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1. Key Themes (to be explored)

See [4.3](#) A question has to do with the availability of legal aid counsel for accused persons who might be considered for diversion/alternative measures.

Besides the obvious representation issues, there is a need to ensure that the legal aid criteria are not tightened to exclude those offenders who are 'presumptively' candidates for diversion/alternative measures.

By tightening the criteria or otherwise restricting access to legal aid counsel – 'alternative' measures are only alternative measures for the state – not the offender.

2. Research Questions

2.1. Mission/Vision/Objectives/Goals

- see also chapter on “Definitions/Principles” – “Results/Performance Measurement/Accountability”

What are the stated mission/vision/objectives/goals of the Defence Counsel in community justice? Short term? Medium term? Long term?

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

2.2. History

- see also chapter on “History”

What is the history of the Defence Counsel’s role and participation in community justice?

2.3. Sponsor/ Organization/Structure/Governance

How does the Defence Counsel support the work and decisions of the community justice projects?

Does the Defence Counsel have any suggestions as to how should community justice projects be structured?

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

2.4. Roles and Responsibilities

What are the roles and responsibilities of the Defence Counsel in community justice?

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

2.5. Accountability

– see also chapter on “Results/Performance Measurement/Accountability”

What are the overall accountability mechanisms of the Defence Counsel with the community justice projects?

Does Defence Counsel have any suggestions as to what other accountability mechanisms should be in place for community justice?

2.6. Complaints

– see also chapter on “Results/Performance Measurement/Accountability”

Does the Defence Counsel have any suggestions as to what kind of mechanism should be in place to respond to complaints about community justice projects?

2.7. Conflict Of Interest – Power Dynamics

Does the Defence Counsel have any suggestions as to how community projects should handle conflict of interest situations and power dynamics?

2.8. Decision-Making

Does the Defence Counsel have any suggestions as to how community justice projects should make decisions?

Does the Defence Counsel 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?

2.9. Interventions/Referrals/Diversions

– see also chapter on “Interventions/Referrals/Diversions”

Does the Defence Counsel have any suggestions about interventions/referrals/diversions?

2.10. Activities/Services/Approaches

– see also chapter on “Activities/Services/Approaches”

What activities/services/approaches does the Defence Counsel engage in community justice? How much time is spent on them? Does the Defence Counsel have any suggestions as to what activities/services/approaches should be undertaken by the other stakeholders in community justice?

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2.11. Offences

- see also chapter on **“Offences”**

Does the Defence Counsel have any suggestions as to what kinds of offences should be handled in community justice?

2.12. Clients

- see also chapters on **“Offenders”** and **“Victims”**

Does the Defence Counsel have any suggestions as to whom the community justice services should be targeted? Accused? Offenders? Victims? Other?

2.13. Human Resource Management

Does the Defence Counsel 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
Does the Defence Counsel have any suggestions as to what kind or roles/responsibilities these members should have?

Does the Defence Counsel have any suggestions as to what kind of experience/skills these members should have? Does the community have any suggestions as to what kind of education/qualifications these members should have?

Does the Defence Counsel have any suggestions as to what kind of informal and formal training these members should have?

Does the Defence Counsel have any suggestions as to what whether members should be paid or be volunteers?

Does the Defence Counsel have any suggestions as to how volunteers could be recruited?

Does the Defence Counsel have any other suggestions regarding human resource management in community justice projects?

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?

How has the workload of the Defence Counsel changed as result of involvement with the community justice project?

<p>2.14. Financial Resource Management</p> <p>- see also chapters on Funding/Budgeting/ Costs</p> <p>Does the Defence Counsel have any suggestions as to how funding should be determined for community justice projects?</p> <p>Does the Defence Counsel have suggestions as to how much core funding should be available to the community justice projects?</p> <p>Does the Defence Counsel have any suggestions as to what financial accountability mechanisms should be in place for community justice projects?</p>
<p>2.15. Material Resource Management</p> <p>Does the Defence Counsel have any suggestions as to what material resource community justice projects should have?</p>
<p>2.16. Project Administration</p> <p>Does the Defence Counsel have any other suggestions as to whether policies/procedures/standards should exist for community justice? see also chapter on “Standards”</p> <p>Does the Defence Counsel have any suggestions as to whether community justice processes should be open to members of the public?</p> <p>Does the Defence Counsel have any suggestions as to community justice project administration?</p>
<p>2.17. Community Services/Resources</p> <p>- see also chapter on “Social Development Factors”</p> <p>Does the Defence Counsel 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>2.18. Audits/Evaluations/Reviews</p> <p>- see also chapter on “Results/Performance Measurement/Accountability” and chapter on “Review Methodology”</p> <p>Does the Defence Counsel have any suggestions regarding the conduct of audits/reviews/evaluations with respect to community justice projects? How often? By whom?</p>
<p>2.19. Working Supportive Collaborative Relationships</p> <p>- see also chapter on “Relationships/Partnerships”</p> <ul style="list-style-type: none"> - Does the Defence Counsel meet with the following stakeholders? - If so, how often? For what purpose? - Does the Defence Counsel have the support of the following stakeholders? - What is working well, in terms of the Defence Counsel’s relationship with the following stakeholders in the area of community justice? - What are the challenges in terms of the Defence Counsel’s relationship with the following stakeholders in the area of community justice? - How are disagreements or disputes between parties resolved? - Does the Defence Counsel have any suggestions on how to improve working collaborative relationships with the following stakeholders?
<p>Victims – see also chapter on “Victims”</p>
<p>Victims’ support/advocacy groups– see also chapter on “Victims”</p>
<p>Offenders – see also chapter on “Offenders”</p>
<p>Offenders’ support/advocacy groups – see also chapter on “Offenders”</p>
<p>Community justice project – see chapter on Community Justice Projects</p>
<p>Volunteers - see also chapter on “Volunteers”</p>
<p>Community – see also chapter on “Community”</p>
<p>First Nations - see chapter on “First Nations/Aboriginal Justice”</p>
<p>Native Courtworkers – see also chapter on “Native Courtworkers”</p>

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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– see also chapter on <u>“Victims”</u>
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
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
2.20. Other Issues
Does the Defence Counsel have specific concerns and/or issues about community justice?
2.21. Successes
– see also chapter <u>“Successes”</u>
According to the Defence Counsel, what are the top (5) five best practices in community justice projects?
2.22. Challenges
– see also chapter <u>“Challenges for Change”</u>
According to the Defence Counsel, what are the (5) five greatest challenges facing community justice?

3. Relevant Documents, Studies and Practices - Yukon

3.1. Building Community Justice Partnerships - 1997 ¹

3.2. A Review of the Justice System in the Yukon - 1986²

- Although defence counsels were generally perceived by the communities as being better qualified than Crown prosecutors, they too were criticized for not being acquainted with the community, spending very little time in the communities and not being well prepared.
- They are seen as not spending enough time with their clients, which contributes to delays.
- It was felt that they did not contribute to the decorum of the court by counselling a client to plead not guilty when the individual would have pled guilty and because of a legal technicality not related to guilt or innocence around the offence, was acquitted.
- Further Defence counsel extols virtues about the accused which in small communities are known to be true.
 - This detracts from the decorum of the court and when a sentence is passed which does not accurately fit the crime of the individual accused, the community is incensed.
- **Recommendations:**
 - Defence lawyers visit the community one day prior to the court sitting to prepare their cases.

¹ Stuart, Barry. 1997. *Building Community Justice Partnerships: Community Peacemaking Circles*. Ottawa: Aboriginal Justice Learning Network, Department of Justice.

² John Wright 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.

4. Relevant Documents, Studies and Practices – Other Canadian

Legal aid

Application fees and client contributions in legal aid: A framework for discussion

Description: Do fees discourage people from applying for legal aid? A report was prepared, based on responses to a request for information sent to all representatives from the Permanent Working Group on Legal Aid. [\[More info...\]](#)

[Executive Summary](#) |

Evaluation of the legal aid Manitoba expanded eligibility project

[Executive Summary](#) | [Full PDF Document](#) |

Factors driving high cost legal aid cases: Preliminary assessment

Description: This study identified criminal legal aid cases that cost over \$5,000 in British Columbia, Alberta and New Brunswick. In BC, .5% of the caseload consumed a quarter of the expenditures; nearly half the cases were homicides. [\[More info...\]](#)

[Executive Summary](#) | [Full PDF Document](#) |

Legal aid delivery models in Canada: Past experience and future directions

Description: This report uses numerous studies to analyze the debate over Canada's three main legal aid delivery models: staff lawyer systems, "judicare," and mixed delivery systems. [\[More info...\]](#)

[Executive Summary](#) | [Full PDF Document](#) |

Legal Aid Duty Counsel Systems In Canada: Summary Report

[Executive Summary](#) | [Full PDF Document](#) |

A multidimensional model for service in delivery in Canadian criminal legal aid

[Executive Summary](#) |

Projected population patterns and the Canadian justice system

Description: The aging population is a factor in Canada's declining crime rate. To predict crime rates up to 2016, two kinds of data were used: demographic projections of Canada's population and age-specific crime data for 1998, which described how many crimes occurred and the age of the offenders involved in specific types of crimes. [\[More info...\]](#)

[Executive Summary](#) |

Public attitudes towards the legitimacy of our institutions and the administration of justice

[Executive Summary](#) |

Public knowledge of crime and justice: An inventory of Canadian findings

[Executive Summary](#) |

Research report on the New-Brunswick aboriginal duty counsel project

Description: In Kent County, the number of Aboriginals with Criminal Code offence files is extremely high. At Richibucto's regional court, numerous adjournments involving Aboriginal clients prompted Legal Aid New Brunswick to open an office on reserve and to hire a Mi' Kmaq-speaking Aboriginal lawyer to attend court twice a week in 1998. [\[More info...\]](#)

[Executive Summary](#) | [Full PDF Document](#) |

4.1. The Criminal Justice System: Significant Challenges – 2002 ³

Legal aid. According to the Department of Justice, legal aid programs were established to ensure equitable access to justice for economically disadvantaged individuals, particularly where there is a risk of imprisonment for an offence under the *Criminal Code*. Provinces and territories are responsible for establishing the programs; the federal government shares their funding. The organizational structure for legal aid and the eligibility requirements vary from province to province.

Legal aid plans are funded from three main sources: federal, provincial, and territorial government contributions; contributions and cost recoveries from clients; and contributions from the legal profession. In 1990-91, about \$206 million was spent on legal aid in criminal matters, peaking in 1994-95 at \$275 million. In 1998-99 the expenditures fell to \$218 million. In 2001, the Department of Justice informed the government in connection with the current criminal law situation that there were 40 percent fewer applications for assistance approved in 1997-98 than in 1994-95.

The Department of Justice has conducted several assessments of the legal aid program. In 1998 it was concerned that large numbers of applicants for legal aid had been rejected in some jurisdictions; in addition, it was possible that some who were eligible had not applied. In February 2001, the Department of Justice told the government the following:

- Standards for essential legal services vary across the country.
- Inadequate funding of legal aid can amplify the difficulties of those already disadvantaged.
- There is no systematic gathering of data on how well the needs of Aboriginal peoples, women, and children are being met.

Further, a July 2001 Department of Justice evaluation of the program made the following conclusions:

- There is a clear and accepted rationale for legal aid programs.
- The Department has not developed clear policies and a coherent set of objectives for the program.
- Staff turnovers have limited the Department's capacity to work effectively with provincial and territorial partners.
- There is currently no empirical basis for assessing the adequacy of the Department's financial contribution to the costs of criminal and young offender legal aid. Data on the performance of the national system of criminal and young offender legal aid are currently not available except in the most rudimentary sense.
- Efforts to integrate legal aid issues into the broader policy development work of the Department have been sporadic at best.
- Provincial and territorial partners do not believe legal aid is adequately accessible to those who need the service. Recent cutbacks in service levels in many jurisdictions mean that only persons facing the most serious charges and whose financial circumstances are the most dire are likely to receive legal aid.

³ 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>

4.2. Justice Canada, Performance Report - 2001⁴

- In 2000-2001, under the Legal Aid program, the Department contributed \$81.9M to the provincial and territorial governments to enable them to assist low-income Canadians accused of certain criminal offences in meeting their legal needs.
 - In March of 2001, the Department secured additional funding of \$20M for criminal legal aid.
 - This will be added to the \$81.9M contribution to the provinces and territories in fiscal year 2001-2002.
- The Federal-Provincial-Territorial (F/P/T) Permanent Working Group on Legal Aid (PWG) continued to focus on the negotiation of the F/P/T contribution agreements for criminal and young offender Legal Aid.
 - This PWG effort will help to ensure that the federal contribution to Legal Aid is effectively distributed to provide optimal benefit to eligible Canadians in need of Legal Aid across the country.
- A Legal Aid research program was agreed to by the F/P/T Ministers Responsible for Justice in August 2000 to support development of a long-term strategy to improve equal accessibility.
 - The joint research program will focus on determining the nature and extent of unmet need for Legal Aid across Canada and will assist in the development of legal aid policies, funding arrangements and practices in program delivery that best respond to the needs of Canadians.
- **Access to Justice Services Agreements**
 - The Department is in the process of negotiating the renewal of the Access to Justice Agreements with the three territories that expired on March 31, 2001. These agreements cover Legal Aid, Aboriginal Courtworker and Public Legal Education and Information services and provide the territories with the flexibility they need to meet the distinct challenges of delivering justice services in the North.
 - The renewed agreements will provide the Territories with their share of the \$20 million in enhanced criminal Legal Aid funding that has been approved for the 2001-2002 fiscal year.
- **Legal Aid Program**
 - Since the 1970s, the federal government, represented by Justice Canada, has shared with the provinces and territories the costs of the legal aid system to ensure that Canadians with low incomes have fair access to legal aid services when in conflict with the law.
 - Five-year funding agreements on criminal and young offender legal aid are currently in place in all provinces.
 - The federal government also has comprehensive access to justice agreements with the three territories covering criminal and civil legal aid.
 - All the agreements, which expire on March 31, 2001, are currently under discussion and negotiation in the federal/provincial/territorial Permanent Working Group on Legal Aid (PWG).
 - The PWG also provides a forum to foster on-going communication among jurisdictions and with non-governmental organizations on legal aid related policy issues and promotes the development of legal aid policy in Canada.

4.3. Restorative Justice/Criminal Justice – Identifying Some Preliminary Questions, Issues and Concerns - 1998⁵

- A related question has to do with the availability of legal aid counsel for accused persons who might be considered for diversion/alternative measures.

⁴ Department of Justice Canada, Performance Report, For the period ending, March 31, 2001 http://www.tbs-sct.gc.ca/rma/epi-ibdrp/est-bd/p3dep/dpr_i-m_e.htm#

⁵ 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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- Besides the obvious representation issues, there is a need to ensure that the legal aid criteria are not tightened to exclude those offenders who are ‘presumptively’ candidates for diversion/alternative measures.
- By tightening the criteria or otherwise restricting access to legal aid counsel – ‘alternative’ measures are only alternative measures for the state – not the offender.