of means an opportunity for the client to inform us of their concerns with tools such as surveys or feedback sheets and grievance procedures.

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We undertake community education activities and this includes talks, seminars and in-service provision for workers across our regions. It also includes becoming involved in local activities such as gadget and machinery field days, local festivals and country shows with displays and talks. It is working with the media to promote community awareness of issues facing victims of crime and the availability of services.

We work closely with our local communities, including police, community organisations, minority groups, other agencies, lawyers, court staff, medical and human service providers. We have members of our local community on our reference groups and we endeavor to ensure that the services we are providing do not duplicate a service that already exists.

The final part of our mandate is in the area of policy development:

We have on our agenda a commitment to work with other agencies and organizations on a state, regional or local level on various campaigns and initiatives that aim to address or raise awareness of issues facing victims of crime. An example of this is this week, with the Victorian Community Council Against Violence initiative of Community Safety Week - September 5th – 11th, where a number of VAP s across the State have conducted or been part of activities focused around safety, crime prevention or promotion of services to assist those affected by crime.

The main aim of all our programs is to assist the victim, their families and their friends overcome the negative effects of their experiences resulting from the crime. We do this by building healthy public policy, creating supportive environments, strengthening community action, developing personal skills and reorienting our service provision to meet the needs of our communities and the individual.

However our service provision is not without problems or challenges and we will outline some of these.

It is important to remember that the information gathered through the provision of direct service is the information which informs our practice to meet the objectives around community education, network, and policy development We will address these areas more specifically in the latter part of the paper..

As with many client services in rural Australia, Victoria's rural Victims Assistance Programs face the challenges of distance and isolation on a daily basis. The regions in which we are situated broadly cover areas of Hume 43000 sq KMS, Barwon-SW 30,000 sq kms and Loddon-Mallee 59,000 sq kms. Obviously the crime rates for small country towns are minute compared to the metropolitan area but the tyranny of distance has a huge impact. So too unreported crime, which is more often than not crime involving family violence and childhood sexual abuse and in our experience common across all regions. Confidentiality and anonymity is vital but complicated where workers, victims and perpetrators are all likely to meet on a social basis at the local pub.

Because of the size of regions and the numbers of VAP workers (on average about three per region) available to provide service most clients access the services via the telephone. They may make the call themselves or another service provider e.g. doctor, domestic violence worker etc may make the call for them. An appointment would generally be made for within a week but if the person is distressed or the situation urgent a worker will try to see the person that day. Practically this may mean a drive of two or three hours each way. Sometimes the first meeting will be conducted on the phone if that's what the client wants.

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Good service networks are vital across the whole region because it enables other geographically closer service providers to be called in, particularly in the case of an urgent visit which involves long distances, to provide information or assessment of the situation. This works both ways and we can be called in from another service because we are closer. Volunteers are recruited and trained by VAP workers to provide a pool of people to assist us respond appropriately to people's needs however they would rarely be the first point of access for victims.

At the initial contact some idea of the service the person requires would be established - and there is a huge range of things which VAP workers are called on to do. Victims and their families are often able to access the service in their own home (unless there are issues of worker safety), a local service, or even the local bakery depending on the wishes of the client.

The most effective way to indicate the type of service we provide, and the issues which are generated, is through the use of case studies. In a rural setting this in itself creates problems because people are so identifiable. Solicitors, psychologists and many human service providers such as ourselves provide service to a whole region and so know cases from a wide area. We would have little credibility if in a forum we discussed a case which is familiar to half the audience. Here today we will provide you with a case study. Rest assured people's confidentiality is maintained and we have the permission of the clients to present this information at this forum. You won't recognise them even if you are from one of our regions, but it will accurately reflect the often complex, creative and just plain frustrating process of restoration for rural victims.

Case 1

Sue and Gary were assaulted by a close relation in their home. Following the assault Sue became suicidal and after a call from the local Domestic Violence worker, the VAP worker made contact with them.

Initially their priority was Sue's deteriorating mental health. At the first visit of the VAP worker Sue was openly talking about ending her life. The worker assisted them understand and manage the process of being admitted to and dealing with the mental health system including advocating on their behalf for Sue's right to some dignity in her treatment. They accessed a psychologist and this was assisted through the VAP worker liaising with the community psychiatric workers and the psychologist to ensure each was aware of the other's part in Sue's recovery. Without this it appeared each would have provided treatment in isolation from the other.

The judicial process became important for Gary to deal with as Sue was unable to. The VAP worker was consulted at each point. Police were happy to indicate where things were up to but committal mentions mean as much as trials to those uninitiated in the court system. In these particular courts there was no access to court network but a volunteer was accessed through the VAP program.

An interim award for ongoing counselling was required and many doctor and pharmacy bills had to be paid. The process of applying for reimbursement through VOCAT is not necessarily familiar to country solicitors so the VAP worker provided information to him about entitlements and processes. An application under Section 86 was a possibility which Sue and Gary wished to pursue so the VAP worker explained the process (or lack of process) to them and then notified the Office of the Public Prosecutor.

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Writing a Victim Impact Statement and the appropriate time to do this is something hotly debated depending on whether you are the police informant, the prosecutor or the victim . Dealing with the sometimes conflicting demands of the officials involved was the task of VAP. Providing support through all the adjournments, offers of deals and then mentions and committals fell to the VAP worker.

This entailed over a period of seven months and before even the committal, a total of over 120 visits , phone calls and contacts with or by the VAP worker, none of which could be considered indulgent. These ranged from five minute phone calls to a number of four plus hour visits to the psychiatric unit. It involved liaising with domestic violence workers, court officials from two different courts, staff at the Office of the Public Prosecutor, at least two police prosecutors, community policing squad and other local police, the clients church group and minister, two psychologists, the social worker at the psychiatric unit, psychiatric nurses at the unit as well as community psychiatric workers, two solicitors, the victims of crime assistance tribunal, the client's GP and local hospital staff. More importantly it saw as is common VAP staff providing the glue to hold this case as well as this person together until they were able to begin to think about moving on. They lived two hours away, a drive of 200kms for the round trip. During this period Sue attempted suicide seven more times. They put their home on the market and reassessed their lives.

I'd like to be able to say they are well on the way to recovery now but the committal hearing has not happened yet and their health is still fragile. The issue is not just the time and effort it took, but, especially for a rural community, who would have done it two years earlier...or from a Melbourne phone number or office?

The challenges for victims of crime are felt through and by the community. The community of course can respond both positively and negatively to the victim, their circumstances and needs. In rural communities we have been able to identify areas of concern which provide challenges to victim support services, but also note some very practical and positive outcomes for that same group.

The victim support model has provided for the realisation of some of these outcomes, by tapping into the strengths of rural communities when implementing the service. I will begin with a summary of some common community reactions and issues which create the challenges.

- The down side to small communities as previously mentioned, is that issues of confidentiality and privacy are much more difficult to maintain. Although people may be well intentioned, sometimes the healing process can actually be impeded by the ongoing publicness of the events.
- Rural communities can also suffer from the identifying of some groups in the community being more deserving of support than others. Small town prejudices and well remembered histories of individuals and families can make life difficult for people who become victims of crime and are in genuine need of full support towards recovery. Attitudes of police, service providers and the general community are sometimes much more intense in small communities. Judgements around those "ideal" victims deserving of assistance and others seen as less deserving can be a challenge and are very prevalent, particularly when resources are already limited. Community education needs to have a vital role in this area. Challenging prevailing attitudes towards domestic violence in rural communities continues also to be a focus for supporters of victims.

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- Cases that go onto trial are very publicly reported and clients are often very concerned about their private lives appearing in local newspapers for public comment and scrutiny. Victim Assistance workers and their partnership services which lobby for a change in attitude have often found that the reporting of sexual assault cases in local newspapers and media can be the main deterrent for non-reporting in the first place.
- Difficulties also go on in applying a wholistic response to the needs of people. It is not surprising for workers to find that a person may have a whole range of issues in relation to the traumatic event or because of it. There may be the needs in relation to the event e.g. for counselling, court support, advocacy, child minding, transport to appointments etc. but there may also be added issues such as drug and alcohol dependency, gambling, unemployment, housing, financial assistance. Sometimes the traumatic event can be the one extra thing that causes the lives of families and individuals to spiral out of control. Community resources are often strained and stretched already and providing that one extra support can be difficult to find.
- Workers in rural communities need to have a realistic view of the extent to which the recommended model of recovery can be fully applied. Something as simple as finding counselling for a person can be less about it being free but more about it being accessible to the person. Issues of transport, communication ie. access to phones, no family support, child minding can have severe limitations on any attempt at recovery even though the counselling is an entitlement.

Strengths of rural communities which contribute to better outcomes for victims.

- One of the more positive aspects of rurally isolated communities is that they have a strong sense of commitment to maintaining their communities particularly in the face of a more centralised policy direction in many areas of government in recent times.
- Existing services in these communities are more inclined to develop partnerships and work together to maintain supports for people. These partnerships are built in both formal and informal networks, both are important ways of relating and both achieve very positive outcomes. This enables the sharing of resources and people skills with a common focus. Example: The Violence Against Women Integrated Services Partnership in South West Victoria.
- Although there may be strains on resources and services the establishing of Volunteer Support programs is found to be much more successful in rural communities. This is mainly due to the sense of community ownership for problems which its members face and also a much more personalised understanding of the impact of crime on people. It is much more difficult to ignore the pain of others when they exist in small communities and are less anonymous.
- Local community groups are more inclined to respond to needs in their own areas if they can see better outcomes for the communities. An example of this is church and service clubs supporting specific projects, providing houses for respite for families who have been victims of crime as in Mildura example with St. Vincent De Paul.

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Building on these existing strengths in rural communities and taking into account the concerns of victims, the Victims Assistance Programs have identified a number of recurring needs across communities and attempted to address them through these initiatives. This is to meet the original aims of VAP's and address policy development, community education, building networks and better services for clients.

1. Court Support

Previously there was very limited court support available to victims in the country areas and that is now being addressed in many areas where volunteer support workers are trained in court support for victims. This is a different role to Court Network which is currently available in the city and some major regional centres. Where Court Network is provided referrals are also made particularly for clients who have to go to the city for court.

2. The VAP Network

A statewide network of Victims Assistance Workers allows for detection of gaps in services and areas of common need. This also allows for lobbying for consistent approaches to victims issues across regions. Workers can agree on positive directions and respond to common issues.

An example of this was the identification of an issue around the placing of roadside memorials by the families of road trauma victims. It was thought that the councils across the state should be encouraged to adopt the Vicroads policy in relation to this issue. Victim assistance workers wrote to their own councils in their respective regions urging them to consider adopting the policy. The response in the main was favourable and went some way towards achieving consistency for clients.

Identified issues are regularly raised with other linked Victim Support providers such as The Victims of Crime Assistance Tribunal and The Victims Referral and Assistance Service. These have been able to bring about some adjustments or even major changes to provide better supports for clients. For example consistency around awarding entitlements to victims under VOCAT.

3. Victims Assistance Workers in all Rural Areas

Another way to try and ensure consistency for clients who move between regions is by referrals being made across regions for clients who wish to continue to have support when they move. Because of the strongly identified network, workers can pick up the needs of the client very quickly.

Most regions have also established outreach services and travelling arrangements to try and respond to the needs of clients wherever they are. Statistical data reveals that clients make contrast with the services from all over the region and so the challenge is how to respond to the tyranny of distance. Even having willing and trained volunteers means there is considerable cost in making personal contact with the victims to support them in their needs. Often the more isolated the area the stronger the need.

4. Community Based Support Groups

These groups are established from victims needs which are often identified through networks and partnerships. Some specialist services are more able to address the requirements of setting up such groups and their title, composition, direction etc will be determined by the needs of the community itself. These groups can assist people with dealing with the isolation of being a victim.

We hope we have established some understanding of the practical implications of the delivery of service through the Victims Assistance Program. This is a new and exciting initiative with many positive outcomes for victims. Clearly it is located in agencies whose principles are consistent with those of the program, namely the primary health care principles.

As a relatively new service we hope to learn through the challenges we currently face and continue to grow in our understanding of the needs of victims. We are mindful of the need to continue to gather data, and information, to network, discuss, and make recommendations with the aim of challenging, influencing, and creating future policy directions for victims of crime.

As workers in a rural setting we will certainly be focussed on achieving better outcomes for individuals and their communities in regional Victoria. We believe that very specific issues for rural settings are better addressed where those offering support have a sense of what the communities can provide and what they need. A real commitment to the delivery of such a service will continue to provide ongoing challenges for both workers and victims into the future.

7.4. Revisiting the Relationship between Retributive and Restorative Justice, - 1999 88

- *Definition of Victim*: I shall be using the terms victim and offender in a straightforward, unproblematic way. But, as some authors⁸⁹ remind us, drawing from their analysis of violent crime,
 - o "ideal victims" ("vulnerable, respectable, not contributing to their own victimisation") and
 - o "ideal offenders" ("powerful, bad, stranger to the victim") are "in short supply".
-

7.5. Restorative Justice The Public Submissions-1998 90

VICTIMS

Overview

The views of victim advocacy organisations

Overview

Much attention was paid in submissions to the needs and expectations of victims, both under the current system and under any restorative programmes. Overall, 32 submissions suggested that victims were inadequately provided for at present.

To date victims have had a poorly defined role or stake in the criminal prosecution system notwithstanding relatively recent legislation designed to give them some kind of voice within the judicial system. (Legal Services Board, 23)

As crime increases so does the number of victims. Victims need more information, more recognition of their part in the system and treated with greater dignity. (New Zealand Police, 24)

Present system too much leaves victim(s) "out in the cold" - and tends to build up a bitterness in the victim towards the offender. (Quin & 7 others, 53)

The Victims of Offences Act is a toothless piece of legislation which lays out general principles but allows no penalty for breach. (Auckland Women Lawyers' Association, 69)

Victims do NOT have a REAL voice in current proceedings. Frequently the voice they do have is barely a "squeak" by comparison to that of the accused. (Neill, 90)

However, there was the view that in many cases this situation could be improved by reform of the existing system.

The plight and rights of victims, needs real attention now, and before any move to impose on New Zealand a system known to fail "a small percentage" (of offenders as well as victims). (Greed, 26)

Two submissions suggested the need for a Commissioner for Victims.

⁸⁸ Kathleen Daly School of Criminology and Criminal Justice Griffith University Revisiting the Relationship between Retributive and Restorative Justice, To appear in Restorative Justice: From Philosophy to Practice (forthcoming, 2000), edited by Heather Strang and John Braithwaite. Aldershot: Dartmouth. Revised paper presented at Restorative Justice and Civil Society Conference, Australian National University, Canberra, February 1999. December 1999. http://www.gu.edu.au/school/cji/kdaly_docs/kdpaper6.pdf

⁸⁹ Cretney, A & Davis, G (1995) Punishing Violence, Routledge, London, 160, cited in Kathleen Daly School of Criminology and Criminal Justice Griffith University Revisiting the Relationship between Retributive and Restorative Justice, To appear in Restorative Justice: From Philosophy to Practice (forthcoming, 2000), edited by Heather Strang and John Braithwaite. Aldershot: Dartmouth. Revised paper presented at Restorative Justice and Civil Society Conference, Australian National University, Canberra, February 1999. December 1999. http://www.gu.edu.au/school/cji/kdaly_docs/kdpaper6.pdf

⁹⁰ 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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A strong theme was the perception that the present system was overly focused on the offender.

Our present system focuses almost entirely on the offender, his/her welfare and rehabilitation. Some tokenism is extended towards the victim but it is little more than that - tokenism. The system should be geared towards protecting those who choose to live within the laws of society rather than vice versa, as is the case at the moment. (Freer, 43; Stewart 44; Baker, 47)

Although most (27) believed that restorative justice could (or had the potential to) remedy this situation, five were cautious or had little confidence that restorative justice would be a better process, or provide better outcomes for victims.

In general terms the writer believes there is some scope for Restorative Justice programmes, but does have a considerable concern that if the motivation for such programmes is a belief that victims will benefit as a result, either emotionally or financially, then this belief should be taken with a grain of salt. (Henwood, 96)

Many issues were discussed. These included:

- The need for victims to have a central role in restorative justice programmes, and for a greater emphasis to be placed on their needs (19 submissions);
- Concern that participation should be voluntary and the need to avoid the intimidation or revictimisation of victims (18 submissions);
- The importance of support services and skilful facilitation to the functioning of restorative justice, especially for less assertive or more vulnerable people, such as victims of sexual or violent offences, children and the elderly (10 submissions);
- Satisfaction and dissatisfaction with family group conferences, and research on this issue (seven submissions);
- The need and opportunity that restorative justice could provide to acknowledge secondary victims, such as family members of victims and offenders (five submissions);
- The inadequacies of the provisions of the Victims of Offences Act 1987 or their use (four submissions);
- The need for victims to have access to adequate information/legal advice (three submissions).

There were concerns expressed about the dynamic between victims and offenders in restorative processes. One submission suggested that it was important to remember that until guilt was proven or admitted, the victim was a victim of a crime but **not** the victim of a particular offender. Caution was also urged in directing restorative justice towards appeasing victims.

One submission argued that, as there was significant private benefit in providing additional services for victims, it was difficult to argue that they should be funded through compulsory taxation.

The Views of Victim Advocacy Organisations

Submissions were made by five advocacy organisations representing victims' interests. These organisations were the New Zealand Council of Victim Support Groups, Doctors for Sexual Abuse Care, Family and Friends of Murder Victims, National Collective of Rape Crisis and Related Groups, and National Collective of Independent Women's Refuges. While their submissions specifically focused on how restorative justice might impact on victims, much of what they had to say was borne out in other submissions.

Three of these submissions strongly believed that the present system failed victims and made little provision for them. It was believed that victims (particularly victims of sexual violence), were often retraumatised by court processes, and had little sense of closure or healing. Given this situation, the exploration of alternatives that could provide better processes and outcomes for victims was in general supported.

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The only area where satisfaction with current practice was expressed was that of family violence. The present pro-arrest policy and recent legislative changes were viewed as hard-won gains for victims and their safety.

The Domestic Violence Act is, to us, a clear signal of government's commitment to the criminalisation of family violence. It is a piece of legislation, which in our view achieves an appropriate balance between restorative processes and criminalisation. (National Collective of Independent Women's Refuges, 107)

The key concern was that any restorative justice programme have the needs of the victims as its central focus.

DSAC would support the focus of either family group conferences or community group conferences being kept on the victim's needs rather than have a situation where there were competing needs amongst the parties. (Doctors for Sexual Abuse Care, 60)

Restorative Justice could work if enough emphasis is placed on the rights of victims. (Family and Friends of Murder Victims, 91)

Trial restorative justice projects were supported by the New Zealand Council of Victim Support Groups, Doctors for Sexual Abuse Care, and the National Collective of Rape Crisis and Related Groups.

The submission of the National Collective of Independent Women's Refuges focused specifically on the application of restorative justice to cases of family violence. Submissions on this aspect are described more fully in the section on eligibility.

7.6. Restorative Justice – 1996 91

- *Screening*: Victim types ⁹²:
 - Some programmes operate with the intention of addressing the needs of all those affected by an offence which suggests a broad definition of who is considered a victim.
 - No general rules are available to guide practice regarding child victims or their parents or guardians; corporate, community and local body victims; or those who are inarticulate or unable, for whatever reason, to fully participate in mediation.
 - Some authors observe that the question of what sort of victims are most suitable for victim-offender meetings has not been resolved outside the practice of individual schemes. ⁹³
- *Corporate bodies* tend to feature strongly as victims in North American programmes: some with between half and two-thirds of their cases involving businesses.
 - Most of the victims in police-based (pre-trial) programmes in Britain have been corporate bodies which included businesses, local authorities and other agencies, while in court-based projects 33% of victims were corporate bodies.
 - In New Zealand, corporate bodies and businesses, including insurance companies, who have incurred losses through or by means of an offence may be involved in victim-offender mediation as part of the process involved in preparing a reparation report.

⁹¹ New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

⁹² New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

⁹³ Marshall T & Merry S (1990) Crime and Accountability - Victim/Offender Mediation in Practice. Home Office, HMSO, London. 92-93, cited in New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

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- Some authors suggest that corporate victims who represent a high proportion of victims in these programmes were more likely to agree to mediate than were individual victims⁹⁴
 - *...perhaps because excessive emotions were less likely to be involved, or because corporate bodies were more likely to see participation as a matter of social responsibility.*
- *Insurers:* Conversely, some North American and British programmes do not recognise insurers as victims for the purposes of mediation, perhaps being concerned that the involvement of insurers or those with purely financial needs may be at the expense of addressing the emotional needs of the direct victim.
- *Multiple Victims:* It is common for victim-offender mediations to involve multiple victims and, at times more than one offender.
 - Some authors note that some schemes avoid taking such cases⁹⁵ but the Ontario Victim Offender Reconciliation Program, for example, dealt with multiple victims in a third of its cases. In such cases the needs among the victims may differ or be in conflict.
 - Where there are multiple victims decisions may need to be made about the amount an offender is able to pay respective victims, issues of privacy may arise and mediators may be concerned about their ability to control very large meetings.
 - In instances of multiple victims or offenders, the mediator must consider whether mediation is appropriate and, if so, whether to hold one or a series of meetings.
- Restorative justice, whatever particular focus programmes may have in different locations, gives victims the opportunity for direct involvement in the process of dealing with the incident that has affected them.
 - *Testimony/ Validation:* They have the opportunity to express their feelings about the offence and its impact to the person who has offended against them, and they can also contribute their views about what is required to put things right.
- Satisfaction/ Needs: Restorative processes may thus offer the prospect of better meeting victims' needs and increasing victim satisfaction with the criminal justice system. Some schemes even include specific objectives of this nature.
 - For instance, the British schemes reviewed all had objectives of increasing victim satisfaction or meeting victims' needs⁹⁶ and British Government funding of four pilot schemes was associated with better serving victims.
 - *Satisfaction:* Studies of restorative programmes in the United States and Britain report varying levels of victim satisfaction.

⁹⁴ Marshall T & Merry S (1990) *Crime and Accountability - Victim/Offender Mediation in Practice*. Home Office, HMSO, London. cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper, 1996*, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

⁹⁵ Marshall T & Merry S (1990) *Crime and Accountability - Victim/Offender Mediation in Practice*. Home Office, HMSO, London. cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper, 1996*, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

⁹⁶ Marshall T & Merry S (1990) *Crime and Accountability - Victim/Offender Mediation in Practice*. Home Office, HMSO, London. cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper, 1996*, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

- Coates and Gehm (1985), cited in Marshall and Merry (1990) found that 59% of victims involved in American Victim-Offender Reconciliation Programmes were very satisfied while a further 30% of victims were somewhat satisfied.
- One author reported that 79% of victims were satisfied in four US mediation programmes involving juvenile offenders.⁹⁷
- Results from British schemes were limited because the schemes were in their infancy and involved only small numbers of participants.
 - However, in two schemes more than half of the victims who participated found the project helpful or described the experience in positive terms.
- A review of the New Zealand youth justice system found that although there was a low attendance at family group conferences by victims (41%),⁹⁸
 - *When they did come, some felt very pleased with what happened : about half said they were satisfied and a third went away feeling better.*
 - *Needs:* The levels of victim satisfaction associated with restorative justice programmes are said to result from the process better addressing the personal needs of the victim. These needs include:⁹⁹
 - information and answers so that victims can regain a sense of security;
 - validation and expression of their experience of the offence and their emotional response to it;
 - empowerment in terms of a sense of personal power over their environment and the resolution of their own cases; and
 - compensation.
 - *Reparation/Restitution:* mediation appears to increase the likelihood of reparation being agreed and completed.
 - Some authors report the results of a number of reviews.¹⁰⁰
 - A 1985 study of American programmes found that 82% of financial contracts and 90% of reparative work agreements were completed.
 - Similarly, other programmes reviewed had more than 80% compliance with restitution orders.

⁹⁷ Umbreit M (1994) *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Criminal Justice Press Monsey, New York cited in New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

⁹⁸ Maxwell G & Morris A (1993) *Family, Victims and Culture: Youth Justice in New Zealand*. Social Policy Agency and Victoria University of Wellington New Zealand, Institute of Criminology, Wellington xvii cited in New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

⁹⁹ Zehr H (1990) *Changing Lenses: A New Focus for Crime and Justice*. Herald Press, Scottsdale Pa. cited in New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

¹⁰⁰ Marshall T & Merry S (1990) *Crime and Accountability - Victim/Offender Mediation in Practice*. Home Office, HMSO, London. cited in New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

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- Victims who participated in court-administered programmes without mediation were found to receive all reparation payments in only 58% of cases, compared to 81% who did so after being involved in mediation¹⁰¹.
- Mediated agreements take account of the ability of the offender to make reparation.
 - Hence reparation orders following mediation may be for smaller amounts than would otherwise be ordered.
 - The completion rate may therefore have been a function of payment levels which offenders could meet and/or the criteria by which offenders, offences and victims were selected for mediation in the first place.
 - In the United States, court-ordered restitution for juveniles is said to have low compliance rates because it is often perceived to be in the nature of a fine paid to the court rather than an obligation to the victim.¹⁰²
- It is suggested however, that mediation contributes to compliance.
 - This is because the parties involved in developing the agreement (and particularly the offender) have a greater commitment to it than to an imposed order.
 - They also develop more positive attitudes towards each other in the process.¹⁰³
- Anecdotal accounts from New Zealand practitioners suggest that offender agreement is associated with a high rate of completion and, in reparation following family group conferences, the involvement of families in reparation decision-making both increases the resources which the offender can make available to compensate the victim and assists the enforcement of agreements.
 - However, the ability of families involved in the youth justice system to afford reparation is limited.
 - In 1990, it was agreed to in less than one-third of family group conferences nationally.¹⁰⁴
- Through the process of mediation, victims may gain some insight into the personal situation of the offender.
 - Victims may hold stereotypical views of offenders and harbour unrealistic fears about them.
 - Studies have suggested that mediation has assisted in reducing victims' fears and in helping them to see the offender as less threatening¹⁰⁵.

¹⁰¹ Umbreit M (1994) *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Criminal Justice Press Monsey, New York cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper*, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

¹⁰² Umbreit M (1994) *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Criminal Justice Press Monsey, New York cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper*, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

¹⁰³ Marshall T & Merry S (1990) *Crime and Accountability - Victim/Offender Mediation in Practice*. Home Office, HMSO, London. cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper*, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

¹⁰⁴ Morris A, Maxwell G M & Robertson J P (1992) *Giving Victims a Voice: A New Zealand Experiment*. *The Howard Journal* 32(4): 304-321 cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper*, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

Research Framework for a Review of Community Justice in Yukon
Community Justice – Victims

- In a review of a number of juvenile programmes in the United States, an author found that fear of revictimisation was present in only 10% of victims after mediation, compared to 25% beforehand.¹⁰⁶
- However, restorative processes may have disadvantages for victims.
 - *Participation*: Many victims may find the thought of meeting the offender threatening, and not feel able to face them directly for a very long time, if at all.
 - While the current court process with its formality and courtroom rituals may be foreign to them, it may be a more comfortable environment for victims who desire minimal involvement in the criminal justice system and distance from the offender.
 - Such victims, especially if they are emotionally vulnerable, may prefer the courtroom role of witness to being a central focus in a mediation meeting at which they will be required to look beyond their own needs to what should happen to the offender.
 - There may also be issues of *personal safety* for victims in respect of some offending or offenders.
 - Victims may fear retaliation from the offender or the offender's supporters at the meeting or after the event.
 - This may increase their anxiety and affect their desire to take part, or cause them to curtail their participation.
 - Some of the British schemes involved mediation at the victim's home or workplace to suit the victim.
 - Some authors found that a small number of victims were concerned that this might have placed them in danger of further offending.¹⁰⁷
 - They suggested that security issues should be a consideration where the victim's details are not known to the offender.
- Restorative processes should culminate in agreements about appropriate outcomes.
 - This involves the victim in contributing to decisions about suitable penalties for the offender.
 - In a review of a number of international studies, Shapland (1985) found that victims did not necessarily desire decision-making powers as such.

¹⁰⁵ Marshall T & Merry S (1990) *Crime and Accountability - Victim/Offender Mediation in Practice*. Home Office, HMSO, London. cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper*, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

¹⁰⁶ Umbreit M (1994) *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Criminal Justice Press Monsey, New York cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper*, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

¹⁰⁷ Marshall T & Merry S (1990) *Crime and Accountability - Victim/Offender Mediation in Practice*. Home Office, HMSO, London. cited in New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper*, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

- However, they did want to be consulted on important issues, including decisions to prosecute or divert offenders, and whether charges should be changed or dropped, but not necessarily decisions about sentencing.
- State-centred systems of justice have traditionally distanced victims from the sentencing process.
 - While some victims may derive satisfaction from having input into sentencing, it is possible that others may feel uncomfortable about this role, may experience conflict based on spiritual or cultural beliefs, or may have personal regrets at a later stage about decisions to which they contributed.
- While restorative justice proponents argue that victims' needs can be better met through such a system, particularly because of the centrality of the victim's role, there is a risk that victims will be revictimised by the process and actually end up feeling worse.
 - In a New Zealand study, 25% of victims involved in family group conferences felt worse after the conference.
 - This was related to dissatisfaction with outcomes and a failure to meet the needs which had led to the victims' attendance in the first place.¹⁰⁸
- Finally, restorative processes take time and may cause inconvenience to victims, particularly where programmes operate during work hours, and when victim participation is in addition to attendance at court hearings.

7.7. Putting Aboriginal Justice Devolution Into Practice – 1995 ¹⁰⁹

- Notable also is the role of the victim in the community healing process.
 - Concern over the interests of victims could also be caused by the emphasis on the healing of the offender/victimizer rather than the healing of the community.
- The New Zealand victim-centered Family Group Conference approach has provided an example of how justice devolution to the community can advance victims' interests.

¹⁰⁸ Maxwell G & Morris A (1993) Family, Victims and Culture: Youth Justice in New Zealand. Social Policy Agency and Victoria University of Wellington New Zealand, Institute of Criminology, Wellington xvii cited in New Zealand, Ministry of Justice, Restorative Justice, A Discussion Paper, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

¹⁰⁹ 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>