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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.

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. This 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”

Safeguarding rights: Given the risks inherent in any informal justice procedures, there is some anxiety about the potential for violation of due process protections of offenders? Netwidening? Harsher outcomes than court?

Due process + Due consideration? Rights are not simply procedural (Timely notice? Physical presence? Counsel? Permission to confront the other side? Opportunity to be heard?), **instead they need to be substantive** (problem solving? voluntary participation? what is needed to restore the victim – what is the loss – how can it be compensated? What is needed to ensure the community’s future safety? What is needed to foster the offender’s return to constructive community life – what actions on the part of the offender can publicly symbolize atonement for the crime?) Should there be equality before the law? (under due consideration, more variables are in play than a person guilty of the same offence being sanctioned in an equivalent way? Impact on victim? Impact on the community?)

“Fair” = “equality of opportunity,” “equality of outcome,” or even “merit” in terms of deserving or not deserving?

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

<p>2.1. Offender Profile</p> <p>How many offenders have been served by the community justice project? Is offender information collected by the project? What is the profile of the offenders served by the project?</p> <ul style="list-style-type: none"> - Gender - Ethnicity - Age - Disabled - Group Home/Mission School - Socio/Economic/Educational/Health status - Faith/Spiritual Roots - Previous victimizations - Previous criminal records/experience with the justice system - Type of crime - Relationships in the community; with victim (family, neighbour, stranger) - Previous participation in community justice processes
<p>How does the community justice project define an offender? Who is an offender?</p>
<p>2.2. Gender</p> <p>- see chapter on "Gender"</p>
<p>2.3. Culture/Tradition/Diversity</p> <p>- see chapter on "Culture/Tradition/Diversity"</p>
<p>2.4. Elderly</p> <p>How does the project address elderly offenders' issues? How does the program give understanding to such issues as dementia, isolation or other aging issues that may exacerbate the offenders?</p>
<p>2.5. Youth</p> <p>How does the project address youth offenders' issues?</p>
<p>2.6. Disabled</p> <p>How does the project address offenders with disabilities? Does the project have someone (working with the offender) 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 offenders 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 offenders? How does the project amend its normal practices to meet the special needs of offenders (for example, a disabled individual, a frail individual that is homebound and cannot travel to the designated site)?</p>
<p>2.7. Information</p> <p>How does the project provide offenders with information/explanation that outlines their options for involvement and describes what they can expect if they choose to participate? I.e. 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 offenders need help with referrals, how does the program help with the process, if needed? Does the program have a list of services/resources to give to offenders? Does the program have a "glossary of terms" for offenders that are utilized throughout justice processes? Does the program provide information in different formats, i.e., Braille or other languages? How does the project inform the offender about the status of their case?</p>
<p>Are project staff who provide referrals and assistance trained in offender's needs and rights? Are project staff familiar with local, territorial, and federal resources for offenders so they can make appropriate</p>

referrals? If not, why?

Are any of them ex-offenders?

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

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

2.8. Participation/Choice

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

Does the project inform offender of their options?

Does the project offer the offender the opportunity to have a support person present during community justice processes? support worker, an advocate, probation officer lawyer ,friend, family member?

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

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

Does the program involve former offenders in the development and practice of the project?

2.9. Testimony

What types of support does the program offer to offenders for providing testimony in community justice processes?

Does the project have a way to address the needs of offenders 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 offenders?

Does the project provide interpreters for those who are deaf, hearing impaired, speak English as a second language, speak another language?

2.10. Validation

How does the project provide opportunities to offenders to express their feelings about the offence – a chance to tell their stories?

How does the project provide opportunities to offenders to express the impact to the person who they harmed/offended?

How does the project provide opportunities to offender to contribute their views about what is required to put things right?

How does the project ensure that offenders and others will also validate victims' testimony?

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

How does the perpetrator get the clear message, "What you did was solely your responsibility and it was not okay to do that"?

2.11. Dispositions/Restitution/Compensation

What were the most common dispositions used when administering sanction or facilitating accountability?

Community service; Other counseling; Restitution (monetary or through work service); Cultural activities (sweat lodge, spending time with an Elder, learning traditional teachings, engaging in cultural activity – art, music or ceremonies

Formal apologies (to the victim, others); Drug and alcohol counseling; Essay and report writing; Developing relationships with community members and experience bonding activities that provide value to the larger community

Does the project have someone to support the offender to ensure s/he is accountable with regard to the disposition?

What procedures are in place in the 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 the project 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 carry out the disposition? E.g. Back to the criminal justice system

What percentage of offenders were successful in the project?

If not, why? Client denied offence; Client disrespectful of the project; Terminated due to behaviour of the client; Client withdrew from the process; Client re-offended while participating in the project; Charges reactivated; Past criminal history; Age of the client; Client diverted, but failed to attend; Poor attendance in the project; Client refused to comply with conditions; Client did not comply; Unable to make contact with client; Prison was deemed to be more helpful for the individual; preferred probation; inappropriate referral for the project to address ; Client moving, so the impact of the project and community involvement negligible; Problems with support team; Client left to attend school; Agreement could not be reached

2.12. Support/Reintegration

What types of activities does the project provide or pay for to support or assist the offender to reintegrate into the community? Counseling; Employment search; Healing circle; Letters of support; Ceremonies to welcome client back to the community;

2.13. Offender Follow-Up

Does the project have an evaluation process for the offender to solicit his/her views about the community justice approach?

If so, what were the results?

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2.14. Offender Questionnaire

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 Yes 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 Yes Why or why not?

- What went well? What suggestion do you have to improve participation/choices?

Why did you decide to go through the (community justice process) rather than through the court system? (can check more than one answer)

Didn't have any choice

Would get off easier

Thought it would be faster

Thought it would be fairer for both sides

Wanted to talk to the victim

Wanted to apologize

Other reason (specify)_____

Did you understand what was going to happen in the community justice process and your responsibilities?

Was it easy/difficult to accept responsibility for the offence? Why? (you wanted to change your life around and saw the disposition as a way to work toward this; the project was there to support you when you were having trouble; you knew that if you did not comply with the conditions you could be sent to court)

Were you able to state what you needed to put things right with victim? and community? Did you have a better understanding of the harm you caused – the victimization – the consequences of your actions – to take responsibility for your behaviour?

No Yes Why?

Do think the participants listened to what you had to say? Did the offender believe s/he was supported through the community justice processes?

No Yes Why not?

Do you think the agreement that was reached was a good one or not? Did you feel confident at the time of the community justice process that you would be able to carry the requirements of the conditions decided upon?

No Yes Why (or why not?)

What went well? What suggestion do you have to improve the testimony/validation?

Was the agreement easy/difficult to complete? Why? (Dealing with substance abuse Offender was not ready Taking responsibility for his/her actions was not easy)

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

Court Community Justice Process

Another way What way? Why do you feel this is the best way?

What affect did it have on you to go through the community justice process? Was it relevant and meaningful?

Did you believe you received adequate support – before, during and after the process?

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

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After you completed the disposition, did you continue to receive assistance from the community justice project?
How was the experience - comparing with it with your previous experience going to court? Project dealt with the root cause of client criminal behaviour. Serving jail time would have only made him/her bitter Project taught him/her a lesson Gave him/her motivation to turn his/her life around Court always focus on paperwork and not on the person
What kind of changes occurred to your life due to your participation in the community justice processes? Were the chances of rehabilitation improved? Stay out of trouble Become more accountable for their actions. Take control of that life
If treatment was provided, did it have a measurable effect on your success?

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*This questionnaire could be completed in a community by a sample number of personnel in the Criminal Justice Agencies and Community Groups involved in assisting offenders i.e. Probation/Corrections **and** Offender Advocacy Groups and Community Groups – other?*

2.15. Criminal Justice/Community Resources Assisting Offenders - 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 their gaps in or duplication of offender assistance/support/services?</p>
<p>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>

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<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>“Victims”</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>

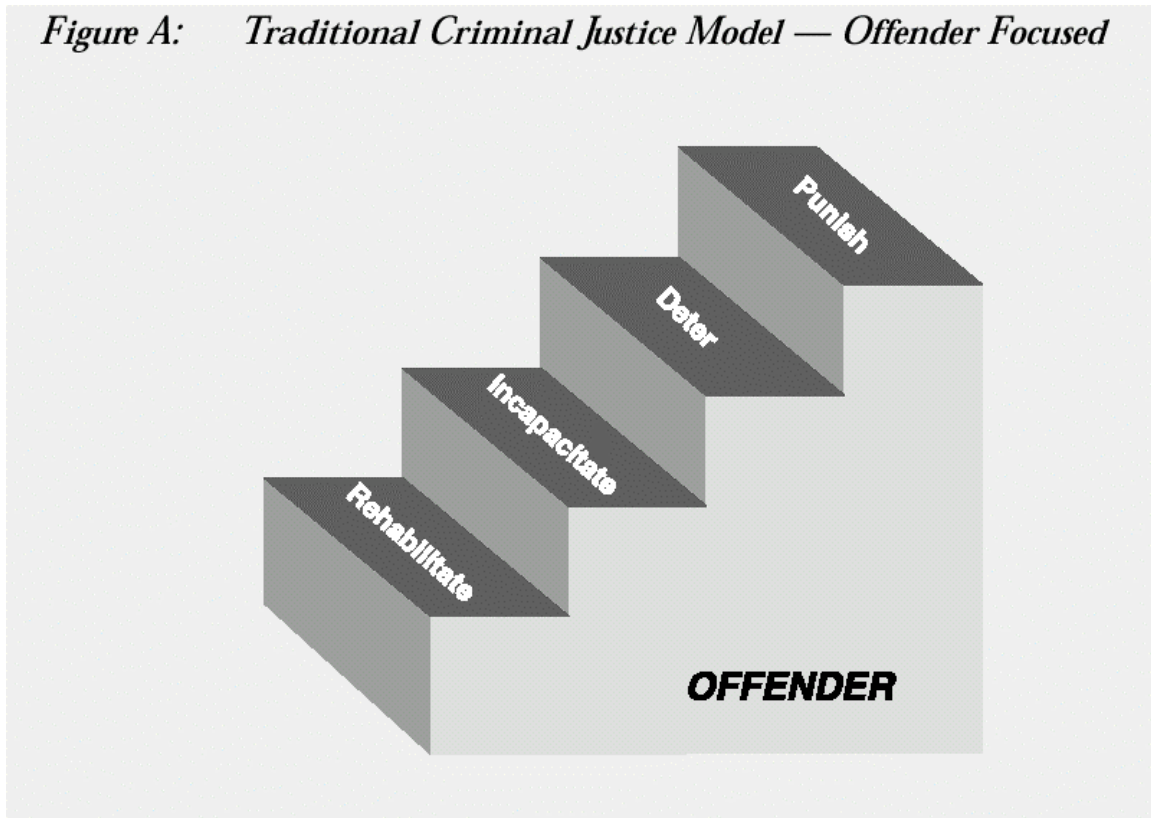
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<p>2.15.17. Material Resource Management Do you have any suggestions as to what material resources community justice projects should have?</p>
<p>2.15.18. Project Administration Do you have any other suggestions as to whether policies/procedures/standards 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 – see also chapter on <u>“Victims”</u>
Victims’ support/advocacy groups – see also chapter on <u>“Victims”</u>
Offenders –
Offenders’ support/advocacy groups
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 (eg. 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?

Figure A: Traditional Criminal Justice Model — Offender Focused



3. Relevant Documents, Studies and Practices – Yukon

3.1. Exploring the Boundaries of Justice: Aboriginal Justice in the Yukon – 1992 ²

- The percentage of incarcerated aboriginal people is also commonly misinterpreted.
 - It was heard on a number of occasions and in different settings, that ‘80% of our people are in jail’ or ‘80% of our people are in court’ or ‘putting Indian people in jail and in courts is the major source of money in the Yukon.’
 - Most troubling about these statements is that they are generally accepted by aboriginal people as true and if repeated often enough, become common knowledge, and are rarely, if ever contradicted.
 - On the few occasions when correct information was offered it was simply rejected on the basis that the justice system had destroyed the evidence.
 - In the current climate it is difficult to have any official aboriginal criminal justice information accepted as credible.

Crime and Disorder Research

- On-going collection of information about nature and extent of crime and disorder, characteristics of offenders and their offences and the response of the criminal justice system.

3.2. Correctional Services Canada - Breakdown of Provincial Aboriginal Offenders ³

Province	Total # of Offenders	% of total Population that is of Aboriginal Descent	Total # of Provincial Offenders that are of Aboriginal Descent
Newfoundland	1,199	6%	72
Prince Edward Island	803	NIL	NIL
Nova Scotia	1,964	5%	98
New Brunswick	2,273	5%	114
Quebec	21,735	2%	435
Ontario	32,815	10%	328
Manitoba	1,393	59%	822
Saskatchewan	3,850	76%	2,926
Alberta	15,491	38%	5,887
British Columbia	9,628	20%	1,926
Yukon	300	NIL	NIL
Northwest Territories	1,594	49%	781
<i>Total incarcerated population</i>	<i>93,045</i>		<i>13,389</i>

3.3. Statistics Canada - Inmates in provincial custody – 1995 to 1999 ⁴

	1995	1996	1997	1998	1999
	Inmates				
Canada	19,427	19,526	18,955	19,233	18,650
Newfoundland and Labrador	355	313	302	328	278
Prince Edward Island	107	90	92	85	82

² 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.

³ Correctional Services Canada, http://www.csc-scc.gc.ca/text/prgrm/correctional/abissues/know/4_e.shtml

⁴ Statistics Canada, <http://www.statcan.ca/english/Pgdb/State/Justice/legal07.htm>

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	1995	1996	1997	1998	1999
Nova Scotia	407	405	398	376	350
New Brunswick	411	400	384	328	319
Quebec	3,470	3,425	3,302	3,321	3,142
Ontario	7,356	7,766	7,778	7,689	7,360
Manitoba	972	984	908	1,071	1,099
Saskatchewan	1,267	1,175	1,177	1,209	1,144
Alberta	2,550	2,309	1,957	2,126	1,969
British Columbia	2,131	2,249	2,228	2,270	2,554
Yukon	84	70	79	74	61
Northwest Territories including Nunavut	317	341	351	358	x
Northwest Territories	x	x	x	x	236
Nunavut	x	x	x	x	57
x Data unavailable, not applicable or confidential.					
Source: Statistics Canada, Catalogue no. <u>85-211-XIE</u> .					
Last modified: March 8, 2002.					

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

4.1. Offender Questionnaire– NWT ⁵

- Why did you decide to go through the (community justice process) rather than through the court system? (can check more than one answer)

Didn't have any choice

Would get off easier

Thought it would be faster

Thought it would be fairer for both sides

Wanted to talk to the victim

Wanted to apologize

Other reason (specify) _____

- Was there something that you wanted to say or explain to the committee (forum) or victim? No Yes What? _____

- Do think the committee (or forum) listened to what you had to say?

No Yes



Why not? _____

- Do you think the agreement that was reached 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 do you feel this is the best way? _____

- 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 process was handled, or how the process could be improved?

⁵ Northwest Territories Community Justice Evaluation Framework

4.2. Inuit Women and the Nunavut Justice System – 2000 ⁶

- **Offender Process:** At the meeting(s), the Community Justice Committee serves to take the offender through the following process:
 - 1) the offender is required to take responsibility for the behaviour;
 - The GNWT diversion program states that a Community Justice Committee can handle such matters as:
 - Providing arbitration in civil cases.
 - Providing advice to the court with respect to sentencing. This could include a judge asking the community justice committee for advice on sentencing. Community justice committees can also hold a sentencing circle at which a judge will invite members to assist in the sentencing decision.
 - Providing counselling or supervision. Committee members or elders can counsel offenders and victims, and provide cultural opportunities such as arranging for an offender to work with an elder. Counselling or supervision can be offered to offenders whose case has been processed either by the court or by the community justice committee, as well as to offenders after they have been incarcerated.
 - Diversion in cases where the police have not laid charges. For further details see Department of Justice, Community Justice Division, *Your Community Justice Committee: A Guide to Starting and Operating a Community Justice Committee* (Yellowknife: GNWT, 1997) pp. 4 to 15.
 - 2) the offender is assisted to explore the consequences of his actions;
 - 3) the offender commits to repair the harm through an agreement; and
 - 4) the offender looks for guidance to turn towards a healthier life style;
- At any time the offender can have the matter referred back to the RCMP;
- A Community Justice Committee can reject a referral from an RCMP officer.

4.3. Nunavut (Northern) Justice Issues - 2000 ⁷

Offender focus

- Much of the literature speaks to the issues revolving an ‘offender-focus’ in community-based justice.
 - This has been the reality of many past initiatives, and efforts should focus on not replicating this phenomenon.
 - This offender focus is an unchecked consequence of the emphasis that is placed on healing and preventing the cycle of crime.
 - Some feel that this precludes any real attention being given to the needs of the victim and that consequently extra attention to the victim may be necessary.

4.4. A Framework for Community Justice in the Western Arctic – 1999⁸

Concerns

Offender Support Mechanisms

⁶Department of Justice, Community Justice Division, *Your Community Justice Committee: A Guide to Starting and Operating a Community Justice Committee* (Yellowknife: GNWT, 1997) p. 1 cited in Department of Justice Canada, Research Report, Research and Statistics, Mary Crnkovich and Lisa Addario with Linda Archibald Division, *Inuit Women and the Nunavut Justice System, 2000-8e*, March 2000, <http://canada.justice.gc.ca/en/ps/rs/rep/rr00-8a-e.pdf>.

⁷ 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>

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*

Research Framework for a Review of Community Justice in Yukon

Community Justice – Victimizer/Offenders

- While community justice models have well-defined processes for diversion, for determining the disposition of cases and for deciding how offenders will make amends for their crimes, there are concerns about the absence of monitoring mechanisms which ensure reparation is in fact achieved.
 - o In the Northwest Territories some committees/coordinators are developing systematic follow-up procedures and tracking systems for this purpose.
 - o In addition, though, counselling, social supports, health supports and other program assistance, including aftercare, are not always available to offenders in the community or nearby to promote rehabilitation and reintegration.
 - Community-based respondents in the Northwest Territories pointed to this as a major concern.
-

5. Relevant Documents, Studies and Practices – Other Canadian

5.1. Aboriginal Justice Strategy (AJS) Evaluation – 2000 ⁹

5.2. Aboriginal Justice Strategy (AJS) Trends - 2000 ¹⁰

5.2.1. Dispositions Used

- The reporting rate on dispositions used by each program when administering sanctions or facilitating accountability was not very high.

	# Programs		
	1996-97	1997-98	1998-99
Reporting Dispositions	8	22	39
TOTAL	26	42	62

- The dispositions examined in this report include:
 - Community service orders
 - Formal apologies (to anyone, not limited to the victim)
 - Restitution (monetary through work service)
 - Essay or report writing
 - Drug/Alcohol counseling
 - Other counseling
 - Cultural activities (sweat lodge, spending time with Elder, learning traditional teachings, engaging in a cultural activity such as making cultural objects or participating in ceremonies)

Type of Disposition	Order of Type of Disposition Used		
	1996-97	1997-98	1998-99
Community Service Order	1	1	1
Formal apologies	5	5	3
Restitution	3	4	4
Essay or report writing	7	7	7
Drug/Alcohol counseling	6	6	6
Other counseling	2	2	2
Cultural activities	4	3	5

- The reporting rate on dispositions used by each project when administering sanctions or facilitating accountability was not very high. In 1996-97, 8 of 26 projects (31%) reported on this area. In 1997-98, 22 of 42 (52%) did and in 1998-99 the figure was 39 of 62 (63%).

5.2.2. Offender follow-up

- is non-existent. For the most part of the programs simply do not have the resources to do that. A barrier often cited is migration of community members and the difficulty in maintaining contact.
 - 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. Offender follow-up and completion rates are absent.

⁹ Department of Justice Canada, Evaluation Division, Final Evaluation Aboriginal Justice Strategy, Technical Report, October 2000

¹⁰ 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 -

Research Framework for a Review of Community Justice in Yukon
Community Justice – Victimiziers/Offenders

5.2.3. Client Incompletion/Refusals:

- refers to person referrals that were ‘unsuccessful’ in the project; clients who:
 - failed to complete the project requirements
 - defaulted or
 - were considered an inappropriate referral by the project and diverted back to the Canadian criminal justice system
 - This variable simply refers to persons that did not complete the project, even though they were referred.
 - The following list represents the most common reasons for those incompletions/refusals:
 - Client denied offence
 - Client disrespectful of the project
 - Terminated due to behaviour of the client
 - Client withdrew from process
 - Client reoffended while participating in the project
 - Charges reactivated
 - Past criminal history
 - Age of client
 - Client diverted, but failed to attend
 - Poor attendance in the project
 - Client refused to comply with conditions
 - Client did not comply
 - Unable to make contact with client
 - Prison was deemed to be more helpful for the individual
 - Guardian preferred probation
 - Inappropriate referral for the project to address
 - Client moving, so the impact of the project and community involvement negligible
 - Problems with support team
 - Client left to attend school
 - Agreement could not be reached

Client Incompletion/Refusals:

Number of Projects Reporting Unsuccessful Referrals by Province/Territory ¹¹

Province /Territory	# of Projects		
	1996-97	1997-98	1998-99
British Columbia	0	0	2
Saskatchewan	2	8	9
Manitoba	0	0	2
Ontario	2	3	3
Quebec	0	0	0
Nova Scotia	1	1	1
Newfoundland	0	0	0
Nunavut	0	1	2
Northwest Territories	0	2	2
Yukon	0	0	3

¹¹ 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 -

5.2.4. Reintegration Activities

- A move into reintegration activities represents a holistic approach to crime prevention, healing and accountability in community-based justice projects in Aboriginal communities.
- This can be done through post-release assistance in counseling or employment, pre-release healing circles, and letters of support, in early-release, or ceremonies to welcome the client back to the community after incarceration. There are a variety of reintegration activities being reported on and projects that are engaging them.
- In 1996-97, 10 projects reported engaging in activities to assist the offender to reintegrate back into the community (38%). In 1997-98 that figure was 18(43%) and in 1998-99, 24 projects (39%) reported such activities.
- By 1998-99 at least half of the projects in Nunavut, the Northwest Territories, Nova Scotia and British Columbia were engaging in reintegration activities.

5.3. Developing a Restorative Justice Programme - 2000¹²

- It is important to note as well that offender participation in RJ programmes is a decision which is voluntary by the offender.
 - ‘Voluntary’ in this context means without promises of benefit nor coercion by threat, and, the offender is competent and legally capable of making that decision.¹³
 - The reality is that any of the offender, the RJ body responsible for the ‘intake’ of cases, or the court may ask for programme intervention.
 - Where the offender makes the request, the only remaining issue is that he or she is legally capable of making the request; youth or those with mental challenges are examples.
 - Where the directing body of the programme makes the request, the view of the offender is always considered before the proposal is put to the Crown (see Part 3 for a more expansive discussion of how the process works).
 - Where an RJ proposal seeks to make sentencing recommendations regarding an offender, be it through a sentencing circle, or some model of a sentencing committee, two points must be kept in mind:
 - the Crown or judge are unlikely to persist with such a proposal where the offender is against it¹⁴ (preferring the usual process of PSR reports, and submissions by counsel); and
 - sentencing recommendations are just that — recommendations.
 - A judge is not bound to accept them, however, they are rarely rejected when the offender, Crown and judiciary are willing participants.¹⁵

5.4. Restorative Justice in Canada - 2000¹⁶

- Although the *Gladue* case specifically dealt with Aboriginal offenders, the Court clearly indicated that the aims of restorative justice should apply to all offenders.
 - The Court also rejected the view that a restorative approach is a more lenient approach to crime, or that a sentence focussing on restorative justice is necessarily a lighter sentence.

¹² Michael R. Peterson, Developing a Restorative Justice Programme, Part One, Justice As Healing Newsletter, Vol. 5, No.3 (Fall 2000) <http://www.jahvol5no3.pdf>

¹³ Various courts have set voluntary participation as a mandatory prerequisite to the involvement of any offender in RJ programmes. See, for example, *R. v. Morin* (1995), 101 C.C.C. (3d) 124 (Sask. C.A.), *R. v. Joseyounen*, [1995] 6 W.W.R. 438 (Sask. Prov. Ct.). See as well such model procedures as the Winnipeg Alternative Sentencing Program (as discussed in M. Jackson, In Search of the Pathways to Justice, in (1992) 26 UBC Law Rev. 147, at 183.

¹⁴ A case involving an offender who was opposed to the advice made by an elders panel to Judge Lilles in Quebec is recited in *Bridging the Cultural Divide*, a publication of the RCAP (1996, Minister of Supply & Services), at p.113. See also *R. v. Morin*, *ibid.*, at 130. Of some 100 circle sentences, only 2 were appealed.

¹⁵ Judge Fafard of Saskatchewan has noted that in 60–70 sentencing circles, he has never rejected a recommendation (See R. Green, *Aboriginal Community Sentencing: Within and Without the Circle*, in (1997) 25 Man. L. J. 77, at 89).

¹⁶ 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/ripap.html>.

Community Justice – Victimizers/Offenders

- Restoring harmony involves determining sentences that respond to the needs of the victim, the community, and the offender.
 - Clearly, it is in the best interests of society to support offenders in turning away from crime and learning to behave in socially acceptable ways when they return to the community.
 - Groups concerned with the rehabilitation of offenders have tended to promote restorative justice approaches, arguing that they encourage offenders to feel and express remorse, to recognize the harm they have done to their victims, and to accept responsibility for their actions.
 - Moreover, restorative processes can provide an opportunity to address underlying causes, although this can only occur if the community has programs to address issues such as alcohol and substance abuse, anger management, and mental illness.
 - An evaluation of the RCMP community justice conferencing approach supports the belief that restorative justice can have positive effects on offenders.
 - Virtually all the offenders who participated in the study indicated that the process helped them to understand the consequences of their actions and to take responsibility for their behavior; more than three-quarters felt that the agreement they reached with the victim about how to resolve the crime was fair.
 - (Nearly 85% were reported to be fulfilling the conditions of the agreement, while other cases were in the process of being completed)¹⁷.
 - However, restorative processes may have disadvantages for offenders as well.
 - Although the law states that their participation must be voluntary, offenders may feel pressured to take part in a program.
 - As a result, they may choose not to seek legal advice or feel they have to admit guilt even if they believe they are innocent.
 - In some cases, restorative processes might even result in tougher consequences than a court would impose.
 - To be effective, restorative justice processes must not only respond to concerns about public safety but also respect the rights of the accused to state their innocence and to have a fair trial.
-

5.5. Restorative/Criminal Justice—Identifying Some Preliminary Questions, Issues & Concerns - 1998¹⁸

- 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:
 - What kinds of offenders and offences is this approach best suited for?
 - The quality of voluntariness of the offender
 - Mechanisms for monitoring and enforcing agreements
 - How the concept of double jeopardy squares the ability of the Crown to prosecute offenders who breach their diversion/alternative measures contracts;
 - What is the appropriate course of action in cases where there is no agreement is reached
- Perhaps beneficial to Some Female Offenders**
- To the extent that female offenders disproportionately come into contact with the criminal justice system for property crimes like fraud, there is some sense that reforms which reduce the likelihood of incarceration for these types of offenses will likely benefit this group of offenders.

¹⁷ Chatterjee, Jharma. (1999). A Report on the Evaluation of RCMP Restorative Justice Initiatives: Community Justice Forum as Seen by Participants. Ottawa: RCMP Community, Contract and Aboriginal Policing Services.

¹⁸ 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

5.6. Making It Work: Planning And Evaluating Community Corrections & Healing Projects In Aboriginal Communities, 1998 ¹⁹

- In the past, alternative measures programs have sometimes had the unanticipated consequence of drawing into the justice system minor offenders who would otherwise have been dealt with informally.
 - For example, offenders who might have simply been counselled or warned may be seen as good candidates for alternative programs.
 - This may not be a bad thing as an expanded range of dispositions allows for a more individualized justice system.
 - Also, the victims of these offenses may prefer the opportunity of participating in a restorative justice program.
 - However, program organizers should be aware that in some cases an informal response may be the best way of responding to minor offenses, particularly those involving first-time offenders.
 - Even more seriously, restorative justice programs may be used as add-ons to prison sentences rather than as alternatives to prison or means of reducing time spent in prison.

5.7. Offender Rehabilitation-1997²⁰

This brief report emphasizes that offender rehabilitation can be effectively achieved where the appropriate treatment principles are implemented. The author contends that what is needed is a cognitive-behavioural approach that takes into account the risk of re-offending and targets needs which are both individual and societal (e.g. group cohesion, self-esteem, community improvement). Client-specific planning, whereby a plan is developed for an offending individual and presented to the court as an alternative to incarceration, can be an effective strategy. While not focused on Aboriginal society the report can easily be related to, and is consistent with, current developments such as treatment programs by Hollow Water First Nation and the Native Clan Organization in Winnipeg.

5.8. Satisfying Justice, Safe Community Options – 1996 ²¹

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

¹⁹ 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>

²⁰ Bonta, James. Offender Rehabilitation. Ottawa: Solicitor General Canada, 1997 cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

²¹ The Church Council on Justice and Corrections, Correctional Service Canada, Satisfying Justice, Safe Community Options That Attempt To Repair Harm From Crime And Reduce The Use Or Length Of Imprisonment 1996 <http://www.csc-scc.gc.ca/text/pblct/satisfy/juste.pdf>

Research Framework for a Review of Community Justice in Yukon
Community Justice – Victimizers/Offenders



Do offenders experience justice?

- Are offenders encouraged to understand and take responsibility for what they have done?
- Are misattributions challenged?
- Are offenders given encouragement and opportunities to make things right?
- Are offenders given opportunities to participate in the process?
- Are offenders encouraged to change their behaviour?
- Is there a mechanism for monitoring or verifying changes?
- Are offenders' needs being addressed?
- Do offenders' families receive support and assistance?

5.9. Healing, Spirit/Recovery - Factors Associated with Successful Integration. -1995²²

This report looks at "successes ... Aboriginal people who have made a better life for themselves and their families after being incarcerated". It provides brief case-studies of twenty Aboriginal persons who have made the transition from incarcerated (often a multiple incarceration) to employed, law-abiding citizen. For all the participants, getting into trouble was associated with extensive use of alcohol or drugs or both. "Getting in touch with one own's spirituality was identified as a key to recovery by all the participants." The desire to change their criminal lifestyle was juxtaposed with a developing awareness of their Aboriginal culture and spirituality. They found a new way of life which empowered them with a sense of direction, valued their culture and provided a way of relating positively to others. This new way of life took time and was the culmination of an holistic approach to healing. All participants were known to the staff at an Aboriginal healing institute so more research is required to establish how pervasive their experience is among successful ex-inmates. The report calls for a more holistic approach to correctional programming and the continuing availability of Aboriginal spiritual programs and representatives in correctional settings.

²² Nechi Institute and KAS Corporation Ltd. Healing, Spirit and Recovery - Factors Associated with Successful Integration. Ottawa: Solicitor General Canada, Aboriginal Peoples Collections, 1995 cited in Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>

6. Relevant Documents, Studies and Practices – USA

6.1. Organizational Self Assessment Restorative Justice ²³

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

Offenders complete financial and other forms of restitution in a timely manner	Rank
Offenders use their assets to give back to the community by performing valuable work service or teach others, especially in their own neighborhoods	_____
Offenders are given opportunities to develop relationships with community members and experience bonding activities that provide value to the larger community	_____
Offenders face the personal harm caused by their crime through victim offender meetings, family group conferencing, attending victim impact panels, and other means	_____
Offenders develop the ability to be empathetic for their victims and others	_____
Offenders learn and practice competencies that address criminogenic factors (such as decision making, conflict resolution, peer groups, anger management, etc.) and reduce likelihood of return to crime	_____
Offenders understand their obligation to their community and learn mutual responsibility	_____
The offender's family or significant others are involved in similar programs as the offender	_____

6.2. Who Are The Offenders?-1994²⁴

Correctional policy may be based on an inaccurate assessment of the offender population

In the aftermath of a recent minor disturbance at a Wisconsin prison, a reporter called to ask for an instant analysis. The questions asserted the reporter's own analysis: that the cause of the disturbance was that offenders today are tougher and more dangerous than ever before.

For a moment, I started to give what I now consider my "brainwashed" answer: the sound bite that includes the code words "youth gangs, drugs, crack, nothing to lose, overcrowded with violent and aggressive criminals."

This is the conventional wisdom in corrections today; a wisdom used too often to explain events such as prison disturbances and to justify the prison growth Wisconsin and the nation have experienced at unprecedented rates.

I have spent many months with probation and parole agents and social workers going about their daily jobs. Whether in the streets of Milwaukee's inner city, the hills of rural Wisconsin, or the Fox Lake Prison, about three-quarters of the offenders were unsophisticated. Their life situations were detrimental. Their crimes were rarely dangerous and usually situational. Most were life's victims, not its predators.

²³ 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>

²⁴ Dickey, Walter, Who Are The Offenders? The Ecology Of Justice (IC#38), Spring 1994, <http://www.context.org/ICLIB/IC38/Dickey.htm> Walter Dickey, a professor of law at the University of Wisconsin in Madison, was director of the Wisconsin Department of Corrections from 1983 to 1987. After leaving his corrections post, he spent time with various parole agents in rural and urban Wisconsin, to find out what works to turn around the lives of former prison inmates. His conclusions are published by the University of Wisconsin in an excellent set of monographs. The following observations about the offenders themselves is excerpted from an article in Federal Probation.

Research Framework for a Review of Community Justice in Yukon

Community Justice – Victimizers/Offenders

I met Rosetta, 43, an overweight, sickly woman with a severe learning disability who was on probation for possession of cocaine. She lived in Milwaukee with her daughter and son-in-law, their three grandchildren, her son, and a niece who has a child by her son.

A sign on her front door read "Drug Dealers don't live here no more. Don't Come Knockin'." She said her daughter had stolen all the food in the house to sell for cocaine and then had left for several days. Her son-in-law, high on crack, had taken all the blankets from the children to sell for cocaine.

When I first met her, Rosetta said she was determined to care for her grandchildren. She relapsed into drinking soon after these events. Her determination to stay eroded. She pleaded with her parole agent to find another place for her because she said she would "go down" if she stayed in that house.

I met Gary, 35, who was on probation for arson. He had been confined to a wheelchair for seven years because he suffers from MS, a deteriorating condition. He is married and has an 8-year-old daughter.

Gary had burned down the house of an acquaintance while his wife was in an upstairs bedroom with the man. His wife, 35, appears immature and flirts with men in his presence. He is supported in part by SSI, his mother, and his wife who works nights in a nursing home.

I also met Michael, an obviously shy, immature young man. He had great difficulty expressing himself. He has no self-confidence. His first prison term was for burglary. His second conviction was for fondling an 11-year-old girl whom he had lured into his room.

Social security provided his support. He indicated that he lived in virtual isolation, rarely leaving his room. He was confused about his sexuality. He said he had no friends, was lonely, and was more afraid of living in the community than in prison.

These were only three of the hundreds of offenders I met, but they characterize 75 percent of the offender population. They live isolated and lonely lives with few, if any, dependable friends or family. They believe they have few choices or opportunities. They tend to have little education. Some have mental or learning deficiencies. Many of the offenders are in poor health with no access to health care. Drug and alcohol abuse are a problem for virtually all of these offenders. Many offenders have repeatedly been the victims of crime. Their own crimes were usually unsophisticated and impulsive and brought small monetary reward, if any.

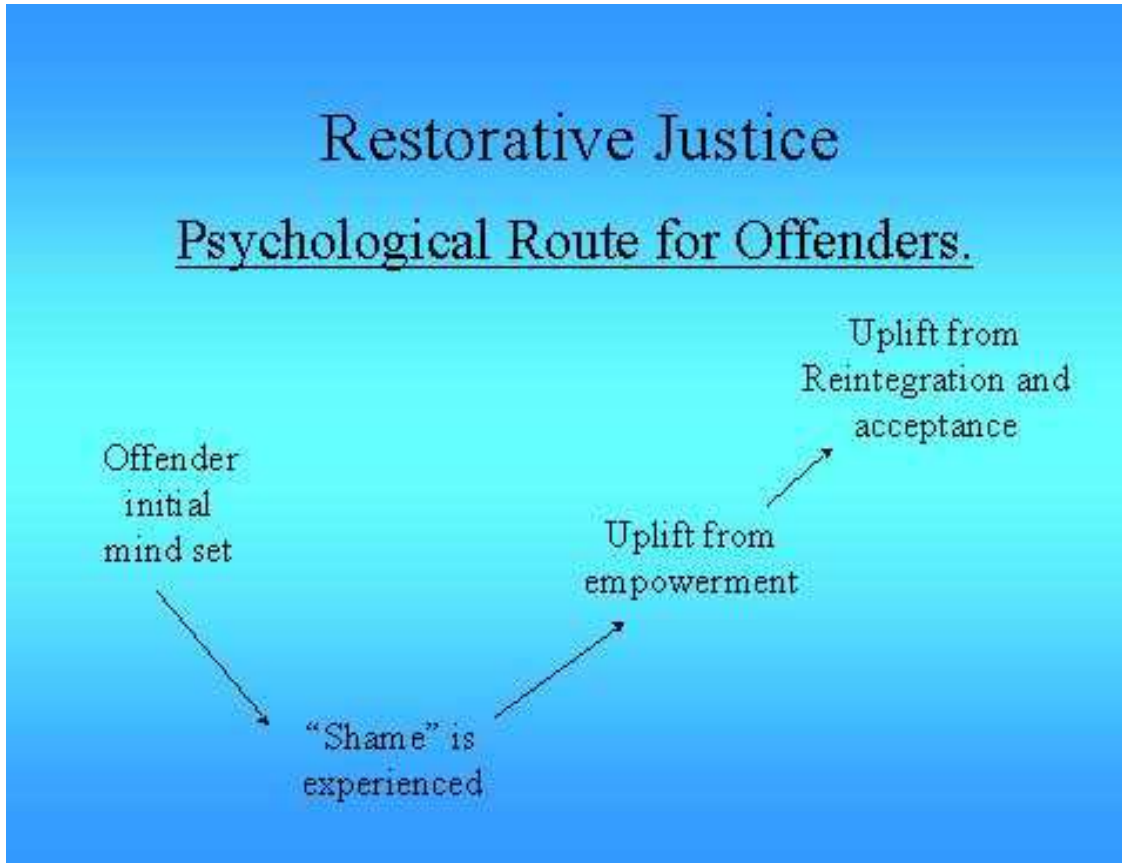
I make no pretense that my studies are scientific or give an accurate account of the variety of offenders that are in the nation's many correctional systems. Some offenders *are* extremely dangerous, maybe more so than ever. They have been imprisoned for committing violent offenses involving weapons. Most of them have committed multiple offenses. They are not impulsive but appear to have decided to commit crimes.

These are the offenders that receive media attention. This attention exaggerates the character of the offender population and the danger it poses.

We make a serious mistake by basing correctional policy on an inaccurate assessment of the offender population, or by allowing politics, based on this misperception, to drive correctional policy. For one thing, it is monetarily expensive. For another, it is enormously destructive in human terms to treat the mass of offenders as if they are all highly dangerous and sophisticated.

By allowing the sensational and the unusual to dictate policy, in a sense, we are victimized again by these crimes. We need to look honestly at the offenders and construct careful policy calibrated to reality.

7. Relevant Documents, Studies and Practices - International



7.1. Restorative Justice Programs in Australia - 2001²⁵

Safeguarding rights

- Given the risks inherent in any informal justice procedure, there is some anxiety about the potential for the violation of due process protections of offenders (see for example Sandor 1994). These include
 - admitting to offences in the belief that they will receive more lenient outcomes through conferencing,
 - the potential at least theoretically for police intimidation and
 - the lack of appeal mechanisms regarding outcome severity.
- As a program administrator, Bargen (unpublished) has expressed concern about ensuring that entitlements such as right to legal advice are consistently respected.
- 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).

²⁵ 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>

Caseflow problems

- The programs sometimes have very limited eligibility criteria: they are usually restricted to juveniles, sometimes to first or early offenders, and eligible offences are often at the trivial end of the spectrum.
- This gives rise to criticism about the net-widening and mesh-thinning potential of a third tier of justice between cautioning and court, which is exacerbated when the referring agencies are conservative in the offences and offenders that they are prepared to recommend for these programs.
- Unlike New Zealand, where referral of juveniles to conferencing is mandated in the *Children, Young Persons and Their Families Act* of 1989 for all offences up to attempted murder for all admitted offenders, there is no imperative for referral by either court or police in any Australian jurisdiction, nor external oversight as to whether they do so or not.
- Even in those locations where the police either run the program themselves or have done so in the past, police have not shown great enthusiasm for referral.
- This difficulty may be an evolutionary one: in South Australia, where conferencing in justice has run longest, an education and training regime for police, specialist police youth officers and courts willing to divert suitable cases has reduced the caseflow problem, with around 17 percent of all juvenile cases now going to a conference (Daly 1998).

7.2. Revisiting the Relationship between Retributive & Restorative Justice -2000 ²⁶

Definition of Offender:

- I shall be using the terms victim and offender in a straightforward, unproblematic way.
 - o But, as Cretney and Davis (1995: 160) remind us, drawing from their analysis of violent crime, "ideal victims" ("vulnerable, respectable, not contributing to their own victimisation") and "ideal offenders" ("powerful, bad, stranger to the victim") are "in short supply".

7.3. Restorative Justice - 1996 ²⁷

- Like victims, offenders are directly involved in restorative processes.
- This gives them the opportunity to learn first-hand what impact their offending has had on the victim.
- The direct interaction means that it is harder for offenders to distance themselves from the harm they have caused and for them to attempt to neutralise either their own behaviour or its effects.
 - o Direct contact also reduces the likelihood of offenders viewing victims in stereotypical terms.
- Contact with victims also provides an opportunity for offenders who feel genuine regret and contrition for their offending and want to express this.
 - o Such expressions may be more meaningful to both parties when made directly and informally to the victim, rather than delivered through intermediaries, such as defence counsel, within the formal trappings of the court system.
- As well as providing the opportunity for meaningful participation, involvement in restorative processes may also make offenders feel they have a measure of control.

²⁶ 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/ccj/kdaly_docs/kdpaper6.pdf

²⁷ New Zealand, Ministry of Justice, *Restorative Justice, A Discussion Paper*, 1996, <http://www.justice.govt.nz/pubs/reports/1996/restorative/index.html>

- They are consulted over their participation and the arrangements for the meeting, and through the dialogue that is established assist in determining what is an appropriate outcome in their case.
- Offenders' involvement may also result in a greater level of commitment to the outcome in comparison to a sentence imposed by the court.
 - Presumably this is because of the part they have played in developing the response.
 - Offender participants in the British and American schemes were found to take the process seriously (Marshall & Merry, 1990).
- However, there are potential disadvantages for offenders.
 - There is the risk of coercing offenders into guilty pleas if they perceive that they might be treated more lightly.
 - Where restorative processes are associated with an admission of guilt and diversion, offenders may be disinclined to seek legal advice, may see an incentive to plead guilty and thus forego the opportunity to put a legitimate defence to criminal charges.
 - Other risks include direct exposure to vengeful victims, as well as the prospect of receiving a more intrusive penalty than might have otherwise been imposed.

Net-widening is the term used to describe the impact of measures which cast the net of the criminal justice system more widely. This may be an unintentional outcome. It can be seen in measures which result in more offenders entering the criminal justice system when they previously would not have done so, and in the deeper involvement of offenders with the system either through more intrusive processes or outcomes than would have been expected otherwise.²⁸

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

Pre-Charge

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

²⁸ 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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Post-Charge

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

The Status and Monitoring of Mediated Agreements

What status should mediated agreements have:

- · A private contract between victim and offender?
- · All elements to be undertaken at the direction of the court?
- · Elements of the agreement which are sentences under the Criminal Justice Act to be undertaken at the direction of the court with other elements as a private agreement between the victim and offender?

Who should be responsible for monitoring and enforcing mediated agreements:

- · The victim and the offender?
- · The agency which mediated the agreement?
- · Public officials such as probation officers, prison officers, police officers and court officials?

The restorative process may be therapeutic and cathartic for participants. There may be an apology, forgiveness and a resolution of matters between offender and victim. These are useful contributions to the criminal justice process but it is likely that agreements will also require the payment of reparation, the performance of tasks as a token of restitution and the offender's completion of programmes aimed at reducing the likelihood of further offending. These need to be completed after the parties have met.

The administration and supervision of agreements could require significant resources. If agreements were frequently defaulted upon, victims would be likely to feel let down by the system, and considerable additional work reviewing previous sentencing decisions might be created for courts.

Maxwell and Morris (1993) noted the dissatisfaction of parties to family group conferences in terms of the follow-up of outcomes. Often agreements were not completed and victims were seldom informed of outcomes. There was also concern that officials failed to action or enforce agreements. Marshall and Merry (1990) also noted that most studies had recorded the need for projects to monitor agreements and the satisfaction of parties, particularly the victim.

The appropriate location for monitoring mediation agreements depends to a considerable extent on the status of the agreements themselves. The main options in programmes integrated with the criminal justice system, include:

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- Agreements are completed as a private contract between the victim and offender. This has the advantage that contracts might include elements which the court could not normally order as part of a sentence. Such elements might involve the offender working for the victim, cleaning graffiti or making acts of atonement. There are a number of options for monitoring under this approach. The first is that there would be no external monitoring and the completion of the contract would be a matter of honour for the offender. Disadvantages of this approach are that it is unlikely to be acceptable to the public where serious offending is involved and in the absence of formal monitoring offenders may renege on their agreements. The absence of external monitoring is likely to create considerable frustration and dissatisfaction for victims. Another approach would involve monitoring by the agency responsible for providing the mediation services. This would extend the function of this agency and a monitoring and enforcement role may call into question their impartiality as well as add to their costs. There would be few options for responding to non-compliance. Where the offender had yet to be sentenced for the offence, non-compliance could be taken into account by the court. However where contracts broke down after sentencing, victims would have to rely upon contract law for any remedy. This would impose an extra burden and costs on the victim.
- Agreements are completed under an order of the court. All elements would be provided for in legislation. These might include sentences imposed under the Criminal Justice Act 1985 with new statutory provisions to include outcomes agreed at mediation as part of a sentence. In such cases they would be monitored and enforced by the responsible public officials: probation officers, prison officers and court staff/bailiffs. The purpose and elements of the contract would need to coincide with those prescribed for the particular sentences. Failure to abide by the terms of the agreement might constitute a new offence or lead to a review of the agreement and re-sentencing where the court considered it appropriate.
- Agreements are completed as a combination of a private contract between the offender and victims for non-sentence elements, and under the order of the court for those aspects which constitute sentences. The private contract element could be monitored by the agency providing the mediation services, but there seems little point in monitoring agreements if there is not also some power to take enforcement action when agreements are not met. Remands to complete mediation agreement undertakings might be one way of addressing this so that the judge can take the completed agreement into account at the time of sentencing, but this approach does run the risk of causing delays in the court system.

Where agreements are to be completed prior to sentencing during a court-ordered remand, the offender is not the subject of a sentence. Under current legislation, administering such agreements would be beyond the role of probation officers. Completion of the restorative process might be ordered as condition of bail but this is wider than current bail conditions would allow. Bail arrangements are usually enforced by the police, but monitoring of this sort by the police would be an extension of their current role in respect of bail.

The court might also request that counsel for the defence or prosecution, in their roles as officers of the court, report on the completion of agreements.

7.4. A Critique of the Panoptican Thesis - 1992²⁹

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

²⁹ Phyne, John. "A Critique of the Panoptican Thesis", *International Journal of Sociology and Social Policy*, 12, 1992 *cited in* Ministry of the Solicitor General of Canada, Don Clairmont and Rick Linden, *Developing & Evaluating Justice Projects in Aboriginal Communities: A Review of the Literature*, March 1998 <http://www.sgc.gc.ca/epub/abocor/e199805/e199805.htm>