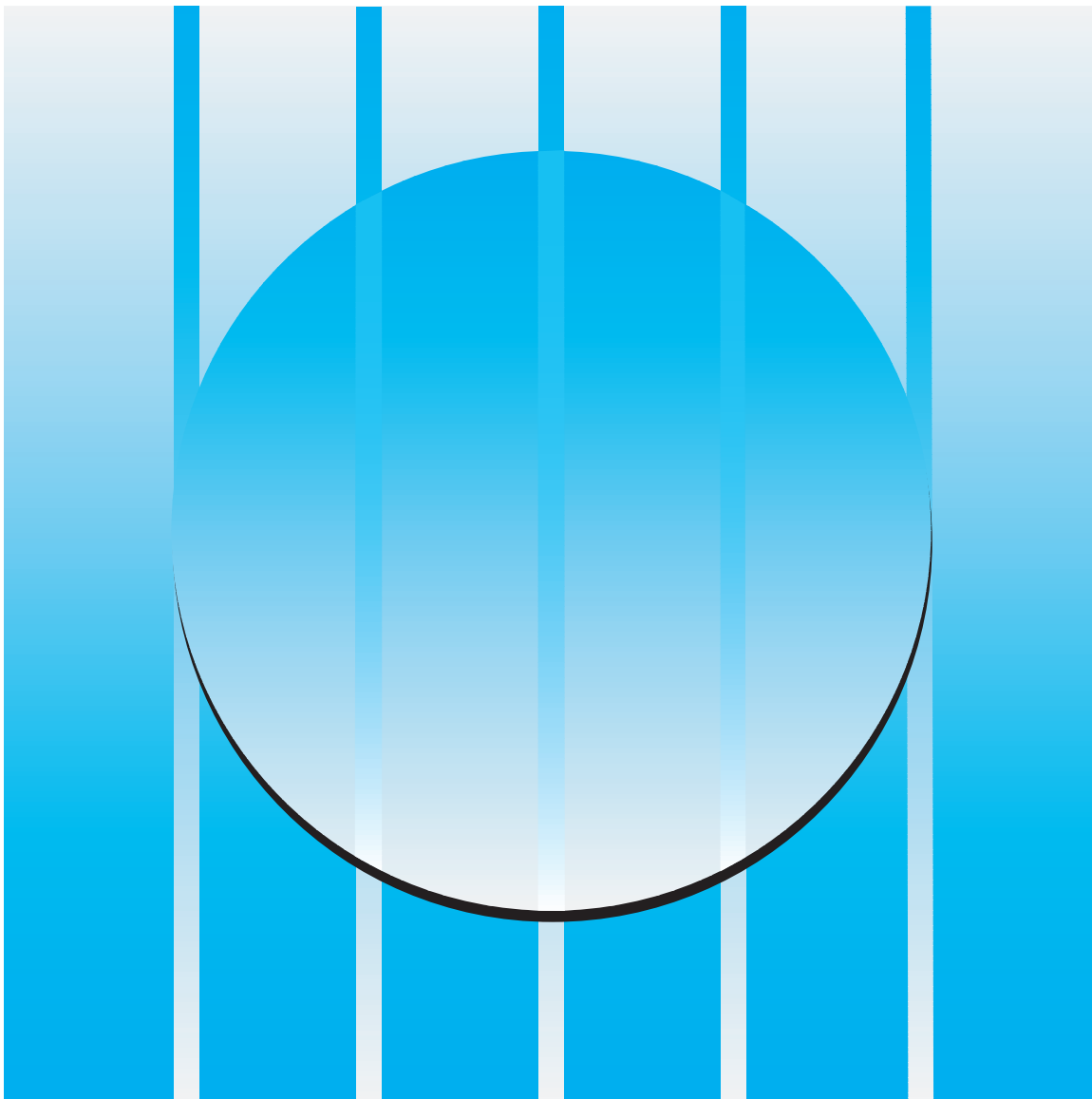


Satisfying Justice

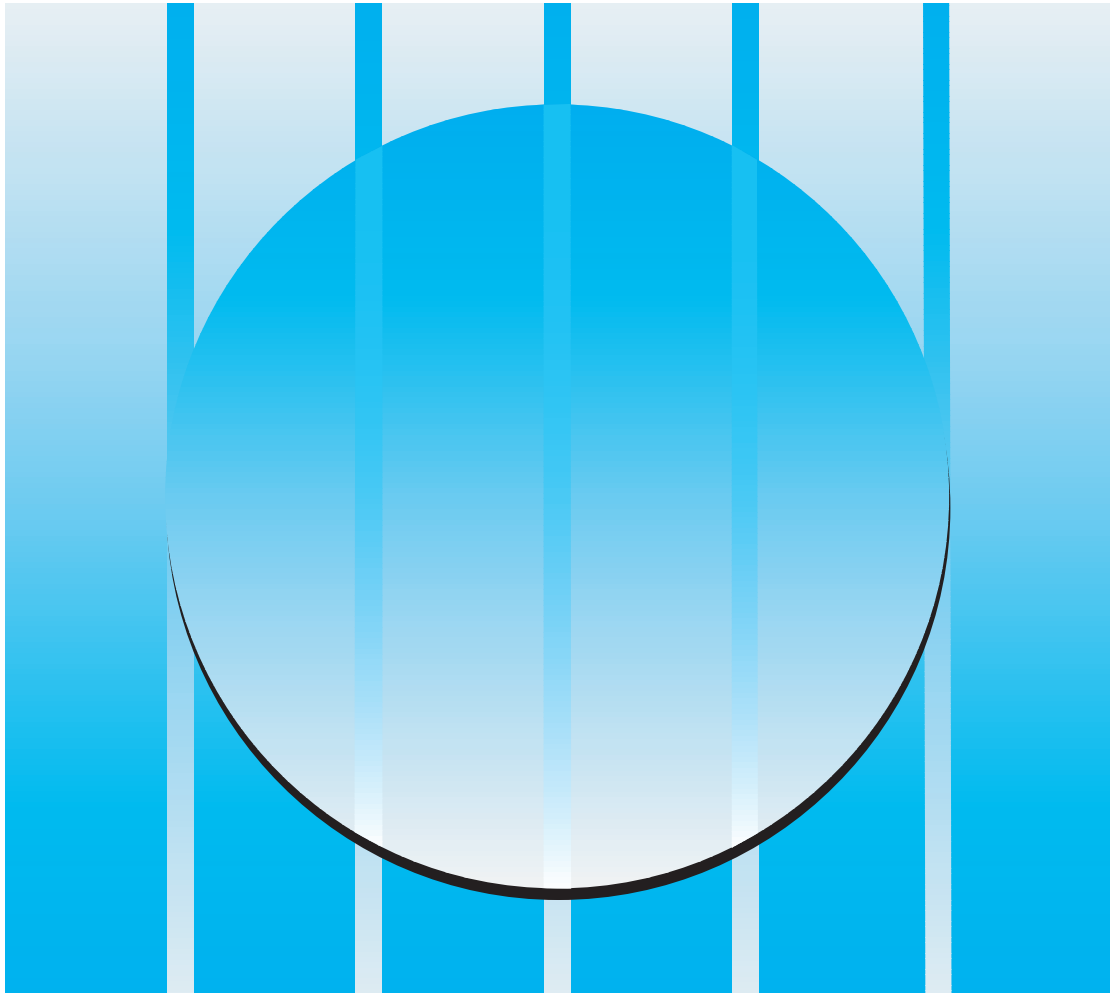
Safe Community Options
that attempt to repair harm from crime and reduce
the use or length of imprisonment



The Church Council on Justice and Corrections

Satisfying Justice

A compendium of initiatives, programs and legislative measures



The Church Council on Justice and Corrections is a national church coalition of eleven member denominations working since 1974 in the field of criminal justice, crime prevention and community development.

The Church Council is grateful to Correctional Service Canada for supporting this project.

Ce document est aussi disponible en français.

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Cover graphic: It is our hope that an emerging experience of satisfying justice, as symbolized through the wholeness of circle, will steadily gain ground over the bars of imprisonment.

*This compendium is dedicated to the memory of Joan Stothard
who died of cancer October 26, 1995.
She believed deeply in the need for satisfying justice.*

Foreward

I was delighted that the Church Council on Justice and Corrections agreed to take on the challenge of compiling a listing of community-based responses to crime; the Correctional Service of Canada has been happy to assist with the costs involved.

Many, maybe most people, agree that, in principle, non-violent offenders should be handled in the community and not sent to prison. However, there is clearly skepticism as to whether effective sanctions can be designed for, and delivered in, the community (skepticism that claims by heroic inference that imprisonment is an effective sanction for these low-risk offenders!).

This compilation should help people to understand that there are a variety of programs in existence, some more successful than others. There is no magical formula that can meet the needs of all communities, but if the compilation provokes creative approaches and a good proportion indeed reach the objectives set for them, we will have made progress.



John Edwards
Commissioner
Correctional Service of Canada

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Introduction

Canadians are facing a crisis in the justice system. Prison populations are soaring. The costs are no longer affordable. Yet people are feeling less safe and secure. What Canadians want and need is “*satisfying justice*” - a response to crime that takes victims seriously and helps them heal, a response that calls offenders to account and deals with them effectively, a response that “gets tough” on the causes of crime and does something about them. It is clear that filling our jails has just not been working.

In fact, a top level document has put government leaders on notice:

...“ continuing to do business in the same way will inexorably lead to further crowding and degraded prison conditions, program effectiveness and security measures.... The current strategy of heavy and undifferentiated reliance on incarceration as the primary means of responding to crime is not the most effective response in many cases, and is financially unsustainable”
(Rethinking Corrections, A Discussion Paper Prepared by the Corrections Review Group, 1995, Government of Canada, obtained through the Access to Information Act).

At the Church Council on Justice and Corrections, we have been asking this question: *what can be done instead of jail to meet the many demands of justice?*

Of course, we all want protection from violent behaviour. But when we are told in this same report that, from the best available knowledge:

... punitive imprisonment does very little, if anything, to reduce our overall risks and that other, less expensive means may be as effective, or more so;

... and when we are told that 84 per cent of admissions of provincial inmates and 37 per cent of the federal penitentiary offender population are in prison for **non-violent** offences;

... and when we are told that Canada incarcerates individuals at a higher rate than any other western democracy except the United States;

... that we use custody as a response to youth crime considerably more than the national average in other comparable countries;

... and that our adult prisons are filled to overcapacity so that we will soon have to build more, at great expense, if we don't change

our way of going about the business of doing justice;

... and when we are told that rates and length of incarceration not only fail to reduce recidivism and the overall crime rate, they sometimes increase them;

... and when we are told that the annual cost of our adult correctional systems was about \$2 billion in 1992/93, that it costs \$52,953 a year to keep an offender in penitentiary instead of \$10,951 for supervision in the community, and that the federal prison population is growing at a rate which suggests a **50 per cent** increase over the next 10 years if we con-

tinue to do business in the same way;

then we feel a need to stop and ask ourselves:

*Why are we doing this?
 Couldn't all that money be put to better use to make us secure?
 How can we get SMARTER about getting tough?
 What can we do instead?*

Many government jurisdictions here in Canada and elsewhere have been asking similar questions. They want to decrease the size and costs of their prison populations. In Canada, however, all

1984-1995

Rate of Incarceration for federal institutions in Canada

	Accommodation Count	% Increase
1984	10,434	
1985	10,980	5.23%
1986	11,225	2.23%
1987	10,785	-3.92%
1988	11,169	3.56%
1989	11,549	3.40%
1990	11,779	1.99%
1991	11,854	0.64%
1992	12,432	4.87%
1993	13,006	4.62%
1994	13,972	7.42%
1995	14,744	5.53%

Correctional Services Canada - Information Management System - Year End Count

Diversion programs can be instituted either before or after a charge is laid. These programs are based on the belief that in many cases the full weight and cost of the criminal justice system is not required to achieve the objectives of the law or the community. Sentencing options must be responsive to the needs of victims and address public safety. They must also allow courts to dispose of cases in a variety of ways that do not always include imprisonment unless that sanction is clearly warranted.

**Solicitor General
Herb Gray
Oct. 1, 1995**

the governments' efforts to date to provide alternatives to imprisonment have failed to halt in any significant way these mounting numbers, already high by international standards. These escalating rates of increase in prison population are no longer sustainable, either fiscally or socially. The traditional average yearly increase of 2.5 per cent has jumped in recent years to over 4 per cent, a trend which is expected to worsen, leaving less money for other essential programs in the field of health or education and, as the Rethinking Corrections paper noted, "grim implications for the quality and values of society generally".

Yet, the truth is that effective community measures do exist in Canada and elsewhere. Some jurisdictions around the world have succeeded in reducing their use of prisons.

Therefore, we set out to track down and describe a range of the best examples we could find. We wanted to illustrate to victims of crime, to justice decision-makers, to members of the public what can be done that would bring about satisfying justice while reducing our country's reliance on incarceration, wherever the evidence shows this to be ill-founded and counter-productive. While we recognize that long-term crime prevention initiatives remain the best path to safe communities, this compendium deals exclusively with initiatives, pro-

grams and legislative measures responding to crime which has already occurred. We wanted to identify safe community options that attempt to repair harm from crime and reduce the use or length of imprisonment.

We found that many **voluntary agencies** have recognized for years the futility and destructiveness of prison sentences vis-à-vis the crime problem. They recognized the need to ensure that the response to crime is social as well as legal. Many have sponsored community-based measures which are safe, and sometimes satisfying for victims, to which the criminal justice system can refer, in order to reduce the use or length of imprisonment.

We also found that, in some communities, **individuals or groups** have spontaneously rallied in the aftermath of a tragic crime to struggle together and to work out some real solutions for community protection and satisfying justice beyond mere incarceration.

Most importantly, we found that in pockets of the world, including examples in Canada, some **communities as a whole** are trying to forge an entirely different kind of partnership with their local justice officials. Some are aboriginal communities drawing on their own traditions. Others are urban groups of citizens who want more ownership for their own justice work to ensure the safety and well-being of their neigh-

bourhoods, schools and communities.

Out of this latter movement, as average citizens wrestle with the real problems, there is beginning to emerge a call for a fundamentally different approach to justice. People who know the facts about individual situations want lasting solutions to the problems they are uncovering; and they often want **healing** for both victims and offenders, and for the community's overall sense of trust and well-being. From this perspective, they are shedding a whole new light on the role of incarceration. It has very little positive contribution to make to what matters most to them about crime. And theirs are the initiatives we have found that stand to make the greatest inroads into forging new models for the "*satisfying justice*" we all ultimately seek, and by the same token reduce wasteful expenditures on imprisonment.

In this compendium, we present a selection of "**a hundred and one things we can do instead of putting or keeping someone in jail**". It is based on information that individuals and organizations forwarded to us after hearing about our search. They do not by any means provide an exhaustive listing of all the valuable programs and services that are currently available. We hope they do provide a balanced representation of the most creative, innovative and satisfying types of

initiatives that came to our attention. Where we found several initiatives of a similar nature, we chose to use an example and a story that we thought could most vividly illustrate how it works and how it feels. Our aim is to spark innovative thinking about justice and generate enthusiasm for experimenting responsibly with new solutions to an old problem. For every entry selected, we have listed a contact person who can provide further details about each initiative's strengths, limitations and potential difficulties. As well, some information will be useful in finding out where other comparable programs already exist and where some guidance might be obtained before undertaking a similar initiative.

There is some tremendously good news about all the initiatives featured here. For the individuals benefitting from them, they do in fact avoid the use of imprisonment altogether, or frequently reduce, to varying degrees, its length. The heartening finding is that the most conclusive evidence gathered to date reveals that this has not increased rates of recidivism or overall crime in the community (see for example Ekland-Olson et al., 1992; Lin Song, 1993; Julian Roberts, 1995).

The bad news is, however, that in many jurisdictions, including all of Canada's, the use of these more cost-effective justice options has failed to reduce the overall

The millions of dollars that we waste on building new prisons and maintaining our old ones is, generally speaking, money wasted. In no other area of public tax funds expenditure do public monies get less scrutiny in terms of positive effectiveness than in the area of penal policy.

Michael J.A. Brown
Principal Youth
Court Judge
Auckland, New
Zealand.

use of imprisonment as a sentence. **They have failed to halt the continuing increases in prison populations and costs.**

They have even failed in some instances to halt the continuing escalation of population overcapacity. According to the government document, “Rethinking Corrections”, in federal penitentiaries this overcapacity recently doubled in the span of only one year and concern about this situation has been publicly expressed by the Auditor General. All jurisdictions in Canada are presently operating institutions at close to full capacity or in excess. Nor is this likely to change as things stand now. Meanwhile, community options are sometimes not funded on the basis that they increase overall criminal justice costs. Yet, on their own they would be more cost-effective, especially if dollars spent on prisons are reallocated to dollars spent on community programs. What is the problem? Some of the factors behind it are discussed in the section of this compendium entitled **Conclusion**.

But of equal concern is our finding that some of these alternatives and community measures, while remaining safe to use without increasing recidivism or crime rates, are not providing victims or communities with what we are calling “satisfying justice”. And this may also partly explain why they are not reducing the calls for incarceration and why governments have not been

inclined to take the actions that would more effectively decrease its use.

In addition, the manner in which many of these measures are presently structured does not contribute significantly to a perception that sentences other than incarceration are a more appropriate, effective or desirable response to criminal behaviour. Prison remains the cornerstone of criminal policy in the mindset of the public and of judicial decision-makers. Its symbolic hold on our collective psyche overpowers all rational evidence to the contrary. Yet on a practical level prisons fail to provide satisfying justice to victims and communities and are often harmful to those who live and work in them, with devastating and long-lasting effects on the children of prisoners (Council of Europe, 1991; Roberts, 1995). As a mere symbol, it is one we can no longer afford.

We need to call our decision-makers to account for this. We need to call for responses to crime and sentences that protect us effectively when that is required, and that spend our money in the ways that will be the most satisfying for our real justice needs and in the long-term best interests of our communities.

In presenting this compendium of justice options that could help to reduce the use of imprisonment in Canada, we have chosen,

therefore, to particularly highlight the initiatives that meet this criterion, while providing “satisfying justice” to victims and communities. And we have asked of all entries the following kinds of questions:

- what are the ways in which this initiative does or does not provide “satisfying justice”?
- does it protect us enough?
- could it be used in more serious cases?
- if a period in prison was still a component of the sentence in this initiative, what was the purpose for which it was used? Was it really necessary? Or is there another means for achieving this purpose that could have been used instead that could have been as effective or more so, less harmful, less costly?

As a preamble to the description and listing of the entries, we begin by providing a framework for reflecting on this newly coined phrase, “satisfying justice”. There are a number of ways in which prison itself does not provide it and can work against the effectiveness of some of the accompanying measures that occasionally attempt to compensate for that. This leads us to a logical question: then why has Canada continued to use imprisonment so much? In the conclusion, we list a number of uses that the prison sentence and

prison institutions serve in our society and the importance of finding strategies to more cost-effectively fulfil all of these functions. Strategies to limit the costs of incarceration, as the government has tried to do up to now, by addressing only one of these purposes, i.e., protection from violent crime, or by providing alternate ways of fulfilling only one of these functions i.e., to more cost-effectively punish low-risk, non-violent and primarily property offenders, without questioning fundamental premises, are bound to be neutralized by the other “uses” of imprisonment. Other means are needed.

As we will see in the concluding chapter, a few other countries have assembled the political will to develop these means.

It is our hope that this compendium will provide some helpful ideas, tools and inspiration to help Canada as well take some significant further steps in this much needed direction.

“A surprising number of judges feel that much of this activity of processing and reprocessing petty social misfits does very little to prevent or control crime,” said Judge David Cole of the Ontario Court’s Provincial Division.

“They are beginning to challenge the theory and practice of sentencing in Canada today.”

Judge Cole, co-chairman of a recent provincial inquiry into systemic racism in the justice system, said the belief that prison sentences will deter or rehabilitate is particularly suspect.

As corroboration, he quoted from a dozen recent decisions in which judges questioned the sense of relying on prison as heavily as Canada traditionally has.

The public seems to think the criminal justice system can prevent and control crime, said Judge Cole. “Public expectation, all too frequently fuelled by opportunistic politicians, mostly overrates that part.”

Judge David Cole
Globe & Mail - March 5, 1996

What Do We Mean by Satisfying Justice?

(i) Satisfying Justice - Not!

The best way to understand what we mean by “satisfying justice” is to begin by examining what it is not. We start, therefore, with a story that powerfully illustrates some of the dimensions of crime currently overlooked by our criminal justice system. The story concerns a woman who was working in a convenience store when it was robbed by a man wielding a knife. From their strictly legal point-of-view, the courts considered the absent owners of the convenience store as the only “victim” in this case. This woman’s story was told to us by Wendy Keats of MOVE Inc., a New Brunswick initiative (see entry in Section Two of the compendium).

Elizabeth had been extremely traumatized by the armed robbery during her shift at the convenience store. The crime scene had been absolute chaos. The masked robbers had screamed death threats as they held her captive with a knife to her throat. She had wet herself from sheer terror.

Even months after the robbers had been caught, life did not return to normal. Word had got out about her fear-induced loss of bladder control, and customers and co-workers teased her mercilessly afterwards. Not only did she have to cope with fear and shame, but past traumas in her life returned

to haunt her. She became ill with bulimia and lost 85 pounds. Insomnia kept her awake night after night.

Friends and family quickly became impatient with her. “Look, you didn’t get hurt. Let it go. What’s your problem?” (This impatient response to a victim’s torment is typical.)

Elizabeth herself couldn’t understand the unrelenting torture. Why did she suffer nightmares every time she closed her eyes for a few moments? Why couldn’t she resume her life? As her health deteriorated, her marriage broke down and her relationship with her children changed dramatically.

Meanwhile, Charles, the 21-year-old offender, was serving five years for the offence in a federal institution. He had been raised in a violent environment by a family deeply involved with drug and alcohol abuse. His string of surrogate fathers were mostly ex-offenders and addicts themselves. He and his sisters were victims of continuous abuse and poverty.

He had committed minor offences as a juvenile, but this was his first serious crime. To him, the offence was the result of an extremely bad acid trip. Completely out of his mind on booze and drugs, Charles had no idea of the trauma caused by his actions.

Charles first learned of Elizabeth's situation when he became aware of her insistence that the court allow her to submit a victim impact statement. She had not been invited by the courts to submit a statement as she was not identified as the victim. The convenience store was.

As Elizabeth fought for her right to somehow be included in the process, her anger and frustration grew. She was terrified that Charles and his accomplice would come back to get her as they threatened they would. She was isolated from her family and friends by this time. She was frightened, emotionally haggard, and physically sick.

Finally after two years and many counselling sessions, Elizabeth realized that she had to find a way to "let it go". She realized that, in order to do that, she had to try to find the answers to the questions that haunted her.

So when Charles' parole hearing came up, she travelled by bus for four hours to the institution... alone and suffering from pneumonia. During the hearing, Charles turned around and tried to say something to her, but victims and offenders are not allowed to speak to each other during these hearings, and he was cut off.

Back on the bus, she kept wondering, "What did he want to say to me?"

At this point, she contacted the National Parole Board with a request for a face-to-face meeting and they referred her case to MOVE. I was the assigned mediator.

When I first met Elizabeth, I asked her why she wanted to meet her offender. "I cannot live like this anymore" she said. "I have to get the answers to my questions. I have to find out whether he is coming back to get me or my family. I have to tell him how I feel. I have to look him in the face and tell him how he has changed my life."

All valid reasons for mediation. And so I went to see the offender.

Charles was amazed by Elizabeth's fear. "Doesn't she know I wouldn't ever hurt her? Don't they give them convenience store clerks some training that tells them to just hand over the money and nobody will get hurt?" he asked incredulously.

"Doesn't she know that every robber says "don't call the cops or I'll come back an' git ya"? That's just the way it's done. Gee, I'm really sorry about this... I had no idea."

Without hesitation he agreed to meet with Elizabeth to try to do whatever he could to make up for what he had previously thought of as just a bad night ... too drunk... too stoned... and one for which he felt he was the only one paying a heavy price. By this time, Charles had been in prison for two years and it was no picnic. He slept with a knife under his pillow because there were so many stab-bings going on around him. Like Elizabeth, he lived in daily fear.

The mediation was arranged to take place in a room within the prison itself. Neither of them slept the night before... each racked with doubts and

fears. By the time the two of them came together, face to face across a 30-inch wide table, they were both peaked with emotion.

However, the controlled process of mediation soon took its effect and the story telling stage began. Elizabeth said everything she had been thinking for the past two years. Charles listened intently, and when it was his turn, he answered most of her questions as his own story unfolded. As the dialogue continued, they started to chuckle about a detail. This broke the tension and they really started to talk: face to face and heart-to-heart. They had shared a violent experience, albeit from entirely different perspectives. A relationship had been formed that night that, until now, had been left unresolved.

Elizabeth got the answers to all of the questions that had haunted her that day. She learned that Charles had never intended to come back and harm her, and that he was genuinely sorry for what he had done. They struck an agreement about how they would greet each other on the street when he is released from prison and returns to their home town. As they finished, they stood up and shook hands. "You know" Elizabeth said, "we will never be friends, you and I - we come from different worlds, but I want you to know that I wish you the best of luck and when I think of you I will hope that you are doing okay. I forgive you."

Leaving the prison, I asked her how she felt. "It's over. It's closed. It's done."

Five months later, she tells me that she has not had even a single nightmare since. "I don't feel like the same person anymore. There is no more fear. It's just gone."

I have learned from Charles's case manager that he is doing well. Staff feel it was a maturing experience for him and that there is a much better chance of him responding to rehabilitative treatment and taking life more seriously. No guarantees. He's twenty three years old. My own guess is that he will never forget this experience, and that it will have a profound affect on future decisions.

After the mediation, Elizabeth requested that a letter be sent to the National Parole Board. She no longer wants to be used as a reason to keep Charles incarcerated. "If they want to keep him in prison, that's their business, but I don't want it done because of me. For me, this matter is over. I am healed."

A Framework for Understanding What Has Gone Wrong

The experience of justice the current system usually provides is seldom any better than what happened to Elizabeth. We invite you to reflect at some length on **why** this may be so, and how this is contributing to the dissatisfaction and frustration with the criminal justice system. This can help us to understand what needs to be put in place to provide pos-

sibilities for a justice experience that is more “satisfying”.

For a long time, the criminal courts have concentrated their attention almost exclusively on the behaviour of the accused. They have been preoccupied with proving that a law has been broken and determining who broke that law and what the penalty should be. They have paid very little attention to the harm that crime does to people - to victims (direct and indirect), to families, to neighbourhoods and communities. Until quite recently, criminology has also focused almost entirely on the study of the criminal’s behaviour, giving us “explanatory models” that concentrate on identifying contributing factors. The following description of the repercussions this has had draws partly on an article by Tony Peters and Ivo Aertsen, two contemporary Belgian criminologists, because their analysis is highly consistent with our observation of the Canadian situation as well (Peters et al., 1995).

What has happened can be understood as follows. The emphasis of the “explanatory models” has generated further research and intervention strategies which have also focused exclusively on the offender. The relation between the offender and the victim of the crime has been neglected. This may go a long way towards explaining why the more recent field of research

about victims has found that contact between the victim and the administration of criminal justice has been primarily a source of revictimization, frustration, disappointment and annoyance rather than a contribution to the solution to the victim’s problems.

“Generally, after the facts (primary victimization), a secondary victimization follows through the contacts with the police and the judicial system. It stigmatizes the victim in the role of a loser and an outcast”.
(Peters et al., 1995)

The administration of justice concentrates on pointing out to the accused that what has been transgressed is a social standard and that, following a specific hearing which is often reduced to a battle between lawyers about technicalities, he or she will be punished if convicted.

The Process Overlooks the Victim

The implications and consequences of the offence hardly get any attention. Ironically, this is so despite the fact that the administration of criminal justice is initiated mainly because of the victim’s complaint and the fact that the police investigation depends largely on the victim’s information. The offender is confronted with the consequences of his or her action strictly in relation to legal definitions that could tech-

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

nically either get him off the hook or further incriminate him. Meanwhile, what the victim is now going through in the aftermath of the crime is largely neglected.

The formulation of the official charge and the subsequent trial hinge on the exact knowledge of the facts and circumstances related by the victim. But the sentence which follows ignores the victim's needs and problems; sentences have consisted primarily of fines and prison terms to which offender-tailored variations have sometimes been added. The possibility of giving the sentencing process, and the disposition itself, a meaningful content and orientation in relation to the specific repercussions of the offence has almost completely been left aside.

An administration of criminal justice which merely enforces the law without affirming as part of its central task the need to attend to reparation for the victim and the community raises a serious question about whether it is contributing in any way to restoring peaceful relations between citizens. Society is entitled to expect this from the criminal justice system. As could be seen in the story above, an administration of criminal justice which does not put emphasis on Charles' responsibility towards Elizabeth is bypassing the actual meaning of what happened when the crime happened, for the offender as well as for the victim. As a consequence of this,

many opportunities for quickly solving some of the problems the victim may be facing, some questions and needs for which only the offender initially holds the key, almost always get lost in the process.

The criminal justice process describes the complaint against an accused by laying a charge that is phrased in the language of the Criminal Code. This categorizes, labels and "characterizes" the behaviour, often in a manner so broadly framed that it is suggestive of many more allegations than the offender may feel are fair. (Terms like "sexual assault" or "fraud" can cover a range of actual behaviours that vary considerably in terms of the degree of seriousness and stigma that is implied). Within this current framework of the system, the offender quickly loses any sense of responsibility as he or she is soon encouraged to reinterpret the whole situation in order to protect oneself against the entire range of allegations. The offender is unable to identify with this legal characterization of what happened, especially if he or she is already in a disadvantaged socio-economic position vis-à-vis the victim, or the rest of society as is often the case for those actually brought before the courts.

At the same time, the accused is rarely confronted with the needs and problems of the victim, or with the emotions and concerns of members of the community

who are disappointed in the behaviour, and worried for this person's future. Instead, an adversarial legal system takes precedence, whereby the offender is expected to concentrate on a defence and to reduce his or her responsibility to a minimum.

The offender becomes entangled in a battle against the administration of criminal justice. He or she wants to "get off easy" with the lightest sentence possible. This of course does not foster a conducive context for the offender to think about the victim's situation or feel confident that if he takes full responsibility for his actions he will find support and acceptance from the community, "a way back in", or a way in, if he or she has in fact never "belonged" in the first place. When the offender is given a punitive sanction, and more particularly is sentenced to imprisonment, that person becomes even less likely to consider there is any obligation to the victim; the offender concludes he has already "paid" his debt through the sentence.

This situation is of course very infuriating and doubly injurious for victims, and it can lead to escalating calls for tougher penalties as they are often perceived as the only satisfaction victims can get out of such a system. But a more repressive policy will clearly not fix these problems. According to Peters and Aertsen, failure to sufficiently punish the offender is **not** the greatest prob-

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

The Process Overlooks the Community

But the neglect of the victim in the criminal justice process is only one of the major drawbacks in sentencing. The other is that it also overlooks the community context of the offence. This means that it fails to consider the initiatives that could be taken to prevent crime in the future. For a justice process to be more satisfying, it should be deciding not only who has some responsibility but also what in society or the particular community contributed to the offence, and it should be focusing on what could be done to avoid the situation in the future (as do coroners' inquests).

"The health of a community improves when its members participate in conflict resolution. When they leave the task to others, the quality of community life declines. Gone is a collective sense of caring, of respect for diverse values, and ultimately a sense of belonging. Gone as well is the community's natural capacity to prevent crime, redress the underlying causes of crime, and rebuild the broken lives and relationships caused by crime."

**Judge Barry Stuart
Yukon Territories**

“Restricting sentences only to the punishment of the crime - incident by incident - is closing the stable door after the horse has bolted.”
(Waller, 1990)

Not only is it too little, too late, but it limits attention to only the crime reported and prosecuted which is a minute proportion of all the crime taking place in a community. (Roberts, 1995). It is also well established that this remaining minority of all the offenders reflects a disproportionate concentration on the most oppressed or disadvantaged groups in a given society and the current sentencing process does not deal with any of the underlying factors contributing to this. Safety in the community depends on far more than this.

Community members are also left with many more unanswered questions than the current judicial process ever addresses. The next story is but just one small example:

A young offender in an Ontario city was involved in a frightening stabbing attempt at his school. He has finished his closed custody sentence, is now on probation and continuing psychiatric treatment, and the justice system expects that this is enough for the community to accept him back without fear or anger: he has paid his debt, the job is done. But how is the community supposed to cope with his living among them again,

how will they know if they are safe, if he is sorry, if they can trust him again? What is likely to happen to him, and his family, if he just gets feared, and ostracized, and scapegoated for the rest of his life? What effects does this continue to have on his already traumatized victims - the one he tried to stab, the students who saw, all the parents and neighbours who heard about it, etc.? Or on the whole sense of safety in that community and school, on its real protection from him in the future? Or on others who are perhaps also a potential threat, and are in this community that is now full of suspicion and fear and remains unable to talk openly about dealing with such problems among its young people. What if he just moves away from that community: will he have to run from the memories all his life? Can he ever heal? Can the community he left ever heal? — Yes, he “paid his debt”, but the job of “justice” is certainly not done, —not for the victims, not for the community, not for the offender and his family...at least, not the job of “satisfying justice”.

Community members need an opportunity and a safe process to help them discuss with an offender their feelings and fears, to hear what he has experienced, to express their misgivings and hopes, to comfort those who have been hurt, to make up for it in some way and to help prevent it from happening again in their

community. Is there not a role some of them can play in this? Some of them may be willing to help.

“Whether it is fighting heart disease of adults or combatting the precocious deaths of young Canadians in traffic accidents, prevention has become a significant and substantial part of the job. No longer would any politician believe that putting resources into hospital intensive care units could be a complete response to the problem.”
(Waller, 1990)

The Process is Adversarial

Standing in the way of achieving satisfying justice is the current adversarial nature of the criminal justice system. And, as we shall see, this is very difficult to avoid in a system where the major purpose of sentencing is to punish. The potential result of an admission or finding of guilt is the deprivation of certain rights and liberties for the express purpose of “punishing”. Punishment, as can be seen in the dictionary, is the deliberate infliction of pain, for the express purpose of causing pain as retaliation, justified in law because the person has done something bad enough to deserve it. Many people don’t think about punishment this way. Many think of other things when they call for more punishment. But this is what the package

comes wrapped up in, and we must not forget that. The only reason this has remained acceptable in our modern world of human rights is because we believe in it as a means to some positive purpose. The possibility of prison or a criminal record is always a threat. Consequently, what is set in motion in our civilized country is an adversarial process to safeguard against the risk of mistakes, of unjustified violation of these human rights. And what we get today is a legal industry that turns the search for justice into a game of technicalities played between two lawyers in court. What we get is an offender who is encouraged to plead not guilty, to deny everything, to make no amends to the victim, to show no remorse. The entire system concentrates on the rights of the accused more than on the victim’s need for support and reparation. And it can only be so, when what is at stake is the deliberate, legally justified infliction of pain as retaliation which is always intertwined with any other goals. On the other hand, the resulting stigmatization isolates offenders, reinforces criminal identity in a subculture, and isn’t even a deterrent (Mathiesen, 1990). And what happens rarely includes any of the positive qualities and community processes that we are now learning are needed if we are to realistically pursue the objectives most people are seeking in good faith when they talk about the need for punishment, or imprisonment as the

At a Harvard Law School conference November 19, 1995 entitled “Police, Lawyers, and Truth,” New York City Police Commissioner William J. Bratton stated that the criminal justice system places extraordinary pressure on the police by emphasizing “winning and losing more than truth and justice.”

Comparing the criminal justice system to a production line, civil rights lawyer, Michael Avery, said police perjury is caused “by the same thing that causes workers in any industry to cut corners when the demands of production managers are unrealistic. The product of the criminal justice system is not justice, public safety, or stopping crime. It’s arrests and convictions. The problem is how to change production managers and the message they’re putting out.”

punishment they know best (processes like “reintegrative shaming”, as presented in sections one and two of this compendium) .

Yes, we need to express abhorrence sometimes, and set limits, and exact consequences which may feel painful, but to do so through the legal sanction of punitive imprisonment is to use a tool that simply cannot work. All that is learned from punishment in this system is how to avoid it, by lies and omissions. Dealing with all these matters in an adversarial manner flies in the face of everything we know about all the things we are trying to achieve. It flies in the face of human growth, personal change, moral responsibility, relationships and community strengthening. It flies in the face of any real solidly grounded public protection. To the contrary, it fuels what makes people feel like enemies of each other. And,

especially, it flies in the face of what victims need most.

Our adversarial system actually stands in the way of meeting many of the needs that are most fundamental for victims. It stands in the way because it’s adversarial, and the continued massive threat of the use of prison as punishment makes it more likely that it will continue to be so.

It gives victims no other way of expressing their feelings and needs except to denounce the skimpiness of a sentence that never seems like enough. And it puts them through a process that seems to humiliate them.

Communities are equally trapped in this dynamic because there is no way of knowing, from the mere pronouncement of the length of a sentence, if real worries and concerns are being properly addressed.

(ii) Satisfying Justice: Towards a New Definition of “Justice”

The increasing awareness of how the criminal justice system really works has very far-reaching implications. Indeed it is not merely a matter of additional insights which can be added to existing knowledge; the offender-centered “explanatory models” themselves must be “widened” to

include those insights. They throw a whole different light on the existing knowledge. They cast into question some fundamental assumptions. They call for a profound redefining of theories about crime and of the choices that face us for criminal justice policy.

What do we seek when we seek justice as an irate and frightened victim or exasperated community? We seek:

- the shared sense of what is right and wrong;
- the holding to account for wrongdoing;
- the affirming of the importance of the rights of the person injured;
- the prevention of other wrongdoing or harm;
- and, of course, respect for the rights of accused and convicted persons, and some sense of “proportionality” between the gravity of the misconduct and any legal coercion society may be entitled to exert in response.

As we have seen, the current system gives more attention to **the law that has been broken** by a crime than it does to **the harm that has been done to people**. Yet, as in Elizabeth’s case, what many victims want most, in addition to their safety, is quite unrelated to the law. It amounts more than anything else to three things:

- victims need to have people recognize how much trauma they’ve been through - they need to express that, and have it expressed to them;
- they want to find out what kind of person could have done such a thing, and why to them;

- and it really helps to hear that the offender is sorry - or that someone is sorry on his or her behalf wherever possible.

The crux of the crisis we are facing in sentencing practices is the crisis of public misunderstanding of how it all works, a misunderstanding that leaves judges boxed into using tools some probably know are obsolete. **An impediment to satisfying justice seems to be that people see no other way to satisfy their very real and legitimate need for “denunciation”.**

And yet in truth, within the current system, very few people are satisfied anyway, no matter where they stand in their various allegiances. We have to do something about the fact that we’re caught in this **[tough vs. lenient]** measurement when the missing link isn’t about that at all. It’s about all the human needs and feelings and worries we have when we’re affected by a crime. But we’re so boxed in by the current approach to sentencing that even the people who don’t “believe in jail” can find certain sentences too lenient - because we have no other way of knowing if the community and the victim are getting what they need.

“Constantly in my work, where the behaviours and situations of our young people, many jobless and ill-educated, have the potential to induce a depressing effect on my own outlook on life, I am affirmed in my belief in the innate goodness of people by the common sense, the compassion and the cooperation of victims.”

*Marie Sullivan,
Manager of youth services, Auckland,
New Zealand*

How Can We Increase the Possibilities of Achieving the Real Justice Canadians Seek?

It would appear from all we have learned in seeking examples of “satisfying justice” that the only way we can break out of the current impasse in order to significantly develop some new directions in sentencing, and curb the needless growth of incarceration, is to encourage safe experimentation with processes in which victims and other community members can start to participate to have a say in what is done.

Some emerging models are paving the way for this, and some of the best examples we found are described in each of the sections of this compendium.

We know of course that this is not a panacea. It is a very difficult challenge, because we face many conflicting interests and pitfalls. There will be problems and we have to be careful to make sure everybody’s rights and interests are protected. But overall, the communication process and community mediation possibilities that these models provide give an opportunity for victims to be supported, for offenders to get some important messages in a safe environment and for members of the community to work at the problems of living together which the offence brings to light. Ideally, this process could be

instituted and encouraged at points prior to the intervention of the formal criminal justice system, in the schools and through the various community and social services. But for present purposes, we have selected examples that have introduced its fundamental principles and benefits into the criminal justice process, at various points, with some implications, at least potentially, for reducing the use of incarceration. Even when they do not reduce the length of imprisonment, they provide a better experience of “satisfying justice”, to some extent at least.

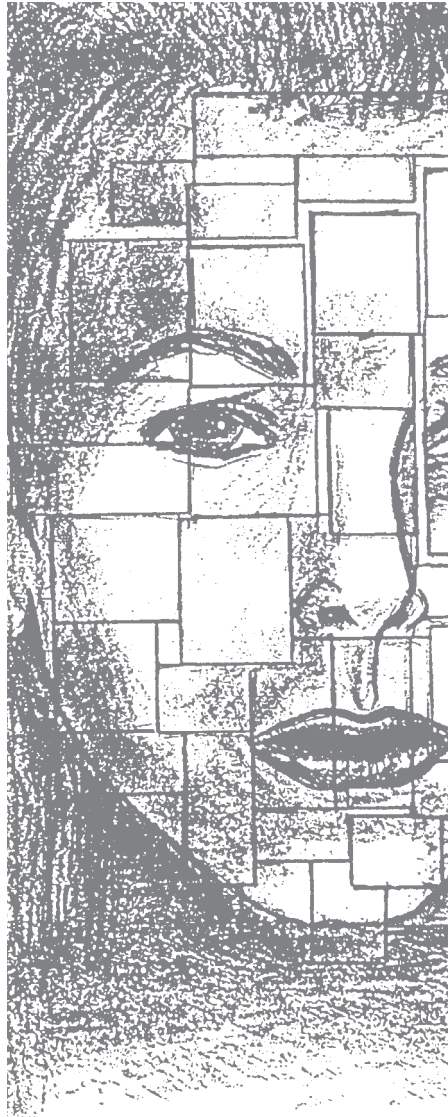
We cannot stress enough that we do not believe that a whole range of new “alternatives” alone will be effective in achieving any fundamentally new directions of real significance that increase overall satisfaction with the experience of justice for victims, communities and for offenders. We found several examples of good alternatives that are frequently used but have not changed the basic climate around the justice system; and they have not changed the basic perception of imprisonment as the normative sentence, as the only sentence that really means the offence is being dealt with seriously. This is one of the reasons they have not been effective in reducing the use of imprisonment overall, and have tended to become popular as “add-ons” to a prison sentence rather than a genuine alternative to it. (Other

reasons are discussed in the **Conclusion** in the final section of this compendium.)

No matter what the sentence, if the PROCESS of handing it down is still stigmatizing, labelling and scapegoating and doesn't include some good expressive justice for victims and communities, we will just be adding more bureaucracy to the same old problems.

If Canada wants to significantly move beyond its ineffective reliance on imprisonment to deal with crime, we must encourage the further development of approaches that provide the experience of "satisfying justice". We believe our society will have to reach beyond its current thinking about crime, and beyond the "negative" philosophy that currently stands in the way of progress. The justice system will have to provide possibilities at least for people to have an opportunity to connect what they do to seek justice back to the soul of our common humanity. While this is already happening in select individual cases, the decision-making process we generally have tends more to bring out the worst, in all the people, and keeps us entrenched in desperate competition for the individual good - and not working for the common good.

What is called for is no less than a *fundamental shift in direction* to change the way we see the whole picture of what justice is about.



Fire in the Rose
Church Council on Justice and Corrections

That big picture, some communities are discovering, is one with a new more positive purpose, an overall **healing purpose**, for victims and communities as well as offenders and their families. But there are a million and one variations possible on how to go about introducing this different approach, while simply bearing in mind what we really want to

accomplish for people affected by crime, such as suggested by the following “benchmarks” for the “family group conference sentencing” in Australia (see Section Two) that is seeking what is referred to there as “transformative” justice:

- *How can we get the offender to understand the impact on the victim?*
- *How can we get the offender to acknowledge the wrongness of his/her behaviour?*
- *How can we acknowledge the harm to the victim?*
- *How can we get the victim to understand he or she is not at fault?*
- *How can the community show disapproval of the behaviour, without making a scapegoated outcast of the offender?*
- *How can the community be involved in the process of holding offenders accountable?*
- *How can we involve the victim in defining the harm done and how it might be repaired?*
- *How can we involve the offender in repairing the harm?*
- *How can the community be involved in repairing the harm?*

“Problem-solving for the future is seen as more important than establishing blame for past behaviour. Severe punishment of offenders is less important than providing opportunities to empower victims in their search for closure, impressing upon the offender the real human impact of their behaviour and promoting restitution to the victim. Instead of ignoring victims and placing offenders in a passive role, restorative justice principles place both the victim and the offender in active and interpersonal problem-solving roles..”

Mark Umbreit

The key message is not that custody should never be used, but that its proper purpose is safety, not punishment, and that it should not be made to carry all the other functions for which it is both useless and costly. Neither does this mean that there shouldn't be consequences for illegal activity, and that they won't sometimes be painfully demanding. But the consequences should make sense and take seriously the real problems that must be faced.

Finally, the most important guideline for new directions in sentencing which are energetic and helpful is to stop concentrating all the attention on the offender.

All the decision-makers in the justice system should make it a point to add to their standard checklist of considerations in each case “**what does the victim need?**”, “**what does the community need?**”, “**how can my function be used to help make this happen?**”. Then, we would go a long way towards getting the public better value for its money, for its safety and for its health. Towards that goal, we conclude this description of satisfying justice by reprinting Howard Zehr's **Restorative Justice Yardstick** .

A Restorative Justice Yardstick

1. Do victims experience justice?

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

2. 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?

3. Is the victim-offender relationship addressed?

- Is there an opportunity for victims and offenders to meet, if appropriate?
- Is there an opportunity for victims and offenders to exchange information about the event and about one another?

4. Are community concerns being taken into account?

- Is the process and the outcome sufficiently public?
- Is community protection being addressed?
- Is there a need for restitution or a symbolic action for the community?
- Is the community represented in some way in the legal process?

5. Is the future addressed?

- Is there provision for solving the problems that led to this event?
- Is there provision for solving problems caused by this event?
- Have future intentions been addressed?
- Are there provisions for monitoring and verifying outcomes and for problem solving?
(Source: Howard Zehr, *Changing Lenses*, Scottdale, Pennsylvania: Herald Press, 1990)

iii) Reducing Imprisonment and Satisfying Justice: Intersecting goals

What started as a search for measures that contribute to reducing incarceration quickly led us to a difficult dilemma: on the one hand, we found few measures that have reduced prison populations to date in most of the jurisdictions that have used them; on the other hand, we found many worthwhile initiatives that could. Yet some of the reasons they are not having the desired impact are quite varied in terms of the quality of intervention or experience of justice they are providing. For example:

- We found programs that use “alternatives” for the primary purpose of relieving prison overcrowding and to avoid building new prisons. They don’t, however, reduce the use of existing prison bed space.
- We found single initiatives, and entire programs, that provide opportunities for some individuals, often young offenders, to avoid going to prison by undergoing interventions to address the health, social, economic or educational issues underlying or accompanying their criminal behaviour. They tend to focus on the offender although some also address issues related to victim and community. These too, how-

ever, fail to reduce the use of existing prison bed space, and they have not prevented the population of young offenders in Canada, as a whole, from receiving, by and large, longer sentences of custody than do adult offenders for the same type of offence. And now, ironically, as community funds are cut due to the rising prison budgets, it is tempting and not at all uncommon for social workers to push for increased custody as the principal means through which young people can access the services they need.

- We found other interventions that include, in addition to or instead of the above, one or several “reparative” elements that do emphasize the need to “make amends”, to the victim or to the community. Some of these also provide an opportunity to address “collateral needs”, the variety of emotional and social needs ensuing from the criminal behaviour, for some or many of the people involved or affected. This can include people affected only indirectly, through the offender, the victim or the surrounding community, and can also include attention to related social

problems in the community. As we have seen, these particular kinds of intervention appear to be key to the experience of satisfying justice. We believe they are the most effective, for this reason, in reducing the use or length of any imprisonment that may be brought about primarily in symbolic deference to victim or community dissatisfaction regardless of the practical irrelevance of the prison sanction requested for the particular purposes sought. (As Elizabeth said: *“If they want to keep him in prison, that’s their business, but I don’t want it done because of me.”*) Nonetheless, while many of these features have gained acceptance as worthwhile elements of the justice system, they have not shifted the emphasis away from incarceration as the centrepiece of sentencing. Instead, they have tended overall to become “add-ons” that are incidental to its continued use, rather than a replacement for it that is sufficient in itself to “do justice”.

As we sought to organize this listing of initiatives that **could** be helpful to the attempt to reduce the use or length of incarceration, we realized that some of the factors presently neutralizing their impact must be referred back to the attention of government leaders. They must be urged to introduce more vigorously directed legislative and policy measures. This

is discussed in the **What Can We Do** section of the **Conclusion**. But we also realized that many of the initiatives have some but not all of the elements of what is needed for satisfying justice, and ultimately, therefore, for what is required to reduce our country’s reliance on imprisonment for the functions that it cannot effectively fulfil. They could be used to much greater advantage if they also addressed these other dimensions.

We have concluded that there is a link between reducing imprisonment and satisfying justice. On the one hand, the call for incarceration will only subside if experiences of genuinely satisfying justice are otherwise provided at the same time as the illusions about imprisonment are being debunked. On the other hand, the use of incarceration does not itself contribute to an experience of satisfying justice in most cases. As such, it continues to perpetuate the very forces and factors that will actually undermine the efforts to reduce its use.

This should come as no surprise to those who are familiar with the research. But some communities have drawn similar conclusions from their own experience over time. The community of Hollow Water, Manitoba has carefully explained this as follows in a statement about the role of incarceration in their attempts to deal with serious incidents of sexual abuse. We find it an appropriate way to conclude our reflection on satisfying justice.

Community Holistic Circle Healing Program - Hollow Water First Nation

Position on incarceration

“In our initial efforts to break the vicious cycle of abuse that was occurring in our community, we took the position that we needed to promote the use of incarceration in cases which were defined as “too serious”. After some time, however, we came to the conclusion that this position was adding significantly to the difficulty of what was already complex casework.

As we worked through the casework difficulties that arose out of this position, we came to realize two things: (1) that as we both shared our own stories of victimization and learned from our experiences in assisting others in dealing with the pain of their victimization, it became very difficult to define “too serious”. The quantity or quality of pain felt by the victim, the family/ies, and the community did not seem to be directly connected to any specific act or acts of victimization. Attempts, for example, by the courts - and to a certain degree by ourselves - to define a particular victimization as “too serious” and another as “not too serious” (e.g. “only” fondling vs. actual intercourse; victim is daughter vs. victim is nephew; one victim vs. four victims) were gross over-simplifications and certainly not valid from an experiential point of view; and (2) that promoting incarceration was based in, and motivated by, a mixture of feelings of anger, revenge, guilt and shame on our part, and around our personal victimization issues, rather

than in the healthy resolution of the victimization we were attempting to address.

Thus, our position on the use of incarceration has shifted. At the same time, we understand how the legal system continues to use and view incarceration - as punishment and deterrence for the victimizers (offenders) and protection and safety for the victim(s) and community. What the legal system sometimes seems to not understand is the complexity of the issues involved in breaking the cycle of abuse that exists in our community.

... The legal system promotes the belief that using incarceration, as a punishment and a deterrence, will break this cycle and make our community a safe place. As we see it, this simply has not - and will not - work.

Our tradition, our culture, speaks clearly about the concepts of judgment and punishment. They belong to the Creator. They are not ours. They are, therefore, not to be used in the way that we relate to each other. People who offend against another (victimizers) are to be viewed and related to as people who are out of balance - with themselves, their family, their community, and their Creator. A return to balance can best be accomplished through a process of accountability that includes support from the community through teaching and healing. The use of judgment and punishment actually works against the healing process. An already unbalanced person is moved further out of balance.

The legal system's use of incarceration under the guise of specific and general deterrence also seems, to us, to be ineffective in breaking the cycle of violence. Victimization has become so much a part of who we are, as a people and a community, that the threat of jail simply does not deter offending behaviour. What the threat of incarceration does do is keep people from coming forward and taking responsibility for the hurt they are causing. It reinforces the silence, and therefore promotes, rather than breaks, the cycle of violence that exists. In reality, rather than making the community a safer place, the threat of jail places the community more at risk.

To make matters worse, community members who are charged with violent acts have, historically, remained in the community, often for months, awaiting a court hearing. They are presumed by the legal system to be innocent until proven guilty. In this period of time there is no accountability to the community and, unknown to the outside, re-offending often occurs.

If and when people are incarcerated they do not seem to receive any help while away from the community. They return from jail not only further out of balance but are told by probation and parole workers - and therefore, to a certain degree, believe - that they have "paid for their crime". As a result the community is more at risk than before the people were put in jail.

In order to break the cycle, we believe that victimizer accountability must be to, and support must come from, those most affected by the victimization - the victim, the family/ies, the community. Removal of the victimizer from those who must, and are best able, to hold him/her accountable, and to offer him/her support, adds complexity to already existing dynamics of denial, guilt, and shame. The healing process of all parties is therefore at best delayed, and most often actually deterred.

The legal system, based on principles of punishment and deterrence, as we see it, simply is not working. We can not understand how the legal system doesn't see this. Whatever change that occurs when people return to our community from jail seems to be for the worse.

... we are attempting to promote a process that we believe is more consistent with how justice matters would have been handled traditionally in our community. Rather than focusing on a specific incident as the legal system does at present, we believe a more holistic focus is required in order to restore balance to all parties of the victimization. The victimizer must be addressed in all his or her dimensions - physical, mental, emotional, spiritual - and within the context of all his or her past, present, and future relationships with family, community, and Creator. The legal system's adversarial approach does not allow this to happen.

The adversarial approach places victim against victimizer. Defence lawyers advise their clients to say nothing and acknowledge no responsibility. Not following this advice "weakens" the case. Because they are feeling very vulnerable, and because they have been told historically that they should trust lawyers to protect their interests, victimizers find it very difficult to disregard this advice. At the same time, Crown Attorneys, to make their case, put the victims - often children - on the witness stand and expect them to participate in a process that in many ways, as we see it, further victimizes them. The court room and process simply is not a safe place for the victim to address victimization - nor is it a safe place for the victimizer to come forward and take responsibility for what has happened.

The adversarial approach also places the victimizer against his or her community. As we see it, this goes against the very essence of the healing process. For us, healing (breaking the cycle) is based on (1) the victimizer taking full responsibility for his/her actions, (2) the victim understanding and integrating this into day-to-day living, and (3) the COMMUNITY being able to support, assist, and/or hold accountable all the parties of the victimization. Until this can happen, and as long as incarceration is seen as the solution, the community will not be a safe place.

We do not see our present position on incarceration as either "an easy way out" for the victimizer, or as the victimizer "getting away". We see it rather as establishing a very clear line of accountability between the victimizer and his or her community. What follows from that line is a process that we believe is not only much more difficult for the victimizer, but also much more likely to heal the victimization than doing time in jail could ever be.

Our children and the community can no longer afford the price the legal system is extracting in its attempts to provide justice in our community. We can no longer talk about punishment and deterrence. We have to talk about BREAKING THE CYCLE - NOW! We see this as clearly the responsibility of the community rather than of the legal system.

...We have begun to break the cycle of violence and abuse in our community, but the issue of a safe place (1) to disclose, and (2) to take responsibility is in a delicate balance. Incarceration is only appropriate [in these cases of serious violence - ed.note] if a victimizer is unwilling or unable to take responsibility for his or her behaviour, and/or the community cannot hold accountable and offer support to all parties of the victimization. Without these, the healing process cannot begin. Incarceration, however, will never be an ingredient in the HEALING of ourselves or our community."

How the Compendium Is Organized

As the previous chapter on the meaning of “satisfying justice” indicated, The Church Council faced quite a dilemma and challenge in organizing the compendium. We wanted to present the individual entries for the compendium in an order that could provide a helpful listing that does justice to all of them despite the fact that we found ourselves, in view of the complexity of the issues, with a diverse array of criteria and initiatives.

It became important to highlight the features of various initiatives that offer some elements relevant to a strategy for reducing prison populations in the future, while recognizing that other equally relevant features may still be absent. Based on our analysis, this has meant that we have considered not only to what extent an initiative is presently reducing the use of imprisonment, but also whether it addresses related safety and bio-socio-economic intervention needs, as well as whether it also addresses what we are calling “justice” needs: does it have a reparative orientation for victim and community, does it attend to related social, emotional and practical repercussions for others affected by the events, does it provide an opportunity to experience “satisfying justice”?

Accordingly, the sample initiatives listed have been organized into four sections, for which they have been selected on the basis of the following guidelines:

1. A selection of initiatives that attempt to repair harm from crime, attend to related needs and avoid or significantly reduce the use of custody.
2. A selection of initiatives that attempt to repair harm from crime and attend to related needs, with some implications for the reduced use or length of custody.
3. A selection of initiatives that attempt to avoid the use of custody, with or without some reparative elements.
4. A selection of initiatives that attempt to reduce the length of custody by alleviating the enforcement of imprisonment.

As well, we thought it would be helpful for readers looking for programs, initiatives and cases relevant to their field of work or interest to provide an appendix in the compendium where we group many entries according to type of offence or group served by a program.

Section One: Satisfying Justice

A selection of initiatives that attempt to repair harm from crime, attend to related needs and avoid or significantly reduce the use of custody



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A selection of initiatives that attempt to repair harm from crime, attend to related needs and avoid or significantly reduce the use of custody

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Introduction

This section describes thirteen initiatives we found that most fully provide to varying degrees the fundamental elements of “satisfying justice”. They are mindful of community safety issues. They attempt to repair harm from crime. They attend to other surrounding needs related to the offence and they attempt to accomplish these objectives while avoiding or significantly reducing the use of imprisonment in serious cases where a prison sentence would otherwise have been expected.

As stated earlier, they do not all reflect the full array of elements to the same degree. Some bring all these basic principles to an integrated program approach that is offered to the whole community. Others implement some key features of a satisfying process particularly well, and are working hand in hand with the justice system, at different points, to make this available for cases of increasing seriousness. Some represent the application of an accepted alternative to a case that would have been routinely excluded from consideration due to its seriousness. The results are remarkable and raise the question: why not more often? And finally, some are spontaneous initiatives that have emerged when community members have felt

moved to bring about the most just outcome possible for people for whom they cared deeply. When people are moved by particular circumstances, they often discover that no “permission” is needed to get involved and nothing is really preventing them from taking action for what they believe. Such actions arising out of a community can be among the most effective as they can be creatively tailored to fit all the circumstances: each problematic situation is unique and the reaction to it must be unique, in due consideration of all the people affected and the myriad of possibilities that can open themselves to build solutions, when people are willing to give the time to working it out together.

In this first section, we have tried to present to you stories that powerfully illustrate some of the most innovative initiatives reported to us that stand to have an impact on providing victims and communities with more satisfying justice. But we have also tried to reflect the broad range of efforts being made to practise principles of satisfying justice, no matter where in the process people find themselves when they are called upon to respond. It is for this reason that we have also included here two initiatives that take place in prisons as well as one

that illustrates what can happen between a community and a high risk offender even after a prison sentence is over and done with: they represent a sound healing and prevention effort to avoid further incarceration in the future.

Community Service Orders - Adults The Windsor case of Kevin Hollinsky

One July night in 1994, Kevin Hollinsky and four friends had a boys' night out at a downtown Windsor bar. Several hours later, Kevin got behind the wheel of his 1985 Firebird.

On the way home, he and his buddies were trying to get the attention of a careful of girls. Kevin was driving too fast when he lost control on a bad curve. Joe Camlis, Kevin's best friend since the age of four, and his other close friend, Andrew Thompson, were both killed. Kevin was not physically hurt. The two others were injured. Kevin pleaded guilty to two counts of dangerous driving causing death. For reasons of general deterrence, the crown asked for a jail term of between eight and 14 months to serve as a lesson for other young drivers. In the words of a community police officer who worked on the case: "we knew that we had been telling audiences a very clear message - 'You drink and drive and kill someone. You are going to jail.'" The appeal courts have said that a prison term is an appropriate sentence in almost every traffic death where there is serious negligence.

But Kevin did not go to jail, both because of an extraordinary intervention from the parents of the two dead boys and because of a courageous and innovative court judge who took a risk with an alternative community sentence. What happened that day in the justice system of Windsor is best expressed in the words of Dale Thompson, Andrew's father. He made the following submission to the court.

"Since society demands exacting a price for Kevin's mistake, I'd like to think that price, rather than incarceration, could be a much more constructive motion... We have been in contact with the Windsor Police Department about arranging a program in conjunction with area schools. The program would consist of Kevin, along with what is left of his car, attending at schools and speaking with the students about the events of that tragic evening. Both families have already offered to assist the Hollinskys and Kevin in his attempt to reiterate to young drivers the importance of responsible driving. I know Andrew would want it this way, I surely do."

Kevin Hollinsky received a sentence of 750 community service hours and has spoken to more than 8,300 students in an extraordinary program that includes strong messages from the police, Kevin, Mr. Thompson and another friend who was in the car.

High school audiences are profoundly moved by the presentation which grew out of Hollinsky's community service order. For the first time in years last summer, Windsor and Essex County had a summer without a high school student being involved in a fatal or a serious automobile collision. After hearing the presentation, one Windsor high school principal told the police he was confident it would save lives in the future. "In my 30 years in education I have never seen a presentation that has made such a dynamic impact on students as this one."

Lloyd Grahame, a recently retired Windsor police staff sergeant in charge of community police, was initially unhappy about Kevin not going to prison. "I've got to say now that he makes the case for alternative sentencing.... Nobody will ever convince me now that sending him to jail was the best thing to do. You could send him to jail for five years and you wouldn't have punished him like you punished him by doing what happened here."

This man was forced to live with the consequences of his irresponsibility, day after day after day. Every day he went out to speak he relived it. He touched many, many young people in this city in a way we could not. It's hard to reach teenagers. He did. Kevin showed them they are not invulnerable."

The non-custodial sentence was appealed by the Crown, partly we suspect because it so challenged the current mindset of the justice system. In November 1995, three appeal court judges deliberated a half hour to confirm the original sentence. "Judge Nosanchuk's decision not to send Mr. Hollinsky to prison was an absolutely brave thing and a wonderful judgment," said Edward Greenspan, the lawyer who represented Hollinsky on the appeal. "They stood up in the courtroom and applauded. The parents of the dead boys stood up and applauded and everybody began hugging each other, including Kevin."

Mrs. Camlis, one of the victims' mom, agrees. She has been to several of Hollinsky's school presentations. "It was not an easy thing for Kevin to do. He relived it every time he talked about it. I think his two friends can be very proud of what he has done for them with his life since the accident. He's said to me many times, 'I did it for them. It's the only way I can say to them that I am sorry'."

Commentary

There is overwhelming evidence that the sentence is not only serious but far more meaningful, effective and less costly to taxpayers than a jail sentence. Given the clamour for stiffer jail penalties, it is ironic that in many

respects Kevin's sentence is much tougher than jail. Kevin suffered survivor guilt and post-traumatic stress disorder syndrome. Many times, he has faced the consequences of his actions and taken responsibility for them. As one of the appeal court judges asked, "How is the principle of general deterrence better served than speaking to 8,200 students about the tragedy of drinking and driving?"

In many cases, victims and offenders are not acquainted or at least not as close as Kevin was to his friends. That has some people dismissing the case as "exceptional" and therefore irrelevant to most other cases. However, while victims and offenders are often not friends, and are not expected to become friends, the current adversarial system strives to keep them apart in ways which undermine such constructive sentences as Hollinsky's. Other restorative justice practices such as mediation, sentencing circles and family group conferences can humanize the judicial process, fostering similar meaningful sentences.

There are many people like Kevin who have committed serious crimes where a custodial sentence is not necessary, and indeed might be ineffective, not only for the individual but for addressing the real needs of the community. Creative alternative sentences are certainly appropriate for less seri-

ous crimes which make up the majority of crime. Where community safety is addressed, these sentences seem appropriate for more serious crimes too.

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"... a term of imprisonment (in this case) is not necessary in order to achieve the objective of general deterrence. The arrest of the accused, his public prosecution in court, the fact that he now has a record of conviction for two serious offences under the Criminal Code of Canada, the fact that he will lose his licence to drive a motor vehicle for an extended period of time, the fact that as an alternative to imprisonment he will be performing worthwhile and extensive community service, personally attending as required to repeatedly send a message of public education to other young persons, serves the need for general deterrence in this community in relation to the offences before the Court."

**Judge Nosanchuk,
sentencing
Kevin Hollinsky**

Restorative Resolutions Winnipeg, Manitoba

The project is founded on the premise that social responsibility and accountability are fostered in the community. The aim of Restorative Resolutions is to provide selected offenders the opportunity to re-establish trust and acceptance with the individuals and community they have harmed. At the same time, it seeks to empower the community to respond in an appropriate and accountable fashion to individuals with whom they have become estranged.

A Story

A 32-year-old man with a lengthy youth and adult record relating to assault and break and enter is charged with four new counts of break, enter and theft. The crown attorney wants a period of incarceration. Restorative Resolutions, a community-based sentencing project, prepared an alternative plan recommending: suspended sentence, with supervision to be carried out by Restorative Resolutions; complete Interpersonal Communication Skills Course; complete Addictions Foundation of Manitoba assessment and attend AA regularly; complete conditions as outlined in the mediation agreement; receive literacy training.

This plan was accepted by the judge.

Program Description

Restorative Resolutions does the preparation (after a guilty plea) of individual case plans which are presented to the judge at the time of sentencing. These plans propose a community-based sentence in cases that would otherwise most likely receive a prison term in the order of a minimum of nine months.

This innovative feature reduces the likelihood of the project being just another alternative which does not in fact reduce the incarceration rate. The criterion of dealing only with offences which would result in a minimum nine-month sentence is intended to reduce net widening and will be determined through consultation with the Crown's office. (Net widening occurs when alternatives are used without reducing the amount of incarceration also used. See **Conclusion** for an analysis of how this happens.)

Each plan will include some form of victim input. Post plea mediation agreements or victim impact statements form an important part of this project's reports placed before the sentencing court. Restorative Resolutions believes that crime results in injuries to victims and the community and solutions to crime must deal with the needs of victims and the community.

A community-based plan will include a detailed social and criminal history of the offender and indicate what actions have been taken and will be taken to meet the needs of the client. The plan will propose a specific recommendation to the sentencing judge which will enable the offender to accept responsibility for the offending behaviour in the community. In a few cases, a judge added a custodial sentence, albeit a reduced term.

Restorative Resolutions, a project of the John Howard Society of Manitoba, is responsible for supervising all community-based plans. It seeks to empower the community to become more involved in the criminal justice process, including through a strong volunteer base for the project in the community. Volunteers are involved in outreach, supervising clients and participating on a community resource board. Restorative Resolutions will accept referrals from Community and Youth Corrections, the Crown, the Judiciary, Community Agencies, and Self Referrals. Restorative Resolutions will consider property related offenses and crimes of a personal nature but not sexual assault, family violence, or drug related offences.

An evaluation report has noted that 80 per cent of the Manitoba government corrections' budget is spent on institutions while only 18 per cent supports community programs. The report concludes that at a time of dwindling public resources, any additional funds for community programs will occur only if there is a reallocation of spending away from those institutional budgets.

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"In Manitoba, as in other jurisdictions, it is generally recognized that many people continue to be incarcerated when responsible and creative community-based alternatives can be made available to the Courts."

Restorative Resolutions project summary.

Kwanlin Dun Community Justice - Circle Sentencing Yukon Territory

This story is about a man whose case was referred to a sentencing circle. He received a community sentence rather than three years in prison for several driving and theft offences.

A Story

John Doe, 42, was charged with several driving offences, possession of stolen property and various petty offences. Partly because of his lengthy record and many prior related offences, the Crown office wanted a sentence of three years.

John heard about circle sentencing while he was in jail awaiting trial and thought that this might help him quit drinking.

John made an application to Kwanlin Dun Community Justice Program by answering some questions - what kind of steps he has made to become sober, steps he would like to make to continue his sobriety and healing, and how the community can help him do this. It was hard for him to fill the questionnaire properly because he wasn't quite sure what he needed or wanted.

All he knew was he was tired of living in pain and wanted to start living for himself and his two children. He hardly knew his kids because he was always drinking and never there for them. He had tried to quit drinking several times over the last two years but it never lasted long.

He started drinking at 14 and alcohol started to get out of hand when he was allowed in bars. His drinking and criminal behaviour steadily increased over the years which led to his incarceration in correctional institutions for about 10 years. Drinking and jail were a good way to never have to deal with life's reality and pain. He no longer felt a part of his community and didn't know how others felt about him.

When he told his mom that he planned to apply to go to circle sentencing (which she was already involved in), she was very excited and went to many meetings with him.

At the first meeting, there was discussion about what kind of assistance John needed. He agreed to take residential treatment, try hard to stay sober and keep busy with community work service. It was at this time he realized how many people from his family and the community were willing to support him. He attended meetings quite regularly after this and at these meetings he talked about how and what he was doing and what help he needed in his healing.

Once his criminal charges went to circle he had many people in the community supporting him, including his family and friends. Most of the people in the circle spoke about John and how they knew him, what they knew about him, good and bad. Everyone that spoke brought a new perspective to who John really was and what his family and peers knew John was capable of.

At the end of the circle, with the community behind him, the circle asked the court if it would give John another chance. The circle believed, after they heard John speak of how he so desperately wanted to change, that John could do exactly what he said he would do.

John was given a three-year suspended sentence with a very lengthy probationary period. He also was ordered to do 200 community service hours, take alcohol assessment, counselling and treatment, lifeskills training, upgrade his education and abide by a curfew from 10:00 p.m. to 7:00 a.m.

John has been completely sober for three years. He has been employed with his community in the Justice program as a Justice Community Support Worker. He sits as a member of the Community Justice Committee and is a well respected member of his community.

John says the circle gave him the opportunity to change and to help him understand and live a good healthy lifestyle. What he has learned throughout his life and experience through the circle is what he shares today with people he helps in his community. The volunteer work made him get to know his own people, required him to help these people that in the past he may have indirectly hurt and assist his community as a whole.

The Kwanlin Dun Community Justice pamphlet provides the following further information about the circle sentencing process.

Circle Sentencing - Its Beginnings

In January of 1992, Kwanlin Dun became more involved with community justice issues. Due to a large number of Kwanlin Dun First Nation cases entering the formal justice system, it had become increasingly evident that many Band members were re-committing offences with little or no community support in place for either offenders or victims. In response, the Kwanlin Dun First Nation leadership began a consultation process with justice officials to examine alternatives to the formal justice system. The community felt it would be important to implement alternatives that would focus on healing and wellness, and the motivation of the offender to become a healthy member of the community. These alternatives must deal

with the problems and not just the symptoms, with the desired outcome of a healthier community and a reduction in Band members in trouble with the law.

The first Kwanlin Dun Territorial Circle Court was held in the Kwanlin Dun Village on March 31, 1992. Court proceedings were held in a circle setting (consisting of judge, crown, defence counsel, court worker, probation worker, alcohol and drug worker, crime prevention coordinator, family members, elders, and community members at large). In one year, between March 31, 1992 and March 31, 1993, there were eleven scheduled and four special Kwanlin Dun Circle Courts. The frequency of community based Sentencing Circles has increased to accommodate the court dockets. More recently, to address the amount of time needed to process each case and the growing number of community requests for cases to be heard in the circle, Territorial Court Sentencing Circles are normally scheduled bi-weekly.

Kwanlin Dun Circle Court

Circle proceedings are conducted in the Kwanlin Dun First Nations Potlatch House and all community members are encouraged to attend and participate. Chairs are arranged in a circle, and the judge, removed of formal gown, is seated in the circle along with defence and crown counsel, the offender, the victim, formal and

community-based justice representatives, and community members.

The Keeper of the Circle welcomes participants and explains the purpose and guidelines of the Circle (Keepers of the Circle act as hosts and facilitators of the circle process, appointed by the Community Justice Committee). All participants are introduced and then the charges are read, followed by crown and defence counsel giving opening submissions. The Keeper of the Circle then invites community members to speak. This includes submissions from the victim or someone speaking on behalf of the victim. Elders provide knowledge and support within the circle. Honesty is a very important factor in the Circle. It is essential that the positive and the negative (reality) are discussed so that the needs of the victim and offender can be met and solutions to the underlying conditions of the criminal behaviour are addressed. It is understood that the decisions that are made in the circle will affect the community as a whole.

After everyone has had an opportunity to speak, the keeper of the Circle, Justice of the Peace or the Judge will address the circle to determine if a consensus has been reached about a sentencing plan. Once the circle process is completed, the sentence plan will be imposed. However, if the offender has not followed through on their action plan and/or met with

“To fit the sentence to the circumstances not only of the offence and offender, but also to the needs of the victim and the community, and do so within available time and resources requires significant information and time. The temptation to impose standard sentences must be overcome for the sentencing process to avoid squandering scarce resources, and to be used to its full potential in achieving its objectives.”

**Judge Barry Stuart,
Yukon Territories**

the Justice Steering Committee, the Circle may send the case downtown to the formal justice system for sentencing or the judge may sentence the offender in the Circle, taking their lack of motivation into consideration.

...There is continued contact with the victim (and the justice committee). This may be to advise them of the outcome of court, and/or continued resources. There is ongoing supervision of the offenders to assist them in meeting the conditions of their probation and or to assist them with the continuation of their healing plan. A failure to abide by the sentencing plan may cause a review in the circle, and in some cases may involve a breach and sentencing by the court.

N. B. For emerging cautions concerning this approach, see Section Two.

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Mediation Services Winnipeg, Manitoba

A Story

This case was referred to Mediation Services in Winnipeg, Manitoba by the Public Prosecutions Department and concerns the stabbing of a 17-year-old high school student and subsequent charges including attempted murder and aggravated assault.

The young people involved were at a party. Most of the persons had been drinking heavily. An argument broke out between several people. When the victim left the party, the accused persons followed him. The victim, Stan, was beaten, and then stabbed several times with a knife. Stan, who was very traumatized by the incident, is a quite articulate 17-year-old attending school and working part time.

The accused included the following: Terry, a 14-year-old, charged with attempted murder and possessing a weapon dangerous to the public peace; he is in a dating relationship with the victim's sister. Kelly, a 13-year-old, charged with common assault. Larry, a 14-year-old male, charged with attempted murder; Debbie, a 19-year-old female, charged with attempted murder, aggravated assault, and possessing a weapon dangerous to the public peace. She is the single parent of a two-year-old daughter.

Initially, only Terry's charges were referred by the Crown Attorney. Stan, along with his mother, agreed to meet in a mediation session with Terry. Stan indicated that he had many unanswered questions about what had happened.

Terry and his mother agreed to participate in this meeting. However, Terry arrived alone for the meeting indicating that his mother had decided not to attend.

In this initial meeting, Stan indicated that he wanted all of the persons involved present so that the unclear details could be unravelled. Because everyone had been drinking heavily, many of the details seemed fuzzy.... The need for accountability of the persons responsible for hurting him was very important to him. Terry, while being quite noncommittal about his role, agreed to come to a second meeting.

Getting that second meeting together was a challenge. The Crown Attorney was somewhat reluctant to refer Debbie (the adult) to the program because of the severity of her charge. Because the victim requested a mediation with her, the Crown agreed to the referral, indicating that a stay of proceedings would not be entered.

... Debbie was an extremely shy, withdrawn woman who had very limited skills in expressing herself. At times, it was questionable whether she understood the process.

The other youths agreed to participate in the meeting. Their parents were encouraged to be part of the process; however, they did not attend the meeting.

The Mediation

On the evening of the meeting, the two mediators were wondering if everyone would show up. The lives of these youths were very unstable, with little support from their families. The chairs were arranged in an elongated circle, with the mediators at one end. The three charged youths arrived without their parents; the 19-year-old came with her two-year-old child. The victim also came alone.

Stan began. He related events.... He had been at a party. After some quarrelling, a fight broke out. Everyone started beating up on him. He tried to run away but he was chased down the street and grabbed by several persons. Events after this were rather blurred. He remembered running home and noticing blood running down his shirt. He could not get into his house and he collapsed on the porch. His girlfriend discovered him in the early hours of the morning.... He had lost a considerable amount of blood by this time, and was in critical condition. He had been stabbed four times. He required 16 sutures, as well as a drain tube in his right arm.

Shortly after this incident, his girlfriend left him. He lost his summer job because he was unable to work for several weeks. In addition, he had received threats from the accused's friends. They were blaming him for the court proceedings and were wanting to "get him".

Storytelling for the others was difficult. One major problem was an accurate re-telling. Alcohol had been a major influence in the incident. For some, it was difficult to tell whether it was convenient to "not remember" or whether they genuinely could not relate all of the details because they were intoxicated.

Kelly had a very difficult time speaking. He asked to speak to Stan alone. He expressed extreme regret for his involvement. Because he had been present only for part of the event, he genuinely was unsure as to what had transpired. He indicated that he wanted to do whatever he could to resolve things with Stan.

Larry remembered more of the details. He recalled that Stan had got into an argument with a female at the party, and had been pushing her. Several people had seen this and had wanted to intervene. They began beating him. When Stan left the party, they followed him. They grabbed him as he was jumping over a fence. Terry had a knife and stabbed him. Debbie then took the knife and stabbed him three more times. Larry indicated that he had been an observer but he was willing to take responsibility for his involvement in any way possible.

Terry was very quiet. He basically went along with what the others repeated. He did not verbally express his feelings and did not show remorse for his involvement.

Debbie had an extremely difficult time expressing herself. She met alone with Stan twice during the evening. She cried through most of the meeting, keeping her head down. Her communication was limited. At one point, she said she was very sorry about what had occurred. It was a breakthrough in the meeting with Stan. He accepted her regret, and both felt relieved that they could express these feelings. This was particularly important because Debbie's friends had been very hostile toward Stan and had been harassing him.

The Resolution

It was clear that Terry, Larry, Kelly, and Debbie wanted to resolve this situation with Stan, but really did not know what to do. Stan indicated that he had to pay an ambulance bill, that his clothes had been damaged, and that he had lost wages as a result of this. He felt that they should take responsibility for these costs.

The mediators asked all of the parties to jot down things that they would like to see included in an agreement. From their hesitation, it was clear that some of them likely had difficulty with writing skills. (Two of them printed their names on the agreement form).

Kelly, who had been only minimally involved in the incident, suggested that they all equally share the costs. It was a moving moment. Stan was very accepting of this offer, and everyone agreed. Stan verbalized that he would know that they were sorry for the incident if they followed through on their commitment to reimburse him for his bills. Debbie also gave assurances that there would be no further threats to Stan or his family, and that she would convey this to her friends.

All of the accused had limited financial means. Debbie was on social assistance. All of them completed the payments as agreed, with the exception of Kelly. He was several months late with his payment.

In the follow-up discussions with Stan, it was evident that the mediation had been significant for him. The payments were a symbolic yet tangible sign that the accused persons had taken responsibility for their actions. Stan was receiving counselling through his school because the event had been extremely traumatic for him. Mediation was a part of the healing process for him.

The court was notified about the results of the mediation. When the youths completed their payments, the charges against them were stayed. Debbie pleaded guilty to a lesser charge and received a conditional discharge with two years supervised probation. Her sentence was influenced by her participation in the mediation.

While it was extremely challenging to do the casework on this referral, this mediation has lingered in the minds of the mediators as a particularly significant example of the power of the mediation process in the journey towards accountability and restoration of relationships.

Program Description

Mediation Services works in cooperation with the Crown Attorney's Office to provide victim/offender mediation. A caseworker will contact the persons involved to discuss their concerns and to assess whether or not mediation is appropriate. If persons are willing to meet, a mediation session is arranged for a time convenient for all participants; evening sessions are available. At the meeting, trained volunteer mediators will help the parties communicate with each other. The mediators do not make decisions for the parties, but assist them to work toward a resolution that they feel is fair and that addresses their needs. If an agreement is reached, the terms are written down and signed by everyone. If an agreement is not reached, the case is referred back to court.

Mediation Services will follow up on agreements to monitor their completion. Some agreements include arrangements for counselling, restitution, or community service work. When a mediated

agreement is completed, a recommendation is made that the criminal charges not proceed further in court. In post-plea cases, the mediated agreement is taken into consideration at the time of sentencing.

There are many benefits to mediation. Mediation is a process which allows for direct and personal accountability for actions which have resulted in a criminal charge. The victim has the opportunity to express his/her views directly to the offender. The victim has the opportunity to obtain realistic compensation for losses incurred as a result of the incident. Offenders have the opportunity to learn about the consequences of their actions, to apologize, express regrets, and make amends directly to the victim. Mediation provides the offender with an opportunity to participate in a process through which the stigma of a criminal record can be avoided. Mediation contributes to the peace of the community by assisting persons to reach resolutions that address the cause of the conflict.

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For more information about victim/offender reconciliation or mediation programs in Canada, contact:

The Network: Interaction
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Community Holistic Circle Healing Program - Hollow Water First Nation

This program demonstrates how an entire community chose alternative ways to deal with pervasive physical and sexual abuse in their midst. This man charged with sexual assault would have been facing a jail term otherwise.

A Story

A 62-year-old male is charged with sexual assault on an eleven-year-old female in December, 1988. He has no prior history of criminal activity.

The victim had disclosed in November and has had difficulty dealing with family members since the disclosure was made. The victimizer is viewed by the family as a grandfather figure. As the victimizer was recently widowed, the victim had been helping out with house-cleaning and had on occasion stayed overnight prior to disclosure.

Workers note that the victim was a fairly good student with lots of friends prior to the incident and now she has dropped out of school and is "a loner". She attended Self Awareness Training in February

1990 and decided to repeat the training in March, 1990. She is receiving individual counselling and attends youth and women's counselling group sessions.

The victimizer was born in Hollow Water and has always resided there. He attended school in Hollow Water until grade four and then started working cutting pulp with his father. He also worked fighting fires, trapping, ice fishing and as a janitor until he retired three years ago. He was married for 36 years and was widowed in 1986. He has an adopted son who is now 22 years old. As a result of contact with his worker, he started attending weekly Victimizer Group Therapy sessions and attended a sharing circle session with the Assessment Team.

The purpose of the circle session was to allow Team members the opportunity to hear his account of the incident and to provide information to assist the group in making a full assessment of where the victimizer was in terms of his own healing.

The Team make the following assessment. We believe the victimizer is sincere in his desire to take responsibility for what he has done. However, we do not believe that he is in fact taking full responsibility.

We recognize that he has taken steps toward his healing. He is beginning to understand and accept the wrong that he did. He accepts and believes that this community approach is crucial to his healing.

We believe that the victimizer needs intensive help from the community as well as outside professional resources. He has great difficulty getting in touch with his feelings and he has little appreciation of the issue of victimization and the long term effects.

He has been cooperative and is committed to his own personal healing. We believe that he is at the beginning stages of his own healing. We are convinced that he will come to recognize that his healing is a lifetime process.

As a result of this assessment, the Team recommended to the court that he be placed on probation for the maximum time possible. Conditions of probation included:

- That he comply with Community Holistic Circle Healing requirements, specifically;
 - that he complete the steps of the healing process;
 - that he participate in self-awareness training, individual and family therapy sessions, weekly Victimizers' Circle sessions, sharing circles and workshops on sexual abuse;

- *that he undergo a psychological assessment immediately, and that he undergo a further psychological assessment within two months prior to the expiry of the period of supervised probation;*
- *that he be required to perform a substantial amount of community work, volunteering to Hollow Water Home and Public Works Maintenance Program, Wanipigow School Maintenance Program, and Hollow Water Volunteer Fire Department;*
- *that contact between (victimizer) and (victim) be subject to the control and regulation of the Assessment Team and that he not be allowed on the same premises as the victim;*
- *that he do upgrading and vocational training.*

The victimizer is presently on probation and is respecting the various conditions as required. The victim has recently returned to school and is progressing well.

The Program

Hollow Water is an Ojibway community of 600 people located on Lake Winnipeg, two hundred kilometres north of Winnipeg. Community leaders estimate that 75 per cent of the population are victims of sexual abuse, and 35 per cent are “victimizers”. Manitoba Associate Chief Judge Murray Sinclair has hailed the Hollow Water First Nation as an “outstanding example” of local

people becoming involved in dealing with sexual offenders after that community decided that the criminal justice system was not working.

“They (the community) took it upon themselves to establish a program that brings together the victim, the offender, the community and the justice system in a way that causes us in the justice system to do things differently than we have always done with those kinds of offenders in those kinds of circumstances,” commented Judge Sinclair, an Ojibway who was co-chair of the Manitoba Aboriginal Justice Inquiry.

Sexual offenders who plead guilty are placed on three years probation. Specially trained community members employ an intensive, holistic approach to heal the victimizer, the victim and their families. The result has been a reported dramatic reduction in rates of recidivism.

The process is guided by the Thirteen Steps which represent a capsulation of the process victimizers, victims and their respective families undergo. Briefly, the Thirteen Steps are as follows:

- Step 1: Disclosure
- Step 2: Protecting the Victim/Child
- Step 3: Confronting the Victimizer
- Step 4: Assisting the Spouse

- Step 5: Assisting the Family(ies)/The Community
- Step 6: Meeting of Assessment Team/RCMP/Crown
- Step 7: Victimizer Must Admit and Accept Responsibility
- Step 8: Preparation of the Victimizer
- Step 9: Preparation of the Victim
- Step 10: Preparation of All the Families
- Step 11: The Special Gathering
- Step 12: The Healing Contract Implemented
- Step 13: The Cleansing Ceremony

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Mike from Rosemary, Alberta - A Community Takes On the Justice System

This story concerns a hostage taking at gun point for which the person responsible was facing the prospect of 10 to 12 years in prison.

...Flashback to January 17, 1993. Rosemary farmer Richard Wiens and Peter Plett of nearby Gem woke up to a startling story on the radio detailing a crime that had happened the night before in Brooks. A young man had taken some family members hostage, forced them into his truck, and ended up at the Brooks Hospital carrying an automatic weapon and looking for his wife.

Medical staff had been held hostage until an RCMP officer had managed to talk the perpetrator into giving himself up. Automatic weapons, attempted kidnapping, assault...this wasn't the kind of thing that happened in a sleepy Alberta town.

Then the bomb really dropped: a young man named Michael Gallup was in custody for the crime.

"Michael was on my school bus." says Peter. "I couldn't believe it."

...Mike himself shudders now at the folly of that horrible night. Too many drinks at a bonspiel party, a fight with his wife, pent up anger from an unresolved family issue, more drinks, and the crime spree was on.

...But the story here is not of a good kid gone bad or a young man lost in the prison system. Unfortunately there are enough of those to make Mike's case relatively commonplace.

"The real story here," says Darrel Heidebrecht, director of Mennonite Central Committee (MCC) Alberta's Community Justice Ministries, "is the story of community involvement and a different approach to justice. It's the story of a more biblical, restorative way of doing justice."

...With support from Heidebrecht at MCC, a community meeting was called to learn as much as possible about the crime and the sentencing procedure.

"We felt our role was to ask the court for leniency," says Richard. "It would have been foolish to ask for a dismissal - after all, Mike was guilty. But we wanted the judge to know that we, his community, felt the best possible option for Mike was to come home from jail as soon as possible."

Within a few days, more than 80 persons from all walks of life had signed a letter to the judge describing the community's response.

The meeting also gave Mike's mother, Allison, and his wife, Carla, a chance to speak forthrightly with the community. Rumours had engulfed the already-sensational story like a prairie brush fire and here was the opportunity to tell their story and acknowledge the pain that Mike had caused.

The fact that both the meeting and the letter were initiated locally is a crucial part of the story, according to Heidebrecht. "This wasn't a case of MCC or any other agency parachuting into town to tell people what to do. The criminal justice world doesn't need another program."

"It needs people like Peter and Richard and all the others who signed the letter who are willing to implement a new vision."

..."What we hadn't counted on was such an aggressive prosecutor," adds Peter. "Here was a first offender, a young kid who could have been anyone's son..."

"But there was no room for forgiveness or leniency in the crown prosecutor's vocabulary. He asked for the harshest penalty he could, ostensibly on behalf of the interests of 'the people'.

Yet we were 'the people' trying to say that locking him up for years and years in a federal penitentiary was not the answer."

Mike's own testimony and the unusual support of the community had a strong impact on the judge. Instead of the maximum ten to twelve years he sentenced Mike to five and a half years. His first parole eligibility hearing comes up this July.

"It's critical now, until parole becomes a reality," says Heidebrecht, "that Mike retains connections with his home community. If he doesn't, there's another community waiting to embrace him."

...Even Mike's prison psychiatrist has stated that prison holds no more purpose for him. The punitive "lesson" of incarceration was learned for Mike in the first six or seven weeks. Any longer in prison will just push him further into the criminal culture.

..."There's nothing very complicated or revolutionary here. It's just a matter of living out who we say we are."

(Excerpted from A community takes on the justice system by Doris Daley, Mennonite Reporter, May 16, 1994)

Mike is now on full parole back in his home community where he has since participated in a mediated meeting with one of his victims which proved to be a very significant step in his and the victim's healing.

A Community in Action

The community initiative described in this story was the result of caring individuals who believed that jail was not the best solution to the criminal behaviour that had taken place. They were supported in their vision and goals by Community Justice Initiatives (CJI), a program of Mennonite Central Committee Alberta.

Community Justice Initiatives, operating throughout Alberta from offices in Calgary and Edmonton, offers a number of programs and services including

victim assistance, mediation, prisoner visitation, public education, transportation services for prisoner's families and a community chaplaincy.

Their Victim-Offender Mediation Project diverts offenders with minor property and assault charges away from traditional sentencing into a mediation program. This program brings together the parties involved in an offence and, with the assistance of trained mediators, attempts to bring resolution to the problem through agreements involving apology, restitution or other compensation.

"Mediation humanizes the crime," says Heidebrecht. "It allows people to, in a sense, create their own solutions."

While mediation is often used instead of incarceration, it can also be used in conjunction with or following imprisonment to address the many needs of the victim, the offender, their families and the surrounding community to which a prison sentence does not attend.

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"This wasn't a case of MCC or any other agency parachuting into town to tell people what to do. The criminal justice world doesn't need another program."

"It needs people like Peter and Richard and all the others who signed the letter who are willing to implement a new vision."

**Darrel Heidebrecht,
MCC Alberta
Community Justice
Ministries**

Pro-Services Québec City, Québec

Pro-Services is a Québec City project that has created a community partnership to repair the harm caused by crime and prevent its reoccurrence. It is beginning with youth and property crime, but plans to develop neighbourhood-based councils that can eventually serve to divert many types of crime, deal with them locally and avoid incarceration as much as possible. For example, when a crime happens, Pro-Services provides conflict resolution and reparation to divert the offences from the criminal justice system and to attend to the factors which contributed to the crime. The project brings together young people, the victims of crime, their respective families, neighbours and other affected members of the community to find lasting solutions to the problem of crime. The project came about with a significant funding base from the corporate sector, because the business community has been educated to realize that the systemic impediments of the punitive adversarial criminal justice system do not serve the justice, crime prevention, public relations or economic business interests of the corporate world.

Besides conflict resolution, the program includes:

- a significant sensitization component which helps business people, service providers and community members see the benefits of dealing with minor property crimes in a community-based problem-solving way;
- situational crime prevention in the form of “courtesy” officers who are trained and paid by the corporate employers to “pre-empt” crime by youth in stores and other businesses;
- a proactively developed network of community support for youth involving one adult and one youth volunteer for every 20 homes in a neighbourhood. This network provides information, support and discussion groups to help community members share in the responsibility for crime prevention.

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Atoskata - Victim Compensation Project for Youth Regina, Saskatchewan

" A criminal justice system cannot succeed in isolation. It cannot alone make a society safe. It's incapable of doing that because it deals with effects and not with causes. By the time the justice system becomes engaged, people are in trouble. The harm has been done and charges have been laid.

Some people assume that we can make things better, make the streets safer just by chalking up the penalties, but that is not going to solve the problem alone. Just throwing more kids in jail is not the only answer. That will not improve public safety. Mr. Chairman, let's do the hard work and make the tough choices and get it right, because by itself more law or even better law will never be the complete answer. In the long run the surest protection is in crime prevention."

**Justice Minister
Allan Rock
Nov. 20, 1995**

Atoskata, a Cree phrase meaning "work at it", is the name given to the Victim Compensation Project run out of the Regina Friendship Centre.

A Story

A Regina teen was given 18 months probation instead of the expected prison term for stealing a car and leading police on a high-speed chase. A year earlier, the same youth received 18 months probation and 100 hours of community service for six car thefts. The new offence might have led to a term of custody, especially in a community which has seen a huge increase in auto thefts which have resulted in public pressure to jail teen criminals.

But the judge rejected a custodial sentence, citing the different approach of the Atoskata Program. The program, set up especially to deal with young car thieves, finds businesses that will pay the accused for his community service. The accused can then pay the victim's insurance or other repair costs with the money he earns.

The boy's parents agreed with the sentence, saying their son has turned his life around since his latest arrest. "We want to keep him at home and we agree that he should do some work for the community," said the boy's father.

Program Description

Rising auto thefts in Regina captured the attention of the public and prompted the police and judiciary to respond initially in a punitive manner that they felt would deter further incidents. Closed custody sentences became an increasingly used option for offending youths, with the length of sentence rising by approximately two months in each of the last few years.

Saskatchewan uses the option of custody as a response to youth crime considerably more than the national average or some other countries. Figures from 1979 to 1994 show that the province takes 1,712 youths into custody per every 100,000 compared to a national average of approximately 1,000. In the United States it is 724.

Concerns about the rising use of custody resulted in the Saskatchewan Department of Social Services exploring community alternatives to custody that would respond to public and judicial system concerns. The idea was to develop sentencing options which provide restorative justice programs for youths.

As a result, a number of human service agencies joined together to develop a pilot project where convicted youths could earn money or provide personal services that would compensate victims for some costs they incurred.

The goals of the project were to: provide an opportunity for youth involved in the theft of vehicles to make some suitable compensation, through generating earnings for restitution or through personal service, to victims of their crimes; provide an opportunity for youth to experience mentoring relationships with aboriginal elders as a form of traditional healing and learning relevant to offending behaviour; demonstrate that effective youth justice responses can be delivered through community partnerships.

While the program has social and educational elements, it is primarily a work program for youths who want to work. The designated population is court ordered youths, 12 to 17 years of age, convicted for theft of vehicles. The maximum number of youths receiving direct supervision in the program is twelve.

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Mediation for Reparation in cases of serious crime Leuven, Belgium

A current project in Belgium using mediation between victims and offenders for serious crimes hopes to demonstrate that a restorative or reparative approach is workable within the very core of the criminal justice system. **Mediation for Reparation** deals exclusively with adult offenders and will concentrate on recidivists.

All types of crimes are eligible for mediation although there has been reluctance to accept intra-family violence. A preliminary study of 30 cases actually referred found agreements were reached in half of the 20 cases which are finished. "They represent a certain seriousness of crime but are certainly not the most serious or violent crimes", the report concluded. Mediated cases included many offences where victims were hospitalized or otherwise incapacitated to work, theft and a few cases of rape and sexual violence. The early findings show victims slightly more in favour of mediation than the offender. Generally, the victims do not prefer a prison sentence. Instead, they care very much about stopping the offender from committing further crime.

"Both parties involved in mediation experience a different type of 'justice' than they expected. They feel much more related to this way of intervention and get the feeling that they themselves are creating 'justice' instead of passively undergoing 'justice'. In such an approach, both sides feel more responsible and put aside traditional stereotypes in their way of thinking.... The destruction of 'myths' seems to be one of the most important effects of the mediation process.... the traditional criminal justice process will support the myths about the suspected criminal since the available information is selected only to serve prosecution and sentencing. Mediation, on the contrary, focuses on another type of information in bringing the conflicting parties nearer to an agreement."

Tony Peters and Ivo Aertsen, Mediation for Reparation

The prosecutor must already have decided to prosecute on the basis of the seriousness of the crime and/or the previous criminal record of the suspect. The fact that the case will be heard by a judge has the advantage that there will be the time needed for a process of mediation and for eventually drawing up a written contract between the partners, as well as for its implementation and evaluation.

The action research project is being carried out by the University Victimology Research Team in conjunction with the chief prosecutor's office. Together they select the particular cases for mediation. The prosecutor invites both the offender and the victim to meet the mediator and to collaborate voluntarily to search for a solution to their problem. We quote from the project's preliminary findings:

"One recognizes, more than was expected, the situation of the opposite party. This does not exclude the fact that some victims stick to a rather hard and retributive attitude, until the signing of the contract. The offender shows initially an uninterested, minimizing, hesitating or defensive attitude. The fact that he knows that he will be prosecuted and will have to appear in court increases his suspicion against mediation. The offender, like the victim on the other side, cultivates a lot of stereotypes.

He stresses the provocative attitude of the victim or his higher socio-economic status. The victim is seen as a person who wants to exploit the offender. Offenders try to anticipate the future judicial decision in two ways: on the one hand, some will complain about the fact that they will not get a real chance or opportunity; on the other hand, some do understand that collaboration serves their own interests very much. The fact that the mediator as well as the victim are prepared to listen and to take into account the offender's personal background has a stimulating effect and may result in a process of showing more sincerity and readiness by doing something for his victim."

As part of the project, a local social welfare organization offers offender and victim assistance through separate teams. Its role in the project is of essential importance in cases when one, or possibly both parties, are in need of particular and/or longer lasting assistance. The project has already discovered that this type of mediation is labour-intensive, the process taking between two and three months with many preliminary and separate meetings with the two sides.

The project wants to reshape how society and its formal institutions respond to crime - away from the exclusive bi-polar “state against the delinquent” notion to the triangular structure of offender, victim and community. Mediation is encouraged to overcome “the systematic neglect of restitution within the administration of criminal justice”.

Mediation for Reparation tries to establish as fast as possible a relationship between the offender and the victim. The main goal is to stimulate each of them to take an active part in the search for the development of a solution. The mediator gradually passes the initiative to both parties. Finally, the offender and the victim have to be convinced of the fact that they are the creators of a justice solution.

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Community Response to Crime - A More Creative Use of Probation Minnesota

The Community Response to Crime program got started in response to the concern that traditional probation services were not as effective as desired in reducing the offender’s future criminal behaviour. While the client’s involvement in crime was suppressed while under supervision, it often resumed when the supervision period ended. “The goal of the Community Response to Crime Program was to move offenders from a position of culpability in the community to one where they are gradually welcomed back and rewarded by the community for their positive efforts. By utilizing community resources in a closer and more personal way with offenders, it is hoped that several of the community’s previously held beliefs will be challenged. Eventually, they might see crime and its resolution as a community responsibility as opposed to one wherein other entities, including the state, corrections or the courts are expected to ‘fix it’ for them.”

The program is a model of supervision that augments traditional probation where individuals that represent the community at large are brought together in an intervention process with offenders to hold them accountable for their behaviour. Prior to a plea bargain being finalized, offenders are

GOVERNOR TURNS DOWN MONEY FROM PRISON-ALTERNATIVES GROUP

Arizona Gov. Fife Symington has turned down free money offered by a New York City foundation that advocated alternatives to prison, saying he wants no part of keeping lawbreakers at large.

In the March letter, Symington said he won’t “be involved in efforts to leave greater numbers of... criminals at large in Arizona communities, except to resist strenuously all such efforts.”

The \$485 million Edna McConnell Clark Foundation, a private group named for a late heir to the Avon toiletries fortune, favours options such as home arrest and intensive probation to prison.

The group has given millions of dollars for prison-reform programs in Alabama, Delaware and Pennsylvania.

More than 20 Arizona judges, lawmakers and other law enforcement officials who took part in a two-day retreat in Mesa ending June 9 said they want the governor to reconsider his decision.

“It doesn’t take a rocket scientist to figure out that we need to start doing some different things and expanding our thinking,” said Judge Ronald Reinstein, presiding criminal judge in Maricopa County Superior Court.

screened by a probation officer for participation in the program. Offenders who agree to enter into the program will have a portion of their jail sentence reduced. The program is too new to evaluate but initial reports point to about half of the offenders having the jail portion of their sentence eliminated; some judges are reluctant to do away with the custodial term completely although that is the goal of the project. Within 30 days from sentencing, the offender meets with the panel, which includes representatives from churches, ex-offenders, human services providers, culturally specific interests, private citizens, education officials, law enforcement, business people, victims groups, offender's family members and government officials. Other sessions are held at 60 days, 120 days and one year after sentencing. Offenders then undergo a graduation ceremony and are placed on unsupervised probation an additional two years.

Before the first meeting, panel members and the offender are given training in the area of restorative justice and there is a trained interventionist present to guide the process. The intervention process is used to "overwhelm offenders" with information relative to how their criminal conduct has negatively impacted the community. Prior to this intervention, the offender's direct victim is invited to participate in victim/offender

mediation . What was initially a confrontational situation in the intervention session is turned into one where both the offender and the community unite in trying to work toward a positive resolution. This involves stringent conditions of probation for the offender as well as following the recommendations of the community members at the intervention meeting. The offender reports to the community committee to document efforts to succeed. The intervention process gives community members the opportunity to vent their frustrations about the criminal behaviour and to unite to improve the offender's life and, thereby, their community.

This model is designed to offer incentives to offenders who are satisfactorily progressing in their adjustment to probation, including a reduction in the amount of initial jail time that they would normally have received through a conditional suspension of jail time. If the offender fails to satisfactorily complete the program, a report is forwarded to the Court recommending that probation be revoked and that the conditionally suspended jail sentence be executed.

The good news about this approach is that it is quite similar to the successful "reintegrative shaming model" of "family group conferencing" and "circles" (see Section Two) which holds offenders accountable and then wel-

comes them back to the community, involving the victim and public in the process. It reduces incarceration and educates the community on a number of long-standing issues, beliefs and stereotypes facing corrections.

The bad news is that it does not question the premise of the necessity of a jail term at all for this group of offenders. It could result in net-widening and people ending up in jail for failing the program who would never have been there if it were not for the program.

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Post-Conviction Mediation Program Reduces Sentences, Oklahoma

This program is a combination of mediation and intensive supervision, with the innovative feature that the mediated agreement may lead to a reduction in the initial jail sentence.

A Story

The offender, Philip (not his real name), was convicted of embezzlement. This was his second such conviction. Philip stated that he needed the money to support his growing family and that he never seemed to be able to save any part of his income or to live within his income. He was ordered to pay approximately \$15,000 total in restitution and jail time was suspended. Due to family and work problems plus an unrealistic payment schedule that was ordered by the court, Philip was unable to make his payments and his sentence was revoked. He was sentenced to four years of incarceration and one additional year of probation.

Through mediation while he was in prison, Philip and a representative of the corporate victim agreed on a payment schedule that was sensitive to the victim's needs but also within the offender's ability to pay. In addition, Philip voluntarily agreed to attend Consumer Credit Counselling to learn to manage and budget his money. Moreover, he agreed to do 8 hours a week in community service for six weeks.

Although the victim wished the offender to be released from incarceration as soon as possible, the Department recommended the sentence be modified to five months incarceration and the remaining four years to be under Intensive Supervision. The victim also expressed interest in allowing Philip to work off part of the restitution at the victim's place of business (offender is a carpenter by trade) and this proposal will be evaluated after a year, provided Philip has kept the other provisions of the Agreement.

Program Description

The Oklahoma Department of Corrections' Victim/Offender Mediation Program began in 1984. The first referrals to the program were a result of Oklahoma's Judicial Review statute. This law allows the sentencing judge to modify an offender's sentence within 120 days of the sentencing date if an offender has not been incarcerated within the last ten years.

Mediation hearings are conducted by the Department of Corrections in order to recommend sentence modifications or as part of a case pre-sentence investigation to propose an appropriate sentence.

The Department does not automatically exclude any type of case for mediation. The most important consideration is whether both parties are willing to mediate. Consequently, cases have ranged from property offences to homicide.

The mediation process encourages and facilitates the sharing of the victim's feelings about the criminal incident and its impact while emphasizing offender accountability and responsibility. Mediation agreements generally address: length of incarceration/supervision, community service, rehabilitative programs for either person, and restitution for the victim. For instance, agreements have included terms for restitution, treatment, giving the offender employment, repairs to property, supervised visitations, education, and other terms which the parties believe would meet their needs.

The agreement, including any recommendations for a reduction in the length of incarceration, is considered by the judge in modifying the sentence originally imposed.

The Department of Corrections provides in-depth training to staff and volunteers across the state on conducting victim interviews and holding mediation sessions. Experience has shown that approximately 95% of mediated hearings result in agreements that are satisfactory to the victim. In fact, often both parties emerge from the experience with an improved satisfaction with the criminal justice system. Offenders who have been mediated are reportedly “model” probationers while under supervision. Less than 8% of offenders who have been mediated failed to carry out their mediated agreement or were involved in any new crimes.

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Family Group Conferences - Doing What Prisons Fail to Do

The following account of a remarkable family group conference is included in Section One even though it did not avoid or significantly reduce the use of custody. However, we felt the story merited telling in this section primarily because it illustrates the extraordinary potential of this process for reparation and healing in a community. It is a reminder that even when the court has dealt with a crime, there is great potential for family conferences to address the many unmet needs of victim, offender and the community. This family conference in Philadelphia did just that in dramatic fashion following an incident which involved two 17-year-old Asian youths who had fire bombed a house in which four victims were trapped on the first floor and had to jump out to survive. They had been sentenced to a minimum of two years detention. The following story demonstrates both the potential of the conferences in community and correctional settings as well as the inescapable conclusion that a prison sentence fails to provide satisfying justice.

The Story - New Hope for Fire Bomb Victims

On a recent trip to Philadelphia (USA), Terry O’Connell of

Australia was asked by a psychologist to consider running a family conference for a serious matter which had already been finalized at the court. Terry, with four other Australians involved in training police and teachers in family conferencing (see Section Two), agreed.

“When I understood how serious and complicated the matter was” says O’Connell, “I realized that it presented a great opportunity to demonstrate how powerful the conference process was even with the worst case scenario. Of course I agreed to coordinate the conference”. The incident involved two 17-year-old Asian male offenders who had fire bombed a house, in which four victims were trapped on the first floor, and had to jump out to survive. The house and contents were completely destroyed and one of the victims (the mother) broke her back in the fall. The precipitating event was the allegation that one of the victims had directed some racial slurs at the offenders. The matter was heard at the local county court, where an attempt to have the offenders “certified” (so they would be tried as adults) was not successful. The offenders were sentenced to a minimum of two years detention.

“The hardest challenge I faced” said O’Connell, “was navigating the bureaucratic hurdles. Negotiating with the probation personnel, victim support people, the police, the lawyers was far

harder than managing the victims and offenders. They continually told me about their concern for the victims, but I suspected it was about not wanting to be responsible if something were to go wrong. I was continually told that the victims would not want to be involved. Reason given - too traumatised or it had only been three months since the incident, and they needed more time to recover. Of course, no one was able to tell me what was an appropriate amount of time.”

O’Connell finally got access to the victims and met them in their rented home for about 90 minutes. “I have not experienced a more pitiful sight” recalled O’Connell, “meeting a family that was so highly regarded, which contained two champion basketball players, and the local regional basketball coach, who had completely lost it as a result of the trauma from the crime. Both boys were constantly frightened, had hardly slept since the incident, had completely lost interest in school and basketball. Their mother, who was clad in a large brace, needed a steel walking frame to get around. The father cried constantly and had gone from being a very popular outgoing teacher to a stage “where nothing really mattered any more”. They agreed to participate although they had some reservations.”

After negotiating in the local prison with the two offenders and their families, O'Connell held a family group conference in the county hall (above the police station) on a Sunday afternoon. The conference lasted three hours and involved 30 participants (which comprised victims, offenders, families, friends and neighbours). In describing the conference as the most emotional conference he had co-ordinated, O'Connell said: "Listening to the anguish of the victims for about 90 minutes was extremely difficult for everyone. This had a significant impact on the offenders and others. However, by the end of the conference there was a complete transformation in the victims' emotional states and general outlook. It was an amazing experience to see the two young victims smiling and hugging people, where two hours earlier they virtually could not look at anyone."

The conference was an outstanding success as it gave the victims the opportunity to address some of their emotional needs. The victims felt the conference gave them some hope for the future, something that the court had failed to provide. As for the offenders, it gave them and their families an insight and an opportunity to rebuild some trust between themselves and the broader community.

The conference was observed by a number of mental health professionals. One, a psychiatrist,

approached O'Connell after the conference and reflected on how powerful the process was. "It was his comment" said O'Connell, "that convinced me about the need to provide similar opportunities for all serious criminal matters. He expressed the view that this intervention had the potential to minimize the impact that Post Traumatic Stress Disorder (PTSD) was likely to have on the victims".

(This article first appeared in Real Justice Forum, a family group conferencing newsletter published by Real Justice, Pipersville, Pennsylvania. For contact information, see Section Two on family group conferencing).

Another Conference which repaired harm: A Serious Assault Case

Another example of a post-adjudicatory conference which satisfied many of the unmet needs of everyone affected by a crime followed a serious assault in Pennsylvania. Four youths had beaten a boy, causing severe head trauma with possible permanent damage. They were in a custodial placement of several months but, before they were released, it was recommended they attend a conference to provide healing and closure. The court consented and the conference outcome was dramatic; the offenders realized for the first time the extent of the harm they had done. The conference ended with the victim and his parents forgiving the offenders for what happened.



Circles of Support and Accountability for Released Sex Offenders - One Community's Story

A Story

(as told by Harry Nigh)

This past June, an old friend came out of prison after seven years and he came to live in our town.

A lot of the people in our community wanted him to stay in prison.

When the police released information about his release, our local paper made Sam front page news. (Sam is not his real name). The school board gave copies of the story to every school kid in the region. Our nine-year-old got his picture in school, and recognized my friend and blurted out, "I know him - he was at our place for supper last night."

Somebody leaked to the press the name of the street that Sam lived on, and within hours every street light had a photocopy of his picture taped to it.

The police mounted an expensive 24-hour under-cover surveillance of Sam with two or often three officers in front and back of his residence. Sam has a generous heart and soon after they set up their operation, he went out and knocked on the window of one of their cars, and invited them in to share a fresh pot of coffee. Just like Beverley Hills Cops - they were not amused!

We had decided before he came out to build a small "Circle of Support" for Sam because he did not have family around him. We helped him to find an apartment, and furniture and to make friends.

Should we invite Sam to join our church community? Already, I had been on the front page with Sam, but what about our community?

The church met twice and unani- mously agreed to invite Sam to be part of us, and established some guidelines.

Every one had a chance to speak, and the one voice I remember from a woman struggling on welfare was, "Where would we be if Jesus hadn't accepted us? How can we not wel- come Sam?"

One Sunday night, shortly after Sam arrived, in the face of the media attention and under the gaze of the police, about two dozen people from the community went over to Sam's place and brought food and guitars and gifts and had a welcoming party-

*Just to say, very simply,
your name is not*

***"unwanted, unloved, out- sider"**.*

We want to call you

***"one of us, friend, neigh- bour"**.*

I think it was a turning point in Sam's acceptance, because the police had been holding bi-weekly meetings to find some loophole to return him to an institution, but that simple gesture and the efforts of our small support group seemed to give Sam a second chance.

One Sunday morning after church, the decision of our group came under fire when a drunk neighbour loudly started condemning Sam as he came out of church. He threatened to kill him, told him he was not welcome in the neighbourhood and that if he came back he would take a shotgun and shoot him. Other neighbours came out of the doors to hear this disturbance.

Our little group was shaken. God, what do we do now?

How can anything positive come out of this?

The next morning, our angry neighbour asked to see me. He apologized for what he had said, apologized to our church, and said, "Tell that man he has nothing to fear from me." As we talked, he spoke of his past.

He showed me documents that revealed that he had been the victim of the training school abuse. It was clear that he was afraid and alone, raising two young kids by himself. And when I invited him to come over and join us the next Sunday, he was in church with his two kids. Two weeks later, I watched as John and Sam shook hands and cleared up the disturbance.

Can you imagine what this has done to our church? A young mother came after the service and said, "It blows my mind that that guy was in church this week. I just can't believe it." She wasn't the only one.

This whole experience with all of its fears has become an experience of grace. Sam's coming to us has been a gift in many ways.

I caught a glimpse of the power of this love the night of Sam's party. Sam, in his generosity, invited all the people he knew, even the officers who kept him under surveillance. He was disappointed when they didn't show up. Then at 10:30 p.m, one officer came timidly up the back steps into the kitchen and apologized. "We were afraid that the press might be here..."

I saw that despite the budget and numbers and physical force of our police force the real, liberating power lay within a little community that simply reached out in love.

Program Description

As a result of community initiatives such as this, a proposal for a **Community Re-integration Project** has been developed to reduce the risk of re-offence by individuals convicted of sexual offences and to ease the transition of the ex-offender into the community.

"I saw that despite the budget and numbers and physical force of our police force the real, liberating power lay within a little community that simply reached out in love."

Harry Nigh

The project involves community volunteers who form support groups or “circles of support and accountability” with high profile or potentially high profile sex offenders who are re-entering the community at warrant expiry from the prison system. This relationship includes a commitment on the part of the ex-offender to relate to the circle of support and accept its help and advice, to pursue a pre-determined course of treatment, and to act responsibly in the community. The circle of support will provide intensive support for the ex-offender, mediating between police, media, and the community-at-large to assist a safe, orderly adjustment to everyday life in the community.

This project is sponsored by the Mennonite Central Committee Ontario (MCCO) in cooperation with Toronto Community Chaplaincy.

While not directly reducing the use or length of incarceration, the project hopes to make an impact on recidivism by facilitating the successful reintegration of the ex-offender into the community.

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Section Two: Satisfying Justice

A selection of initiatives that attempt to repair harm from crime and attend to related needs, with some implications for the reduced use or length of custody



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A selection of initiatives that attempt to repair harm from crime and attend to related needs,
with some implications for the reduced use or length of custody

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Introduction

This section highlights four emerging types of initiatives that are particularly effective in their attempts to provide satisfying justice through an opportunity to address the harm done to people by crime. In so doing they are having some impact on reducing the use or length of imprisonment to achieve justice, although not in all cases.

The first **victim and offender mediation** emerged spontaneously in Canada in 1974 as a bold initiative by two individuals to persuade a judge to deal differently with two youths who had vandalized property belonging to 22 victims in Elmira, Ontario. The opportunity for offenders to meet their victims face-to-face has since been developed into a program model that has spread not only across North America but also to Europe, Australia, New Zealand and South Africa. As with all sound approaches that are encouraged to grow by becoming institutionalized into the workings of the overall system, they can start to run on “automatic” and risk reducing their inherent potential for rich creativity in providing justice. There are other risks as well and these are discussed. But, by and large, evaluations have shown that this is a satisfying option that can help reduce victims’ fears and, far

from being “soft on crime”, is experienced as demanding accountability and reparation. There are clear benefits to be derived from this process even when it is not intrinsically linked to diversion from prosecution or imprisonment.

Circle sentencing was also born in Canada, as a result of the efforts of a growing number of judges to counteract the futility of the current sentencing process and to respect in Native communities the traditional aboriginal method of dealing with members of the community who broke the law. It is one of the most promising breakthroughs in our western justice system because it can provide for a community-based, pre-sentence advisory process that presents a healthy opportunity for emotional expression of grieving, anger and support, and has a strong focus on accountability, reparation and restoration of peaceful and just relations in the community. It can also have a wider impact on crime prevention because of the number of people it involves in taking responsibility for solving the problems that surface. It is not without its dangers and limitations, however. The potential abuses from power imbalances in the formal and informal relations between members of the commu-

nity must be watched for all the more carefully in a process that can give the illusion of reassurance that highly democratic principles of participatory decision-making are being respected. Interest is growing in learning from this process what can be adapted for use in urban, non-aboriginal communities. While the goal of circle sentencing is **not** to keep offenders out of jail, that is still often the outcome when the process of sentencing in a way that makes sense is taken seriously by the judge and the community.

Family group conferencing has emerged in the aboriginal cultures of New Zealand and Australia as another credible, reparative process for communities affected by crime. It tends to bring together a more restricted group of community members than do circles, primarily the victim and offender and as many of their family and supporters as possible. It also utilizes the services of relevant professional or community workers. Conferences offer great potential for satisfying justice because they deal with people's unanswered questions, painful emotions, the issue of accountability and the question of restitution or reparation. The process they have relied on heavily has led to a new understanding in criminology of the role that the human emotion of "shame" can have in bringing about changes in behaviour, **but only on the condition that the offender is not made an outcast.**

Family group conferences seek to achieve this by mobilizing informal community mechanisms to express both **disapproval of the conduct of the offender** as well as **gestures of reacceptance into the community of law-abiding citizens**. There is a growing interest in implementing this approach in the U.S. and Canada. It makes eminent sense that reconnecting the offender in a healthy way to family and community is a most effective means to reduce the likelihood of future dangerous behaviour. In New Zealand, it is by law that every case involving youth, except murder and manslaughter, must be referred for a recommendation from this circle-type gathering they call "conferencing", and it is beginning to be requested for adults because judges find it so much more productive to consult the community in this way, and get its real assistance with the issues and problems. While conferences in some jurisdictions can recommend a custodial sentence, in fact they seldom do. Their impact on rates of incarceration should be enhanced as they deal with increasingly serious offences. They are not a panacea but, generally speaking, satisfaction on the part of justice system professionals and the public is much higher compared to their experience of the courts.

Youth justice committees and sentencing panels are also presented in this section of initiatives that attempt to repair harm from crime and attend to related needs, with some implications for the reduced length or use of custody. They involve citizen volunteers or aboriginal elders in determining or recommending dispositions of a case and their decisions often rely on such restorative measures as mediation and victim involvement, restitution and reparation. Some deal as well with the local social conditions contributing to crime. They are operating in both aboriginal and non-aboriginal communities and can take many forms, serving both adults and youth, depending on their mandate.

The above initiatives differ from those selected for presentation in section three in that they feature, by and large, a more community-based and holistic approach to crime, and stronger reparative and restorative elements; but they are not as clearly focused, in the short term, on reducing the use of imprisonment. Over the long term, however, their impact on rates of incarceration may, in fact, prove to be greater.

1. Victim and Offender Mediation - Canada's Gift to the World

Introduction

The first "victim-offender reconciliation" project was set up in the city of Elmira, Ontario near Kitchener in 1974.

Representatives of the Mennonite Church, together with a judge and a probation officer, took the bold initiative to bring about mediation in a case which involved two youths who had vandalized property belonging to 22 victims. The judge acted on a suggestion of a probation officer, ordering the two youths to meet with and arrange to compensate each of the victims. The victims and the community liked the approach. It was a starting point for a growing practice of victim-offender reconciliation programs, first on the North American continent, but later on also in Europe, Australia, New Zealand and South Africa.

Strengths

Victim/offender mediation programs provide a unique opportunity for offenders to meet their victims face-to-face in the presence of a trained mediator. The parties have an opportunity to talk about the crime, to express their feelings and concerns, to get answers to their questions, and to negotiate a resolution. Mediators do not impose settlements. The

process is meant to empower communication between both parties.

In many situations, mediation can be an alternative to the courts and to custody, used as a means of resolving the issues and needs which arise from

International Development of Victim Offender Mediation Programs

COUNTRY	Number of Victim Offender Mediation Programs
Australia	5
Austria	Available in all jurisdictions
Belgium	8
Canada	26
England	20
Finland	130
France	40
Germany	293
New Zealand	Available in all jurisdictions
Norway	54
South Africa	1
Scotland	2
United States	15

Source: The Network Interaction Spring 1996

criminal behaviour. Frequently, it is experienced as more satisfying, more inclusive and more relevant than imprisonment. However, mediation is also used in addition to, during or following incarceration in order to address the needs of those affected by crime which are not addressed by imprisonment. In some situations (such as the victim/offender projects in New Brunswick and British Columbia), the use of mediation is not directly related to the reduction of the use or length of incarceration. In fact there is some concern that the possibility of such reduction may lead to offender involvement for the wrong reasons. Successful and meaningful mediation may indeed result in reduced recidivism on the part of the offender and eliminate harsh demands for punitive sanctions on the part of the victim; however, it is important to note that those often are consequences of mediation rather than the goals for some programs.

As an alternative, mediation exists for adults primarily at the point of post-conviction sentencing while for youths it is more often available instead of going to court.

Mediation has the potential to help reshape how society and its formal institutions respond to crime, shifting from a traditional concept of the “crown vs. the accused” to take in the victim, offender and the community.

Participants often view mediation as a positive experience, realizing it has a strong effect in humanizing the justice system. Many victims have acknowledged that their sense of vulnerability and anxiety can be reduced following a face-to-face mediation. Significantly, the victim and the offender have the opportunity to be creators of justice rather than its passive recipients.

Cautions

Nevertheless, there are many practical concerns about mediation. Its strongest advocates worry that mediation will be promoted more for reasons of expediency and cost than for creating a higher quality of justice. As victim-offender mediation expands and courts the risk of becoming more institutionalized, there is the danger that more and more it will accommodate the “dominant system of retributive justice, rather than influence the present system to alter its model to incorporate a more restorative vision of justice upon which victim-offender mediation is based.” (Umbreit, Coates, Picard)

A major concern is the issue of choice and avoiding any element of re-victimization of victims who should be allowed various options to regain a sense of power and control in their lives. This is true at all ages but has been a particular issue for mediation programs involving young offenders; there have been exam-

While VORP (Victim Offender Reconciliation Program) can serve as a partial or total substitute for incarceration for many offenders, it is not the solution to jail and prison overcrowding. At best, VORP can strengthen broader public policy efforts in limiting incarceration.

Crime and Reconciliation, Mark Umbreit

ples where a youth's due process rights have been ignored.

Although the practice of mediation has grown substantially these past 20 years, its impact on the justice system continues to be marginal in many jurisdictions with too many programs receiving few referrals. Umbreit and others argue for a pro-active and assertive referral process to overcome this obstacle.

The following examples demonstrate how mediation is being used in a variety of ways in an attempt to achieve more satisfying justice.

Comparison of English, Canadian and U.S. Studies of Victims and Offenders Participating in Mediation

	Combined English Sites (2)	Combined Canadian Sites (4)	Combined U.S. Sites (4)
Victim satisfaction with criminal justice system response to their case: referral to mediation	62%	78%	79%
Offender satisfaction with criminal justice system response to their case: referral to mediation	79%	74%	87%
Victim satisfaction with mediation outcome	84%	89%	90%
Offender satisfaction with mediation outcome	100%	91%	91%
Victim fear of re-victimization by same offender, following mediation	16% (50% less than victims who were not in mediation)	11% (64% less than victims who were not in mediation)	10% (56% less than prior to mediation for same victims)
Victim perceptions of fairness in criminal justice system response to their case: referral to mediation	59%	80%	83%
Offender perceptions of fairness of criminal justice system response to their case: referral to mediation	89%	80%	89%

Source: Interaction Spring 1996 (The Network Interaction for Conflict Resolution)

There are a number of similar mediation programs in the country bringing together victim and offender. To give the reader a flavour of how mediation works, we feature first a story based on a case sent to us by an Ottawa dispute resolution centre. We follow up on that story with a brief description of mediation programs in Ottawa, Moncton and Edmonton respectively.

A Post-Charge Mediation Model, Canada

A Story

This story is about a 49-year-old man named Arthur who was facing numerous break and enter charges and already had served four and a half years in prison over the past eight years because of a lengthy criminal record, comprised of numerous charges of Possession of Narcotics, Trafficking and Theft. After being charged with the current offences, Arthur confessed to at least 75 other Break and Enters which had occurred over a four-month period in the same region. The Crown wanted a nine to twelve-month prison sentence if the accused pleaded guilty.

The victims of this particular Break and Enter, homeowners Chris and Debbie, had arrived home to find that the exterior lights had been twisted to darken the front of the house and their front door had been forced open. Police were dispatched to the area along with a Police Services dog. The track of the suspects was traced

to a nearby residence where a smashed rear door was located and Arthur was found inside. He was arrested in possession of some of the property stolen from Chris and Debbie; he appeared to be under the influence of non-medication drugs. A second suspect, presumably in possession of the remaining \$1,800 of goods taken from Chris and Debbie, was never located. Arthur was treated in hospital for dog bites and held for a bail hearing.

*By the time Arthur's defence lawyer met with the Assistant Crown, Arthur had taken several initiatives to get help with his alcohol and drug problem and to turn his life around. He was being monitored medically and was doing well in a course he was taking in "Management of Non-Profit Organizations". When the defence lawyer requested that a presentence report be prepared, it occurred to the Assistant Crown that this was a case that might be appropriate for mediation. He asked for this possibility to be explored by the **Criminal Court Pre-Trial Mediation Program** operated by the **Dispute Resolution Centre for Ottawa-Carleton**, "based on the accused's attempts at rehabilitation".*

Chris was very open to trying out the mediation process because he had been "pre-sensitized" by his own life history; he had had a serious drinking problem and had even lived for a period on the streets before overcoming his addiction and becoming a successful businessman. His wife Debbie, however, had been too traumatized by the offence to take part; one of the items that had not been

recovered was a pendant that held deep-seated emotional value for her because it had been given to her in honour of her granddaughter (it said “#1 Grandmother”); the little granddaughter had since died, and that death had also stirred up painful memories of a child she herself had lost years ago.

During the mediation, Chris was very forceful in confronting Arthur on his sincerity about wanting to turn his life around; he scrutinized him for any sign that this may just be another “con” job. On the other hand, he also served as an inspiration to Arthur that turning one’s life around is possible. Chris was also very powerful in conveying to Arthur that his offence had done irreparably more harm to Debbie than Arthur had ever considered. For Arthur, it was clearly much harder to face the complainant in mediation than to simply “take his knocks” from the criminal justice system. But he had decided to do it as part of the steps he was taking to genuinely turn around his life.

Mediation Agreement (between Chris and Arthur)

1. Arthur and Chris were glad to have had the opportunity to meet in mediation and mutually agreed that the mediation was a positive step in the recovery process.
2. Having had this opportunity, Chris advised Arthur that he no longer has feelings of bitterness or animosity towards him.
3. Arthur advised Chris that he has feelings of shame, guilt, and remorse for any upset caused by the incident. Chris accepted Arthur’s apology as sincere.
4. Both parties agreed that they share similar backgrounds.
5. Chris stated that he is glad Arthur is in recovery and expressed that if Arthur continues in recovery it will benefit not only himself but also others.
6. Both Chris and Arthur agree that restitution would serve no purpose as items of sentimental value can never be replaced.
7. Chris agrees to pass Arthur’s apologies on to his wife for the loss of the irreplaceable items of sentimental value.
8. Arthur and Chris agreed that when they attend the Christmas and New Year’s 24-hour meetings of AA, they will meet as friends. Further, should they run into each other in the future, their greeting will include a handshake.
9. Chris wished Arthur luck and success in the future. Further, he wished to advise the Crown Attorney that he hoped this agreement would be taken into consideration when a determination is made on disposition of all charges against Arthur.

Disposition

The Crown noted in the file that “mediation was a great success”. Crown’s position on sentence moved from asking initially for a prison sentence of up to one year to requesting a suspended sentence, two years on probation, conditions to refrain from drugs and alcohol. That is the sentence that was imposed.

Program Descriptions

(i) Dispute Resolution Centre for Ottawa-Carleton

September 1989 marked the start of the **Dispute Resolution Centre for Ottawa-Carleton’s** involvement in an adult post-charge, pre-trial Mediation program, among the first of its kind in Ontario. In 1993, the centre initiated the same type of mediation program for youth not eligible for diversion under the alternative measures option.

Mediation is a confidential process. The Dispute Resolution Centre has an undertaking from the Crown Attorney that they will not be forced to give any information about matters covered in the course of a mediation. Generally, the criteria considered in assessing suitability of mediation in criminal cases includes: age differential between the accused and complainant if the latter is under the age of 18; the nature of the crime - the centre

will not mediate breaches, offences of a sexual nature or if there is a previous similar charge and/or conviction; the degree of fear of the victim in relation to the accused, excessive violence and/or serious injuries in the crime, or use of guns; diagnosed psychiatric impairment; and cases related to an “abusive” spousal relationship.

Contact:

Dispute Resolution Centre
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(ii) The Edmonton Victim-Offender Mediation Project

The Edmonton Victim Offender Mediation Project is a one-year pilot project, currently being evaluated, that tried to demonstrate the viability of using mediation to resolve matters in selected cases involving adults facing criminal charges. The project received referrals from the police and the Crown on both a pre-charge and post-charge basis for minor offences, i.e. theft under, possession of stolen property, mischief or minor assault. An interim report on the project noted that approximately 40 to 50 per cent of referrals result in actual mediation as it depends on Crown approval and the voluntary participation of both parties.

“Victim offender mediation teaches kids that ‘what I did affected real people’... paying restitution as a consequence for their behaviour is part of growing up.”

Oakland judge

However, at that time, over 20 mediations resulted in an agreement. Victim-offender mediation programs typically have a resolution rate of between 85 and 95 per cent.

Jeff Sermet, a third-year law student involved in the project, says that the courts are not designed to address the specific circumstances of events that lead to criminal charges. **“They’re punitive and designed to sentence, not to get to the root causes of crimes. As criminal lawyers, we’re going to need to put resolving crimes at the forefront rather than looking for a band-aid solution.”**

The mediation project was privately sponsored by the Elizabeth Fry, John Howard Society and community partners.

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***(iii) Pre-Sentencing
Mediation Pilot Project -
MOVE, Moncton, New
Brunswick***

In 1993, MOVE Inc. operated a Pre-sentencing Court Mediation pilot project in conjunction with the New Brunswick Department

of Justice. MOVE offered mediation services for 30 cases selected by the Moncton courts. By utilizing a process of dialogue, understanding and interaction between victims and offenders, mutually acceptable restitution agreements were reached in all of the 25 cases that came to full mediation. Judges in seven of those 25 cases stated explicitly that jail would have been “appropriate” had the offender not participated in mediation.

The pilot was well received by the Justice Department who recognized the potential for diverting a number of cases from the adversarial process presently used to one in which mediation is used as a tool to bring resolution to crime. They believed that the project was successful in meeting its objectives which were to: affect reconciliation and understanding between victims and offenders; facilitate the reaching of an agreement between the victims and offenders regarding reparation; involve community people in work with problems that normally lead to conflict with the criminal justice system; and identify crime that can be successfully dealt with in the community.

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Genesee County Victim-Offender Program Genesee, New York

A Story

This story concerns the surviving family of a man who was killed by a drunk driver who had been sentenced to six months in jail and five years probation.

The story of Connie Whittier...speaks eloquently to the impact of Genesee County's Community Service/Victim's Rights services and its victim/offender reconciliation program.

...David Whittier was an Orleans County deputy sheriff who was pinned by a drunk driver between his patrol car and an abandoned vehicle... He died nine months later, without having the chance to meet the driver, John, who was sentenced to serve six months in jail and five years' probation. His wife had the chance through an Orleans County branch of Genesee County's victim/offender reconciliation program.

"After David died, I still didn't know what this man looked like," Mrs. Whittier told Texas officials, in the area to get ideas for setting up a similar program in their state. "I didn't know if he was standing in line behind me in the grocery store. I didn't know if he was the man I said 'hello' to on the street."

David Whittier had wanted to tell John that he was forgiven, and asked his wife to do that for him. But she didn't feel she could do that. She wanted to tell the drunk driver how she hated him, how he had ruined her life.

Mrs. Whittier and her children met with John for two hours in 1990, without lawyers, police or any other members of the criminal justice system present. There she was able to express all the pain and anger she felt. John had to sit and listen. In the end, Mrs. Whittier says she left still angry, but in a different way.

"I'm angry at him for what he did... that he took my husband's life. But I know now, after meeting with him, that John is always going to live with that. That he killed another man."

John had to face his responsibility for that pain and anger, as he never had to in court.

That is healing.

Our justice system attempts to describe human pain in terms of prison time. How long, and how severely, do you punish someone who has inflicted pain on someone else? The only way civilized society can deal with wrongdoing is to objectify it, to separate emotion from reason. Otherwise, we'd all be at the mercy of those who wanted revenge for real or imagined hurts. But when pain is objectified, the victim is dehumanized. The victim/offender reconciliation program heals people...

(Excerpted from the editorial Recognizing the Pain, The Daily News, January 10, 1994)

Program Description

What is distinctive about the Genesee County program is that it usually brings together victims and offenders very close to the crime, within hours of the crime taking place, and it gives priority to providing care to victims dealing with trauma. Volunteers and staff work to do victim assistance that is very intensive - right down to the crime scene cleanup. Mediators create comprehensive victim impact statements, and then bring everyone involved, including the district attorney, together. The mediators begin putting together a sentencing package with input from the victim, the offender and the community.

Genesee County has a total of 42 jail cells while a neighbouring county built and quickly filled some 300 cells, following a more conventional crime and punishment route.

Citizens feel that Genesee County doesn't need 300 cells because they have a community that feels safer than the one beside it, because the community is tremendously involved at virtually every level. The community placements for offenders are very visible. There's tremendous accountability to the community.

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**Victim-Offender
Mediation Service for
violent and non-violent
crimes**
Langley, British Columbia
and Moncton,
New Brunswick

Program Description

The program described here is the Victim Offender Mediation Program run by the Fraser Region Community Justice Initiatives Association; it is similar to the victim/offender mediation service for serious violent and non-violent crimes operated by MOVE in New Brunswick. Because of the serious nature of the crimes, this program is not a diversion from the traditional criminal justice system including imprisonment. Its purpose is to address the deep and varied needs that arise when a crime is committed and which are not addressed by the traditional system. (See story illustrating these programs in the section, **What Do We Mean by Satisfying Justice?**)

The Victim Offender Mediation Program (VOMP) is an innovative program designed to meet the need for healing and closure for people involved in, or affected by, the most serious crimes in the Canadian Criminal Code.

The program has worked successfully with victims and offenders of crimes as serious as serial rape, aggravated assault, armed robbery, and with the families of the victims in criminal negligence causing death, manslaughter, and murder cases.

The purpose of the program is to assist people by:

- addressing questions and concerns regarding the offender's eventual release into the community;
- empowering participants to address issues and concerns surrounding the crime and its consequences;
- providing the parties with a process which can lead to new insight and understanding thereby reducing levels of fear and anxiety; and,
- providing sensitive staff who are committed to being agents of healing and restoration for those who suffer crime's effects.

Victims and offenders participating in VOMP report that their needs and concerns have been addressed through this program

in ways that do justice and produce closure beyond what the Criminal Justice System has been able to do. In describing their experience of the program, healing is the word participants choose time and again.

The offenders' involvement in the Victim Offender Mediation Program is important because: offenders are the only ones who have answers to many of the victim's questions; only offenders can take responsibility for their crime in a way that is meaningful to the victims; offenders need to face the reality that their crimes affected people, not just the "state", and that the harm done continues; in cases where offenders will be back on the streets, it is critical that they have become aware of the victim's pain. Many offenders report that awareness happens most powerfully when they hear of the harm from the ones they have victimized.

Facilitating contact between victims and offenders in serious and violent crimes is new, and there are a number of important questions and issues that still need to be worked through. However, such initiatives push the principles of restorative justice into the arena of our most serious crimes and hold out the promise of more meaningful responses to crime, with more implications for community involvement and incarceration

rates than are currently offered
by the criminal justice system.

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2. Circle Sentencing

Introduction

Circle sentencing entered our legal jargon in 1992 when Judge Barry Stuart of the Yukon Territories delivered his decision in the case of Philip Moses. Stuart relied on a traditional aboriginal method of dealing with members of the community who broke the law. Still in its infancy in the western justice system, circle sentencing usually provides for a community-based, pre-sentence advisory process with a strong reparative and restorative focus.

The goal of circle sentencing is **not** necessarily to keep offenders out of jail, yet that is still an outcome of many circles, especially for property crimes and even some more serious cases. A serious, non-custodial community sentence replaces a jail term.

There are variations of circle sentencing operating in different parts of Canada, including sentence advisory committees, elders' or community sentencing panels and community mediation committees. For example, in Cumberland House, Saskatchewan, there are pre-charge sentencing circles; the RCMP refers about six cases per month without having to go through court.

Recommendations from those circles are then passed on to the court.

In post-trial circles, once there has been a finding or admission of guilt, community members sit in a circle with the judge, prosecutor, defence counsel, police and other service providers to discuss sentencing options and plans to reintegrate the offender back into the community. Community members usually include the accused, victim, their families, elders and other interested citizens. There is little formal structure or script for a circle, their use and arrangement varying from community to community, judge to judge. Generally, everyone is welcome, a prayer is offered, participants introduce themselves, the facts of the case are presented and crown and defence counsel provide opening remarks. Many circles last three to four hours as everyone is then given the opportunity to speak, the ultimate goal being to come to a consensus or resolution.

So far, circles have been used largely in aboriginal communities and with adults more than young offenders. As our stories in this section will illustrate, they can deal with even quite serious criminal offences such as manslaughter or armed robbery where a jail

“Clearly there’s nothing to lose by trying it. The system has not worked up to now. It hasn’t resolved the issues and reintegrated people into the community. Traditionally, if somebody is charged with assault, the barrier between the victim and the accused will never heal within the traditional court process because there’s no mechanism for that to happen. But if you involve the community, you open up an opportunity for something very positive to happen. You open up the possibility of forgiveness and reconciliation so people can get on with their lives. In small communities this is absolutely critical.”

**Judge Bria Hucaluk
Saskatchewan**

term may or may not be imposed; however, the community has the opportunity to address social problems and other harm related to the crime. Circles are also being adapted and tried in urban and non-native settings.

The objectives of sentencing circles include restitution to the victim, reparation to the community, responsibility being accepted by the offender, reconciliation between the victim, offender and community members wherever possible, reintegration of the offender into the community and prevention of recidivism.

Different judges have listed criteria for determining if a case should go to a sentencing circle. Common on most lists are:

- the initiative for alternative sentencing should come from within the community, although some circles are initiated by the judge or at the request of the offender or counsel;
- the offender must agree to the circle, take responsibility for the offence and desire rehabilitation;
- the community must be prepared to assist and support the offender during and after the sentence;
- there needs to be elders or non-political community leaders willing to participate;

- the victim agrees to participate without coercion (in cases of physical or sexual assault, including battered spouses, there should be counselling provided and the victim should be accompanied by a support team in the circle);
- the judge involved in an alternative sentencing case cannot abandon basic judicial principles.

If the conditions of the circle plan are not followed, the sentence can be referred back to the judge for alteration.

Strengths

In the opinion of Judge Bria Hucaluk of Saskatchewan, the traditional legal system has not provided satisfying justice because recidivism rates are high and there is no method to tackle the root causes of crime.

Circle sentencing offers a way to secure community commitment to help the offender and victim; for example, there is more than a probation officer checking up on the offender to ensure he abides by the circle plan. Untapped community resources emerge in a circle to assist justice professionals. Communities and individual families are often strengthened in being able to talk about and deal with their problems. Circles have contributed to community health, healing and harmony.

Offenders are confronted with the consequences of their crimes and become more aware of the suffering they inflicted and the subsequent disapproval of family, friends and community. Cal Albright of the Federation of Saskatchewan Indians calls this the “good pain” associated with healing circles, contrasting it to the courts’ “bad pain” in stigmatizing the accused which only reinforces destructive feelings.

There is the perception that some will ask for a circle in the belief that they will get off easy. The circle process should be able to unmask that insincerity.

Some participants indicate that they can be themselves, especially in freely expressing painful emotions; they appreciate a circle’s informal setting where there is less legal language and the chance to address one another by first names. As one judge noted, “two pictures of the offender often emerge. We see the bad guy but we see the guy is also more than just his crime. The circle builds on the strengths of the offender and the victim.”

Cautions

There are several challenges facing circle sentencing, paramount among them ensuring a safe and equal place for victims, as well as determining which cases are appropriate to be referred and what is the identifiable community for the crime.

There have been isolated examples of sexual assault cases done in circles in small communities which ignored prevailing male dominant influences or failed to assure support for victims.

There is worry that circles which are dominated by criminal justice or other professionals will undermine their key benefit of community participation. There is an ongoing challenge to have the circles genuinely community based, reducing the number of professionals and their role.

Sentencing plans can ignore power imbalances and be undermined by poor infrastructure or too few resources in the community.

Pioneers of circles have also warned other communities not to replicate what the north and native communities are doing but to adapt the justice approach to fit their own local reality. On the other hand, the philosophy and spirituality of circles are integral to their success.

The evolution of circle sentencing has been intertwined with matters related to Native self-government and, as well, has raised issues touching on the question of judicial independence. This must be carefully considered in any adaptation of circles in any other setting.

Conclusion

It is premature to draw any firm conclusions about the impact of circle sentencing. Certainly, in its evolution, there will be mistakes, bad circle law will emerge as surely as there is bad court law. Some lawyers will be frustrated, too, by an absence of any concise set of rules and guidelines governing their application. They are no panacea for crime but, given the many benefits reported by communities, it may be wise to recall the words of Judge Barry Stuart. He advises people to compare the results from sentencing circles to the results in existing courts, not to perfection. Circles will require community consultation, proper education and training, participation of all members of the community and close evaluation. For the moment, the healing and empowerment flowing from the circles seem to outweigh other growing pains.

Sentencing Circles Cumberland House, Saskatchewan

The first sentencing circle story is actually located in Section One, featuring the Kwanlin Dun Community Justice project. Here, Don McKay, community co-ordinator at Cumberland House, describes how the circle justice process matured in his community over time.

“... first few sentencing circles started off tentatively because everyone involved was still intimidated by the process. It was like court all over again. The judge was there, lawyers, policemen in uniform. It started off really slowly. Everyone was so used to the court system as it was then, when the judge and lawyers would fly in, hold court and fly out again once or twice a month. Neither victim nor offender would speak up because they were intimidated. In court the offender would just want to get it over with so he would plead guilty. It was only after the trial was over and the judge had sentenced him that he started asking questions. After a foundation of trust and credibility had been laid down for the sentencing circles in Cumberland House, however, the people involved began opening up. They were less intimidated. We were able to communicate in our own language and because everyone knew family histories of the offender and victim, things were placed in context. Sometimes there was no sentence imposed on the offender because the reconciliation and resti-

tution took place in the circle. Also, alcohol, drug and other counsellors are included in the circle so if the offender has to take treatment, everyone knows. If young offenders are involved, we always include the parents in the circle.”

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Urban Circles - Armed Robbery in Saskatoon

The following story highlights the experience of a victim who was choked during an armed robbery. The suspect was facing the prospect of a nine to twelve-year prison term. This sentencing circle was held in a city and illustrates the sometimes conflicting expectations of sentencing.

A Story

This past April, Dee-Anna Bryson participated in a unique and experimental judicial process in Saskatoon — the Sentencing Circle. For the first time in Canada this procedure was pioneered in an urban setting.

Almost one year ago Ivan Morin and Brian Janzen robbed a gas station of \$131. and assaulted two attendants on duty. Because Dee-Anna called 911 during the robbery, the offenders were quickly apprehended and charged with “robbery with violence”. Janzen pleaded guilty and received a three-year sentence. Ivan Morin had spent 18 of his 34 years in prison, including an earlier nine-year armed robbery conviction. The crown wanted a sentence in the range of nine to twelve years. Morin initially pleaded not guilty, but later changed his plea and, because he is Métis, requested a circle. Justice J.D. Milliken agreed, and on April 15 the innovative process of a Sentencing Circle took place. Following a full day of careful consideration from many perspectives, Justice Milliken indicated that he would follow the recommendations of the Circle if he considered them to be reasonable.

....Sentencing is not an end in itself, but a means to an end — namely restoring harmony within the individual and within the community; consequently, all those affected or involved in some capacity with the case are included in the Circle. Since Dee-Anna was a victim of the crime — Ivan Morin had choked her — she and her mother agreed to participate in the Circle. Justice Milliken mediated the process....

The Circle process involves looking at the accused and assessing whether he or she is a good prospect for reha-

bilitation. It also includes an assessment of the offender's community and family context to determine if they wish to accept the responsibility of assisting in the offender's rehabilitation. Finally, through a consensual process, the group determines a suitable sentence.

Justice Milliken began by requesting that all be open and honest, and behave with respect towards each other throughout the process. The configuration of the circle is appropriate for it denotes the equality of all; it is a symbol of harmony and the goal for all present is the same. To begin, the prosecutor outlined the facts of the case. Following this, the defence attorney told of Ivan's life as a victim himself. The next person to be heard was Ivan ... He apologized to Dee-Anna, talked about his life and his desire to turn things around. The four representatives of the Métis community and the Métis Elder described the hardships faced by Métis children and adults in our society that stem from a very real racism. They also indicated their willingness to support Ivan in his reformation. They felt that incarceration would not help him. The Métis Elder was willing to give him a job for he had known Ivan through his rough times, but was convinced that he was a decent fellow and that alcohol caused him and others a lot of grief. Many in the Circle felt to some extent that Ivan should get a jail term, particularly officials of the justice system. The Métis officer challenged Ivan as to what he intended to do about his own rehabilitation. The gas station owner felt

that Ivan had done wrong and should be incarcerated.

For Dee-Anna, the process of that day was intense and complex. Many layers of emotion and point of view required a draining concentration. She felt no anger and sympathized with the difficulty in the lives of Métis. With regard to Ivan, Dee-Anna indicated that he was intelligent, that he had worked as a newspaper reporter. She also indicated that he appeared remorseful. She perceived that he resented authority and feared a white court. It was very apparent that he had a very serious problem with alcohol; when he was attending AA and not drinking, he had been successful, productive and happy. She felt that he was evading action and the issue of his crime. For his rehabilitation to work, Dee-Anna felt that it was marvellous that his community was committed to supporting him, but that he himself must make the commitment to reform. She was frustrated for a time because the Métis representatives offered no alternative suggestions if he didn't go to jail. She also recognized the risk that faced the Métis community. The success of this initial experiment with a Sentencing Circle will be the measure for its reputation and future use. Dee-Anna herself did not participate in the sentencing aspect of the Circle. Dee-Anna's mother was able to express her anger at Ivan Morin for the injury inflicted on her daughter. Dee-Anna suggested that the process was probably therapeutic for her mother.

For Dee-Anna the process was wide-open. Individuals could express themselves freely and emotionally. Some challenged the offender, and the offender had to face his victims and the consequences of his action. It worked, and from Dee-Anna's perspective it would be desirable to use it again in similar circumstances, although she felt that some crimes would be too overwhelming for Sentencing Circles.

The process was long and intense, requiring careful listening, but through a process of distillation, consensus was achieved. The essentially wise element of trying to assure rehabilitation of the offender was critical; such a practical goal holds the promise that reformed offenders will not become repeat offenders. When asked if she was confident in the rehabilitation of Ivan Morin, Dee-Ann indicated that she could not "see into his heart". Uncertain as to whether he was motivated by a true desire to rehabilitate himself, she said she couldn't be sure, but that she fervently hopes that he will be successful in turning his life around.

(excerpted from STM Newsletter, St. Thomas More College & Newman Alumni)

The Rest of the Story: Sentence and an Appeal

The sentencing circle recommended Morin serve an 18-month jail term; should he be released early, he would be subject to electronic monitoring or house arrest for the balance of time to be served. As

well, he would enter a drug and alcohol rehabilitation program after his release from prison, be on probation for one year and perform 140 hours of community work that would include 100 hours at the Métis Community Centre and 40 hours for the owner of the gas station. On June 15, Justice Milliken agreed with all the recommendations with the exception that he extended Morin's probation to 18 months.

On a Crown appeal, the Saskatchewan Court of Appeal added 15 months to Morin's sentence. The defence has now appealed the case to the Supreme Court of Canada.

Defence lawyer Kearney Healy described the circle as "infinitely superior" to anything he had experienced in 15 years of legal work. At first, the circle was "polarized" between those who did and did not want jail for Morin. "But it was a good circle in the process that took over," he said. "In the end, it still came down to the traditional idea that a price had to be paid for the crime - this was articulated by the police. There were many community supporters who did not want jail."

Healey noted that a successful circle depends on correctly identifying the proper community of the offender and the crime. In Morin's case, the community could be one of many - his Métis

community, the geographical area where he lived, those who have some moral persuasion or caring relationship to him or those affected by the crime.

Another Urban Circle

Another urban circle Healey participated in involved a man with no previous record who was charged with armed robbery. The Crown asked for a three-year penitentiary term. The circle agreed to a three-year suspended sentence with six months electronic monitoring and other conditions. At the outset, the judge in this case wanted assurances that the victim would be treated properly in the circle and that the offender was held accountable, was remorseful and had community support.

“I could sentence somebody in three minutes, so if I didn’t think the sentencing circles were a benefit to the community and to the process of justice, I wouldn’t spend four hours each time participating in them,”

**Judge Bria Hucaluk
Saskatchewan**

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Serving on Sentencing Circle Attitude-changing Experience

by Kenneth Nosklye

Last week I was involved in one of the most incredible experiences of my life. I was asked to sentence a man who had committed an armed robbery.

There were more than 30 people in this sentencing circle. Police, family, university professors, aboriginal elders and even a captain from the armed forces. Of course, there were also the accused, the victim, the judge, lawyer, representatives from probation and the Crown prosecutor.

The man is a 27-year-old aboriginal man, married with one child. He has never been in trouble before. He is a graduate of the University of Saskatchewan. He is a man who had done thousands of hours of community work, all as a volunteer. He comes from a very loving and stable family. So, what happened?

One year ago this month, the man became addicted to video lottery terminals (VLT). He spent all the money his family had on VLTs, he even spent the family's Christmas money. In desperation, he decided he would rob a business. He had a knife in his hand, with his face covered, when he walked into a Saskatoon gas station. He demanded money, he got \$68.00 He tried to make a clean get-away but was spotted by a man as he ran out of the

gas station and towards his car. The man took down the license plate number. It didn't take long before the police knocked on his door. He immediately confessed and wanted to plead guilty to all charges. His lawyer suggested a sentencing circle and the Crown agreed.

The Crown at the sentencing circle said: "If there was ever a need for a sentencing circle, it is this case." We heard from the Crown, who wanted to send the man to prison. We heard from the victim, who supported the process of sentencing circle. We heard from the man's family, who gave a powerful presentation, asking us not to send him to prison. We heard from the lawyer. We heard from the accused and we heard from every single person in the circle.

Finally the big moment came. The judge would weigh all the facts, take into consideration all the presentations and pass a sentence. The man was sentenced to a three-year suspended sentence, including having to wear a monitor for six months. There was also a number of conditions placed on his sentence: attend a gambling addictions program; work with aboriginal elders; and 400 hours of community work.

Recently there has been a lot of criticism of sentencing cir-

cles. I, too, I must confess, have had my doubts of the process. But, after this experience, my belief in the process is restored. There is no better form of justice than the justice bestowed by the public.

After all, this case was not a man before one judge, with one lawyer and one prosecutor. This was a case where he had to appear before a large number of people, including his victim. This wasn't a case where a bunch of legal mumbo jumbo was argued. This was a case of man and his victim. Even the arresting officers in this man's case didn't want to send him to prison - this fact wouldn't have been heard in a regular courtroom.

A regular court would have heard about the man's past from a generally biased pre-sentence report. In this case, we heard all about the man's past directly from his parents, family and many others.

I now believe sentencing circles are an evolution of a system that only cared about protecting the system, with no consideration of the human aspect. Sentencing circles take the human approach. This is a profound approach to a system that needs a touch of humanity.

(Prince Albert Daily Herald)

“This circle can only partially be described and must be experienced to understand its spiritual power and effects.... The family and friends of the deceased were given opportunity to express (to the offender) their anger, hurts and sorrow for what has happened. What more can an offender ask than the freedom to comment on and agree on a suggested sentence he is to receive, or minutes before he goes to the prison cell be encouraged by the Judge to speak to those he hurt so many months ago in his distraught and drunken condition. If in our other courts, assaulted persons, victims of drunken driving, had this circle opportunity they might heal more easily if they would openly face the accused. This process brought the wheel of justice full circle and included the whole community.... At the end of the day community and estranged families sat down to eat at the same time. May the courts find the courage to include this vital link for reconciliation and rehabilitation of the victims and offenders in our communities.”

**Martin Goerzen
Clinical Counsellor,
Fort St. John**

Manslaughter Case in Fort St. John, British Columbia

This story illustrates the serious offences being referred to sentencing circles; a custodial sentence sometimes results anyway, but with other reparative healing taking place.

On Feb. 8th, 1994, after hearing of the death of his closest friend in a car accident, Saviour Stoney began drinking. Much later, Stoney picked up a gun, a shot was fired and Molly Apassin, his sister-in-law, lay dead. (Molly was sister to Stoney's wife who had died in a car accident two decades earlier).

On June 8, B.C. Supreme Court Judge P.J. Millward together with Crown and defence agreed on a guilty plea for the lesser charge of manslaughter, dismissing the jury.

Both the victim's family and accused's family were interested in using circle sentencing. Justice Millward announced Aug. 16 as the date for sentencing, to be preceded by a circle sentencing hearing on August 14 and 15 if necessary.

The community prepared for this circle based on a photocopied paper written by Justice Barry Stuart of the Yukon Territory, passed on by the Victim Offender Reconciliation Program at Langley, B.C. The court asked Martin Goerzen, a clinical counsellor who had made Judge Stuart's material available, to orga-

nize the circle. Goerzen relates what happened:

“The Court agreed that preparatory information sessions and workshops for participants would be helpful. Regrettably there was no thought given to financing the circle sentencing process.

Several meetings were held with Judge Stuart. A workshop and information sessions to precede Stoney's sentencing circle were planned in August, with preliminary consultation about the program with the victim family and relatives, chief of the Indian band, the court's trial coordinator, Crown, defence and probation. The workshop facilitators were community workers from Kwanlin Dun First Nation and Carcross Band in the Yukon. People from all the Treaty 8 First Nations, court workers, RCMP, law offices and general public were invited.

Saviour was concerned about what he would say in the circle to those he had offended. We suggested that he simply speak out clearly and from the heart, no more could be asked of him. He said he was so sorry for what he had done.

So many members of the Doig River Indian Band were suffering from the death of Molly Apassin who had been their teacher of native ways and their religious leader.

Harold prayed for guidance and for the presence of the Creator while all participants held hands.... The feather was passed from one person to the next clockwise around the circle and we were all ready with heart, mind and soul to introduce ourselves and say something about why we're here. The tradition of passing the feather around was that each person was honoured and welcomed by all because what one had to say was important for oneself and for others. The circle was a safe place to express our feelings because we were asked to leave what you hear in the circle; it was not to be talked about outside. Among the 30 persons were expressions of learning and long pent-up feelings of hurt, guilt, frustration, anger, revenge and forgiveness.

Sunday morning, the Kwanlin Dun leaders and Ben Cardinal met with the offender, Saviour Stoney and his son. It was an opportunity to prepare them for the circle tomorrow.

Sunday late afternoon and evening families of the accused and the victim met at the Doig River Indian Band at the former home of the deceased. The purpose was to have a meal together and to give participants of tomorrow's circle time to develop some guidelines on how the process should go. Some emphasis was placed on preparation for facing the offender and for the circle to express their thoughts on what type of sentence should be given.

On Monday, organizers briefed members of the court party, including the Judge, on what to expect and what their role would be. There was discussion about the technical set-up, the seating arrangement, who could come in or leave, and about the possibility of pronouncing the actual sentence should there be a consensus of opinion.

The actual circle assembled 46 persons and lasted six hours. Judge Millward acknowledged the risk he had taken in holding a circle. 'I was concerned because the process was new to me. It occurred to me that if the feelings of the persons present were going contrary to what I thought would be the right thing to do and contrary to the kind of sentences that have come before the courts in the last number of years, I would be in a quandary. That did not happen. I was greatly relieved.' In actual fact, the judge had brought to the circle an envelope containing examples of sentences handed people in similar cases. Without opening the envelope, he invited people on the third go-around in the circle to give their opinions regarding a sentence. Then, the judge opened the envelope and said that examples were similar to those handed down by judges in other cases.

The consensus of the circle was to sentence Stoney to two years in jail and three years probation, during which time he was ordered to address issues of anger and drinking. He would be off reserve for five years. Influencing the sentence had been the community wish that Stoney be in a place where he could be productive rather than being "in their face".

"We wanted this because we wanted to deal with it in our own traditional way. She was the only one that we have. She was everything to us - our teacher, our storyteller. She was the centre of the whole family. We've always dealt with it the other way. They never face their victims or reality. This way the words come out of their mouths and not their lawyer's"

**Lillian Apsassin
Molly's daughter**

"This process played a big part in our family's healing and opening up to each other and bringing our families together again, hopefully stronger."

**Linda Sark
Stoney's daughter**

The offender was given a few moments with the family. Once most of the group had left, a number of the family members gathered around the offender for a final farewell greeting. Words are inadequate to describe the words of pain and forgiveness, the handshake, the tears and the hugs given the offender or his response asking for forgiveness for shooting the victim in a state of drunkenness, depression and anger. As the families left together for supper, they expressed peace and great relief from the pain and suffering they had experienced over the past eighteen months - a great burden had been lifted. The healing and reconciliation that occurred in these past five days was a spiritual experience."

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Many other aboriginal communities mostly in western Canada and in the territories have either experimented with sentencing circles or have now made them a normal part of their community justice system. The case cited from Kwanlin Dun Community Justice is found in the preceding chapter featuring initiatives which we found best illustrate satisfying justice. Some non-native communities are interested in adapting sentencing circles for their own communities.



3. Family Group Conferencing

Introduction

In the past few years, family group conferencing has evolved from its New Zealand and specifically Maori roots to emerge more generally as a credible, reparative justice process for communities affected by crime. Primarily used to date for youth, family group conferences bring together in a circle the victim, offender and as many members of their family and supporters as possible, along with relevant professional or community workers. Conferences provide a forum to deal with people's unanswered questions, painful emotions, the issue of accountability and the question of restitution or reparation. We believe they offer great potential for satisfying justice.

The amount of diversion from courts appears to be significant in many jurisdictions using them; while conferences in a few countries can recommend a custodial sentence, in fact they seldom do. Their impact on rates of incarceration, modest for now, should be enhanced if and when increasingly serious offences are referred to this relatively new process. Generally speaking, satisfaction on the part of justice system professionals and the public is much higher compared to their experience in the courts.

Family group conferences are grounded in the following assumptions, according to David Moore, an Australian educator and pioneer of that country's conferencing model. (Moore, **Facing the Consequences: Conferences and Juvenile Justice**)

- the definition of community is used sparingly, that is, it is confined to people with specific relationships to offenders and victims;
- the offending behaviour and not the offender is rejected;
- emotion is part of the process;
- process allows reintegration into immediate community of interest (such as family) and broader community (such as the geographic community);
- gives the conflict to those directly affected;
- basic rules are those of social justice and community decency rather than of legal justice;
- the conference is the most effective way to identify the causes of failure in the family, when applicable, and of community control, and to begin the complex process of restoring social bonds;
- traditional justice system informal methods may achieve material restitution for victims but are not designed to repair the most significant symbolic and emotional damage;

- coordinators act on behalf of the social justice system but will be umpires not players;
- conference will encourage offenders to face consequences of behaviour;
- conferences offer victims the opportunity to deal with their resentment and anger;
- individual rights of offenders will continue to be protected.

Strengths

“The first outburst often comes from the victim” says Judge Michael Brown, describing the dynamic of a family group conference. But after they’ve had a chance to vent some of their feelings of pain and anger, “it’s amazing how generous they can be.”

“Look, they may say, we don’t want him to go to jail. But we do want our motor car back. And that leads to a realistic discussion about reparations.”

Family group conferencing builds on common restorative justice principles, offering the potential at least of genuine “satisfying justice”. Because crime is understood more in the context of harm done to people rather than mere law-breaking, family conferences give the conflict back to those most directly affected, enhancing a shared responsibility for repairing that harm. Experts tend not to dominate the conference as they would in a courtroom; many community resources surface that were previously unknown and untapped. Some models of family conferences delve more into the family and community conditions underlying the crime, addressing the complex task of restoring social bonds.

The goal is reintegration rather than stigmatization and labelling of offenders. Through a trained co-ordinator, a process is followed with a determined order of speaking that is designed to enhance the reintegration. Participants in a conference will encourage the

offender to face the consequences of one’s behaviour, attempting to denounce and reject the behaviour instead of the person. The individual rights of an offender are intended to be a primary concern for conference organizers.

Victims are included as parties in their own right. They have the opportunity to deal with such emotions as resentment or anger. There is the likelihood of some material or symbolic restitution.

A positive “reintegrative” kind of shaming occurs in conferencing, particularly in the Australian police-based models as Carol LaPrairie explains: “It gives the community of people most affected an opportunity to seek resolution without making the offender an outcast. This is accomplished by harnessing informal community mechanisms to express both disapproval of the conduct of the offender **and** gestures of reacceptance into the community of law-abiding citizens. It is the second part of the ceremony, i.e. reacceptance based on John Braithwaite’s theory of reintegrative shaming that distinguishes degradation ceremonies (used by the mainstream criminal justice system) from reintegrative ones.”

Cautions

The early experience of family group conferences has illustrated the challenges facing this newer approach to justice. While victim participation and satisfaction is

much higher than through the court process, it remains a central issue for vigilance. It is an ongoing priority in all these innovative justice processes to hold up the needs and rights of the victim. In any move to consensus and agreement in a conference, the healing needs of the victim should be given equal weight to those of the offender.

It is a challenge to select the most effective participants for a conference, those meaningful to victim and offender. When families are no longer influential in a young person's life, it is incumbent to identify and include someone who is now interested in that youth or once was, perhaps an aunt, favourite teacher or sports coach.

There is the danger down the road that family group conferences could create their own justice industry, just as much rule-bound and professional-dominated as mainstream justice.

In practical terms, early evaluation has been positive but also has revealed concerns about enforcement of diversionary conference agreements, due process rights, the potential for net-widening, turf wars among police, court and justice professionals and the limitation of conferences to address serious conditions leading to an offending behaviour such as unemployment, poverty and breakdown of family support networks.

However, in the words of American criminal justice writer Russ Immarigeon, this preliminary evaluation indicates matters that require repair, not rejection.

Conclusion

Family group conferences have spread to several other countries, including a few pilot projects in Canada and considerably more juvenile jurisdictions in the United States. Remarkably, as the final few stories in this section illustrate, the approach of family group conferencing is also being used in prison and in the community, in some cases, even after someone did go to jail for a crime. It was clear that the jail sentence had ignored so much of the harm cause by the crime whereas these conferences were able to bring healing and closure. It is a poignant reminder that such processes make all the more sense at the front end of the justice and corrections systems; in cases where justice has been satisfying, and the offender is judged not to be a danger to the community, it begs the question of why custody at all.

Family Group Conferences, New Zealand

A Story

An offender, 16, has stolen and wrecked a car worth \$1,700. Not a Rolls exactly, but to the poor single mum who owned it, essential and all but impossible to replace. Though young, the thief is no stranger to crime. Should the case go to court, odds are he'll go to jail.

All this comes out at the family group conference, where a grandparent agrees to pony up the \$1,700. for a new car and the kid agrees to take a hard job at a packing plant to pay the money back.

Senior Police Constable Ross Stewart ticks off the winners.

"The victim's happy - she got the money she needed for a car. The police are happy - they solved a crime. The offender's happy - no conviction. His family? Well, they're annoyed. But they've taken an interest, and they have a stake in seeing him pay off the money."

"Justice has been served," says Stewart, a fit and strapping 40, and no bleeding heart. "It's a good system."

Doug Small
(Justice Down Under, National/The Canadian Bar Association, November-December, 1995)

"The violated person is able to express her or his anger and resentment directly to the violator; the victim has begun the process of being back in control, of being empowered something she or he was robbed of by the offence. This is the first step in the healing process. The offender's reaction to this event is clearly visible to all present. The most frequent response, clearly demonstrated by demeanour, is one of shame and remorse. When the victim stops speaking there is almost always a most powerful silence, a stillness, while the eyes and thoughts of all those present are focused on the young person. Occasionally, a spontaneous verbal response will happen; more often, after a time, I will ask the young person how he feels about what has been said. This will elicit an indication of shame - even the most inarticulate will admit to feeling "stink". I may ask them whether there is anything they want to say to the victim. The majority will then proffer an apology. The victim then has the opportunity to accept the apology and often in doing so begins to display the first signs of forgiveness and compassion.

They will often now say what it is they want from the offender by way of reparation, not just in the financial sense, but what is needed to 'make things right' between them. In situations where the victim has suffered physical harm, or is left with a residue of fear from the offence, they will need reassurance that they are not going to be at risk from the offender in future, and they will need time to recover their confidence. If they wish, this can be addressed by

further contact with the young person, or reports as to progress, or provision for a further meeting together when time has passed.

By focusing on the needs of victims for healing, their need to be restored to the feeling of being in control of their own lives, of being re-empowered, the young person and family when proposing a plan to deal with the matters can offer a creative, constructive solution. The best solution is that proposed by the young offender, through his family, having taken into account the requirements of the victim....

*Marie Sullivan,
Manager of youth services, Auckland
(quoted in Restorative Justice - Four
Community Models. Saskatoon
Community Mediation Services'
newsletter)*

Conferencing - How it Started in New Zealand

In 1989, New Zealand passed the Children, Young Persons and their Families Act, dramatically changing the way in which the country handled young offenders.

Judge Heino Lilles of the Yukon Territorial Court in Canada summarizes the convergence of factors motivating the New Zealand reforms: "... too many youth were charged and brought before the courts, often for offences which were not particularly serious. Inadequate resources were

provided to the court to deal with the issues that came before it and the courts were ill suited to deal with social and family problems. The "justice" model was seen as ineffective in preventing delinquency. Others were concerned that there was a tendency to confuse welfare and justice issues, and that this resulted in interventions which were inappropriate and perhaps too soft. Victims' groups pointed out that victims were largely excluded from having any say in the court process and that very little attention was paid to reparation and restitution. In addition, the adversarial court proceedings were considered inappropriate to the culture of the indigenous Maori population who were over-represented in the criminal justice system. (Maori families make up 12 per cent of the country's 3.5 million population but 43 per cent of the known juvenile offender population)."

Meanwhile, the Social Welfare Department was studying victim-offender mediation schemes elsewhere, moving to a policy and justice approach which emphasized holding young people accountable for their crimes. Drawing on Maori and other Polynesian tradition, it was decided to apply these principles of restorative justice to the whole country. Supporting this direction was the Labour government's overall ideological push to privatize and cut back on social spending.

The new youth-crime law has helped stop this mindless merry-go-around. And it's given police like Stewart a new sense of purpose.

"In years to come," he predicts, "it will be seen as on a par with giving women the vote and the social legislation of the 1930s."

Doug Small, Justice Down Under

At another family group conference, called to deal with a boy who stole several cars, the following dramatic exchange took place as an uncle of the boy confronted him.

“Stealing cars. You’ve got no brains, boy.... But I’ve got respect for you. I’ve got a soft spot for you. I’ve been to see you play football. I went because I care about you. You’re a brilliant footballer, boy. That shows you have the ability to knuckle down and apply yourself to something more sensible than stealing cars.... We’re not giving up on you.”

Its Objectives

The goals of the new legislation included:

- **diversion**, including keeping young people out of courts and preventing stigmatization;
- **accountability**, emphasizing restitution;
- **enhancing well-being and strengthening families**;
- **“frugality” of time**, meaning holding a conference within 21 days of the incident;
- **due process to protect rights**;
- **family participation**, to reintegrate youth back into the community;
- **victim involvement**, in the decision-making and enabling their healing;
- **consensus decision-making**;
- **cultural appropriateness**, providing for different ways of resolving incidents depending on the culture of participants.

Its Results

According to Joe Hornick of the University of Calgary, research indicates that conferences have significantly cut the flow through the court system and have led to a reduction by half in the use of custody. Conferencing must be understood in the broader context of that country’s youth justice system where 71 per cent of all offenders are either **formally cautioned** or informally warned, with the remaining cases going through the formal courts or a

family group conference. **Only** 20 per cent of all young offender cases go to youth court, compared to a 80 per cent figure before the law changed in 1989. Even if a case goes to court, after a guilty finding a conference is called to make recommendations.

How does it work?

A trained social worker usually serves as conference coordinator, carrying out significant pre-conference work with both victim and offender and their families. New Zealand family conferences delve far deeper into the underlying social conditions related to the crime and rely heavily on the youth’s extended family.

The conference can only be convened if the youth admits to the offence. If there is a denial in a conference, an adjournment is called for discussions between the co-ordinator and youth, with the option that continued denial will have the case referred back to the courts. As a conference is empowered by law, a decision reached by consensus is binding.

There are three stages to a family group conference. Following introductions and greetings, which sometimes include an introductory prayer, the police describe the offence. It is not long into this first phase before the young offender in the presence of his family and supporters is confronted directly by the people his actions have affected. This

early storytelling gets at the emotions, the unanswered questions, the needs of the victim and the facts related to the case.

A second phase involves a private deliberation by the offender's own supporters to propose a plan. Families seem to address personal and private matters more freely in this phase.

Finally, the conference reconvenes with the professionals and victim and supporters to see if all are agreed on the recommendations. A Youth Justice social worker monitors the plan: if it is completed, charges are usually withdrawn; if not, a youth court judge will make a determination.

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Family Group Conferences, Wagga Wagga, Australia

A Story

A 15-year-old male and a 16-year-old female broke into the flat of an elderly woman who lived alone. They stole a variety of property including a television, jewelry and food (value around \$5,000). Both offenders were living at a nearby caravan park and had watched the victim leave her home. The victim's daughter suspected the offenders as the flat had previously been broken into.

Police became involved, interviewed the offenders and located most of the property. Police also arrested another adult offender, who was charged and placed before the court. This offender was sent to prison because of his criminal history. The issue of a conference or court hearing was discussed at length by police. As the adult offender had been sent to court and imprisoned, police initially felt that the other offenders should also be charged because of this and the seriousness of the matter. However, the case was referred for a conference.

The cautioning conference involved the following people: the male offender, his mother, brother and sister; the female offender, her mother, sister, boyfriend and two other friends; the victim, her daughter and grand-daughter.

The results of front line diversion programs like conferencing can be dramatic. While Canada's average rate of youth court cases per 1000 is 53.1, the court appearance rates in the four most populous states of Australia vary between 14.8 (Victoria) and 23.7 (New South Wales).

Both offenders talked about the circumstances and were confronted by the elderly victim who disclosed that she had been broken into on two prior occasions. The victim talked about living in fear for about two months. She was distressed about the loss of a wooden box her brother gave her when she was fourteen. The victim's daughter spoke about her concern for her mother over the past few months.

The mother of the female offender noted her daughter had not lived at home for about two years. There was considerable emotion between the offender, her sister and mother over many issues. The conference participants were moved by the anguish shown by the elderly victim. The discussion on the \$400 compensation resulted in an arrangement whereby the two offenders would make repayments each fortnight into a bank account nominated by the victim's daughter. Both offenders agreed to undertake 20 hours community work. The female offender was to work with her mother with a local scout group (her mother was doing community work there as a result of a court appearance for social welfare fraud). The male offender was to work at the St. Vincent de Paul Society.

As the elderly victim was leaving, she summoned the sergeant saying, "Thank you, I now feel safe".

The outcomes of the conference were: offenders apologized to the victims; they agreed to pay compensation; they agreed to undertake 20 hours community work; the victim stated

she was no longer fearful; the victim's daughter felt relieved that her mother's situation would now return to some normality; the conference provided a forum for the female offender and her mother to deal with a number of outstanding issues.

It would not have been possible to address the victim's concerns if this matter had been sent to court. The young offenders would not have been confronted in court about many of the issues dealt with in the conference. The conference brought together members of two offenders' families with a history of difficulty and enabled them to deal with issues in a positive and constructive manner.

Conferencing - How it Got Started in Australia

Among others, Police Sgt. Terry O'Connell wanted a different, more satisfying justice intervention for youth in conflict with the law. He knew well the typical court room scene where the young person sat with his or her legal advocate, the only dialogue occurring between the judge, crown and defence lawyers. The average proceeding in most cases was 15 minutes and the only time the young person was involved is when the judge asked him or her to stand up in order to be told that they had broken the law. "In what way has this intervention contributed to the young person not re-offending?" he wondered. "How can young persons be expected to accept responsibility for their behaviour when general-

ly they have no idea of consequences, apart from understanding that they are in court because of what they did?"

Its Results

There are statistical data which measure in a limited way some of the more tangible conference outcomes. There has been a nearly 50 per cent reduction in the number of young offenders before the court. The recidivism rate for those experiencing a conference in Wagga Wagga is less than five per cent. Seventy to eighty-five per cent of young people who are cautioned do not come to the attention of the police a second time. In excess of ninety per cent of all conference agreements are completed. Offender, victim and police satisfaction is high and there is considerable reduction in workload for juvenile justice workers.

The Australian pioneers of conferencing list other benefits which cannot be measured. They include: the recognition by young offenders that there are people who are concerned about their well-being; the empowerment of parents and others with an opportunity of accepting collective responsibility and accountability; and victims are provided with a positive role in assisting young offenders and their families to deal with the consequences of crime.

How does it work?

Conferences are viewed as a more formal and far more effective form of cautioning than a mere police warning. The cautioning conference model involves police in a more central role than New Zealand. They determine whether a particular offender will receive a warning, be involved in a conference or proceed to court. These decisions are made by a review board of senior police. This arrangement was an important step towards securing police support of the program. Conferences are coordinated by police and held at several locations, including police stations.

The Australians actually have several different adaptations of family group conferencing operating in at least five states, in some areas using conferencing for adults as well. Generally, their model is geared more to the resolution of a specific event, although there is the assumption that broader community interests may also be better served. Unlike New Zealand, there is no private phase to the conference for the offender's supporters to gather to recommend a plan.

The heart of a conference is the stories of participants. The offender gives his own story first, at times assisted by helpful questions from the coordinator. The victim follows. The coordinator asks the first set of questions in response to each of the stories

and then other conference participants interject. Questions to the offender are intended to get a recognition and acknowledgement of the effects of the behaviour, and to the victim, to establish the harm done.

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Family Group Conferences -Aboriginal Youth Regina, Saskatchewan

Kwêskohtê, a Cree term meaning approximately “walk a straight path”, offers aboriginal youth in Regina a pre-charge option through a family conference approach, diverting youth for “**minor types of serious offences**”. This pilot program of the Young Offenders Diversion project is particularly innovative in its decision to handle more serious offences than tend to get diverted. Charges for prostitution or soliciting, theft over, break and enter, and common assault are being referred to family conferences.

Government and private studies cite the over-involvement of aboriginal youth in the criminal justice system. Although aboriginal children and youth account for only 15 to 20 per cent of the population in the province, 72 per cent of youth in custody are aboriginal, 45 per cent of the community youth caseload is aboriginal and only 35 per cent of aboriginal youth receive current alternative measures. If the current rate of demand continues, Saskatchewan Social Services estimates that an additional 105 youth custody beds will be needed by 1999. That is the equivalent of one large new facility costing \$8 million.

Kwêskohtê wanted a different approach than custody. Co-ordinators assisted by aboriginal elders facilitate reconciliation and reparation processes. Up to 15 youth can be handled by Kwêskohtê, a central condition being that the youth is willing to take responsibility for his or offence.

The justice conference is a tool of empowerment, first for youth and their families to take responsibility for his or her actions. It empowers victims to move forward from incidents that have set them back. Victims can express what they have experienced as a result of the offence and recommend what they feel would be appropriate and suitable redress for their circumstances arising from the offence. Options for victims include a personal or written

apology, personal service to the victim or community service on behalf of the victim, compensation, replacement or restitution or a charitable donation. It also empowers the community to be a part of justice processes which reintegrate youth as contributing members of society.

The youths responsible for the crime agree to counselling and cultural activities with elders, structured activity within the home, school or community environment. They agree to participate in programs and services to address their needs. They complete the agreement in order to avoid charges and court appearances.

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Family Group Conferences, United States

The Australian innovators of police-based family group conferencing have already trained hundreds of U.S. and Canadian police, social services workers and educators in family group conferencing during four training sessions in North America.

Initially, these conferences tend to be recommended for more minor offences. As police, Crown and public confidence in conferencing increases, there is every reason to believe officials will divert more serious offences which would have resulted in incarceration. As an example, we cite one Vermont family group conference. We also give additional addresses, first for **Real Justice**, a program dedicated to bringing Australian family group conferencing to North America, and also for a Minnesota police officer who has done more than 23 conferences for incidents ranging from shoplifting to racial bias crimes.

Assault in a Vermont High School

A 17-year-old student physically assaulted another student in the hallway outside the guidance office of our high school. The investigation revealed that the offender was upset about a non-school-related matter. He had walked out of a classroom and apparently happened upon the victim, a fifteen-year-old boy, in the hallway outside the guidance office.

The boys did not know each other. The older boy simply assaulted the younger one because he was in his way. The younger boy did not require medical attention but was clearly roughed up and shaken by what had happened. He was knocked to the ground and did receive some bruises. More significant was the fear this boy harboured; a fear that was shared by others, including his parents. This incident was witnessed by the secretary in the guidance office. She reported the attack. The secretary was also frightened by the incident. Her fear was heightened even more when she learned that the attack was unprovoked. The question for her own safety and that of everyone else in the school added to the level of anxiety.

The consequence for the offender was immediate suspension from school with a recommendation for expulsion. In addition, the family of the victim was preparing to press criminal charges.

The Family Group Conference that was organized involved the following individuals: the victim and his parents; the offender; his foster mother; social worker; a school counsellor; a teacher from the high school; and the guidance office secretary.

The significant outcome of this conference was in allowing the offender to face the people who had been affected by his actions. It allowed each of the victims and their supporters to tell the offender how they felt. The offender apologized and was given the opportunity to convey to every one present

that he recognized his need for professional help. He understood that what he had done was wrong and that he would not be allowed to return. The victims expressed their satisfaction with this process because it allowed them to participate in determining consequences that were meaningful to everyone. Most importantly, the boy who had been attacked, his parents, the guidance secretary and others left the conference with greater confidence that their school is a safe place.

As a result of this conference, no criminal charges were laid. The boy was suspended rather than expelled and there was a tutoring program put in place.

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Family Group Decision-Making Project, Newfoundland and Labrador

Nain, an Inuit community in Labrador, and Port au Port Peninsula and St. John's regions in Newfoundland, tried a non-judicial version of family group conferencing as part of an innovative family violence pilot project.

There was no direct impact on incarceration in the **Family Group Decision-Making Project** because those who abused still went to court and possibly jail, depending on their sentence. However, there was a judge in the Nain circuit who became interested in the family group decision-making approach and found it relevant for sentencing. In some cases, once safety concerns and family wishes were addressed, escorted prisoners attended the family group conference. The conferences were able to deal with much of the harm and needs not addressed in a courtroom. The project's final report noted: "It's hard to maintain the denial when confronted with clear evidence about the abuse and when your whole family is sitting in a circle listening to what you did.... During the conferences, most people who had

committed abuse did not or could not deny it....With their entire family and closest supports present, the offenders could not play one group off against another. Moreover, it should not be assumed that abusers do not want help; a case in point is one man who not only admitted to the abuse, but the referral to the project was actually initiated by him."

Any family referred to the project was brought together with their extended family and other significant social supports to work out a plan to stop the abuse or neglect.... "The aim of the Family Group Decision-Making Project was to reduce violence by stitching 'old' partners together to determine solutions, but now these 'old' partners - family, kin, friends, community, and protective services - were to assume new roles, new configurations on working together."

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"It's hard to maintain the denial when confronted with clear evidence about the abuse and when your whole family is sitting in a circle listening to what you did.... During the conferences, most people who had committed abuse did not or could not deny it....With their entire family and closest supports present, the offenders could not play one group off against another. Moreover, it should not be assumed that abusers do not want help; a case in point is one man who not only admitted to the abuse, but the referral to the project was actually initiated by him."

Family Group Decision-Making Project program report

4. Community Sentencing Panels and Youth Justice Committees

Introduction

There are quite a number of “community sentencing” initiatives happening in our country that have considerable potential for a more “satisfying justice”. They take many forms, including Community or Youth Justice Committees, accountability committees, corrections committees, sentencing panels etc. Whatever form they take, most involve citizen volunteers or elders who often rely on such restorative measures as restitution, reparation, mediation and victim involvement. They can also deal with the social conditions contributing to the crime. These community justice initiatives are operating in both aboriginal and non-aboriginal communities, serving adults as well as youth depending on their mandate.

A Manitoba report on the development of youth justice committees in that province summarizes the evolution and potential for these various initiatives. “Justice committees typically evolve slowly, gaining momentum with experience and time. A common beginning involves one or sometimes a few individuals recognizing that the capacity to solve problems in the community exists within the community itself.... People get involved. They take

on responsibilities. Issues get examined and thought through with the benefit of local knowledge. Things happen in ways that surpass those of the traditional Justice System. Behaviours change. Reconciliation with the community occurs. Community sense of security is enhanced. Clearly, Justice Committees are a method of enabling the people of a community to become engaged in the belief that they have something to contribute. Arguably, that is the foundation of individual, family and community health.” (Roger Bates, **Manitoba Justice Committees**)

Teslin Tribal Justice Project - Sentencing Panel, Yukon

A Story

In 1991, a 42-year-old man pleaded guilty to the sexual assault of his 13-year-old daughter, indecent assault of another daughter and having sexual intercourse with a 13-year-old foster child. He would have expected to receive a prison sentence. After this plea, the man took treatment for his alcohol problems, joined educational sessions on sexual abuse as far away as Winnipeg, as well as attending a weekly “teaching circle” run by the community. When the

time came for sentencing, the Crown was the only party that requested punishment, while the sentencing panel recommended a community disposition. Judge Heino Lilles was sitting at Circuit Court at this time. The man's wife was a victim of sexual abuse and initially felt anger, betrayal and guilt at her husband's behaviour but took a different position at the time of sentencing. According to Judge Lilles:

"Mrs. P. gave evidence of how the disclosure affected her, but also her observations of the changes in her husband during the past year. They have talked openly about the problem, including the need for both of them to get alcohol treatment. They went to treatment together and both of them, along with the eldest daughter, attend the 'healing circle' on a weekly basis. She described the positive changes in their relationship since the disclosure, including open communication, honesty and truth in their relationship and the courage to stand up and admit that he is an offender. Both mother and daughter support the clan recommendation for a community disposition, feeling that 'jail will stop the healing that has been going on', and that the father is an 'integral part of the healing process for herself'."

The community itself, and the sentencing panel also favoured a community disposition, as reported by Judge Lilles:

"Chief Keenan emphasized that the Tlingit attitude towards the sexual abuse of children is that it is not condoned or tolerated. He stated that there is no room in their society for this kind of activity. He testified that the Tlingit focus is not on the removal of the offender from the community but on the healing of both victims and wrongdoer within the community... The offender, victims and the rest of the family must be brought together in the 'healing circle' in order to 'break the cycle of abuse' which would otherwise tend to repeat itself from one generation to another."

After learning of the community's approach to this kind of offence, Judge Lilles said in his judgment:

"It is of interest that it has been only relatively recently that professional psychologists and social workers have begun to fully appreciate the devastating impact of this cycle of abuse. Tlingit custom and tradition have apparently recognized it for centuries. Moreover, as our criminal law focuses primarily on the offender, it is unable to effectively deal with victims, family or the community of the offender.... They have asked for a culturally relevant disposition which would be supportive of family healing, which would

denounce abuse of children within the community, and which would encourage other victims and offenders to come forward for treatment and rehabilitation.” (Please refer to commentary on circle sentencing on page 89 for relevant cautions about this process vis-à-vis women who risk further victimization in these community-based justice processes unless adequate safeguards are put in place.)

When passing sentence, Judge Lilles agreed with the panel’s recommendations and commented:

“In this case I have heard evidence about the humiliation which accompanies disclosure of an offence like this in a community the size of Teslin. ‘First, one must deal with the shock and then the dismay on your neighbours’ faces. One must live with the daily humiliation, and at the same time seek forgiveness not just from the victims, but from the community as a whole.’ For, in a native culture, a real harm has been done to everyone. A community disposition continues that humiliation, at least until full forgiveness has been achieved. A jail sentence removes the offender from this daily accountability, may not do anything towards rehabilitation, and for many will actually be an easier disposition than staying in the community.”

Project Description

The Teslin Justice Project began in 1991 in the community of Teslin located in the southern area of the Yukon along the Alaska highway. The population is primarily aboriginal with the Teslin Tlingit Band having approximately 700 members. An Elder from each of the five Tlingit bands sits with the Territorial Court Judge and advises on dispositions that directly affect members of the community. In addition to participating in the court proceedings, the Elders play an important role in developing community based justice and alternative dispositions for the court to use. According to one community leader, “our tribal justice system allows our Elders, who know the offender well, to delve more deeply into the underlying issues of the offender’s behavioral problems and then reflect their concerns in the sentence imposed.” This project allows people to re-identify with their traditional ways and helps to develop a more effective justice system that is sensitive to the needs and aspirations of their community.

Through this project, the Court is seen as being a part of a community process and the offender is held accountable before the Court and the community as a whole. A Band Council member explains that “out of it, the offender gets the feeling that he’s part of the community and is responsible and has an obligation to the community.”

The Teslin tribal justice project is available to all residents in the community and does not exclude any kind of offence. The Elders know the offender well and are able to discuss with the members of their clan what types of dispositions would be recommended to the court; as a result, most everyone in the community is aware of the offender's behaviour in the community. After hearing the final comments of the Judge, the Elders retire to discuss their recommendations, which must be arrived at by consensus. This process allows the Elders to reassume their traditional role of dispute resolution in the community and demonstrate the wisdom and guidance they possess to the community, thereby helping to rebuild the respect for traditional ways.

Dispositions recommended by the Clan leaders are intended to reflect the concerns and cultural values of the community and be rehabilitative in nature, generally being a probation order with recommended conditions attached. This reflects the aboriginal view of a wrongdoing being like an illness in the community that must be healed in the community as part of a holistic healing process. According to one Band Council member, "there is no such thing as a dispensable Tlingit person" and the potential value of every person, including offenders, is recognized.

The Teslin Tribal Justice Project also includes the Healing Circle, a community initiative developed to bring residents together on a voluntary basis to discuss their problems. Victims, offenders their families and other community members participate by sitting in a circle and discussing openly their concerns and feelings, in a way similar to group therapy. These circles operate on an informal basis with the only resources being the people themselves, and tend to be spontaneous events advertised by word of mouth.

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Wabasca Justice Committee, Alberta

A Story

The hearing started with a prayer and was carried out in Cree, the first language of all present, except the police officer who read out a police report on the offence. The offence was drinking and driving related and the officer remained for the rest of the hearing. Information from probation services was read out by the court worker, who also took notes and provided various kinds of legal information. The sentencing panel members, who knew the offender and his family quite well, commented on efforts of other family members to remain sober, the important financial role the young man played in the family, his past misbehaviours and told him that his driving frightened many community members. His respect for the sentencing panel members was evident throughout the hearing. He was asked various questions and eventually asked how he felt about the recommended sentence. He seemed very relieved and said he agreed with it. At the end of the hearing, each panel member gave the offender a hug. It was easy to see that the young man was moved.

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Slave Lake Sentencing Panel, Alberta

A Story

The young offender was non-native and the proceedings were in English. There were three sentencing panel members, one of whom was Native. The other two were non-Native. Each member introduced themselves to the young offender who was charged with a property offence and a personal offence. Information was presented by an RCMP officer (who promptly left), and received by fax from probation services (and read by the court worker). The young offender was asked his version of the event and questioned about certain things in the police report. His father was then called in and asked about the boy's upbringing. Both the young offender and his father got severe tongue-lashings from one of the sentencing panel members. After discussion with the boy and his father, consensus was reached. The young offender was sentenced to make restitution, to apologize to the victim, and to attend school regularly or to find a job. His father thanked the sentencing panel and said his boy would be okay, thanks to their help.

Youth Justice Committees

Youth Justice Committees have been in operation in Manitoba since 1975 and in Alberta since 1990 and are also being developed in other provinces. For example, they are responsible for

the alternative measures program in Newfoundland.

They are a reminder that many communities still take responsibility for straightening out their own members who have problems. Manitoba officials report they have been effective in reconnecting offenders with family, school, peers or the community itself. It is community members who can keep an eye on others during everyday routine, help them with their problems and put pressure on wrong-doers to change their behaviour. Many of these communities believe jail is not the answer for these youth in conflict with the law. They would learn further criminal behaviour there. The community would rather keep the youth at home and in their midst, believing they are less inclined to commit crimes if they have to answer to members of their own community.

Youth Justice Committees are a group of anywhere from eight to fifteen volunteers who meet together to look at social and justice issues within the community. Typically, committee members include teachers, police, parents, youth, seniors, other professionals, business people, trades people, members of various cultural or ethnic groups, and other interested citizens. For the most part, they form around a particular geographic community, e.g. reserves, small rural communities or a city district.

Youth Justice Committees are mandated by the Young Offenders Act at s. 69 which states that they may assist “in any aspect of the administration of this Act or in any programs or services for young offenders”. The two most common models for these committees focus on either sentencing or pre-court diversion. As a sentencing panel, the committee interviews those relevant to the offender and the incident and then makes a recommendation to the court judge. One disadvantage is that the youth still gets a criminal record. The pre-court diversion option, on the other hand, bypasses the judge and avoids a record. Youth Justice Committees may also get involved in monitoring the progress of offenders and undertaking community education in crime prevention.

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Elders' Justice Committee Fort Resolution, Northwest Territory

The community of Fort Resolution under the direction of Sub-Chief Danny Beaulieu formed a six member Elders' Justice Committee in January, 1995. The committee attends all Justice of the Peace sittings in the community and advises the court. Beaulieu is a local Justice of the Peace as well. This is working out quite well and they hope to form a Youth Justice Committee in the future.

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Russell Heights Community Justice Committee Ottawa, Ontario

An Ottawa neighbourhood has formed a community justice committee to promote more meaningful, effective, speedier and community-based responses to crime, starting with youth in conflict with the law. The Russell Heights Community Justice Committee is founded on the principles of restoration, not retribution. Still in its initial implementation stage, the committee hopes to receive referrals from police or Crown and is open eventually to dealing with adults as well. The committee consists of seven members, including three residents, one from South Ottawa Community Legal Services, one from South-East Ottawa Centre for a Healthy Community, a Crown Attorney representative and a Probation Services (Youth) official.

The committee wants to involve in its sentencing process people with some degree of connection to an offender, so that collectively they can make a decision recommending the most suitable expression of justice for the person. Depending on the recommended sentence, this committee would then also be involved in supervising the sentence and supporting the offender.

The Russell Heights community is a subsidized, low-income family housing project for some 700 residents, including 500 young persons under the age of 21. Without exception, all residents are either receiving social assistance or are working poor. The majority of families are sole-parent households usually headed by women, with over half the residents being new Canadians who have immigrated within the past ten years.

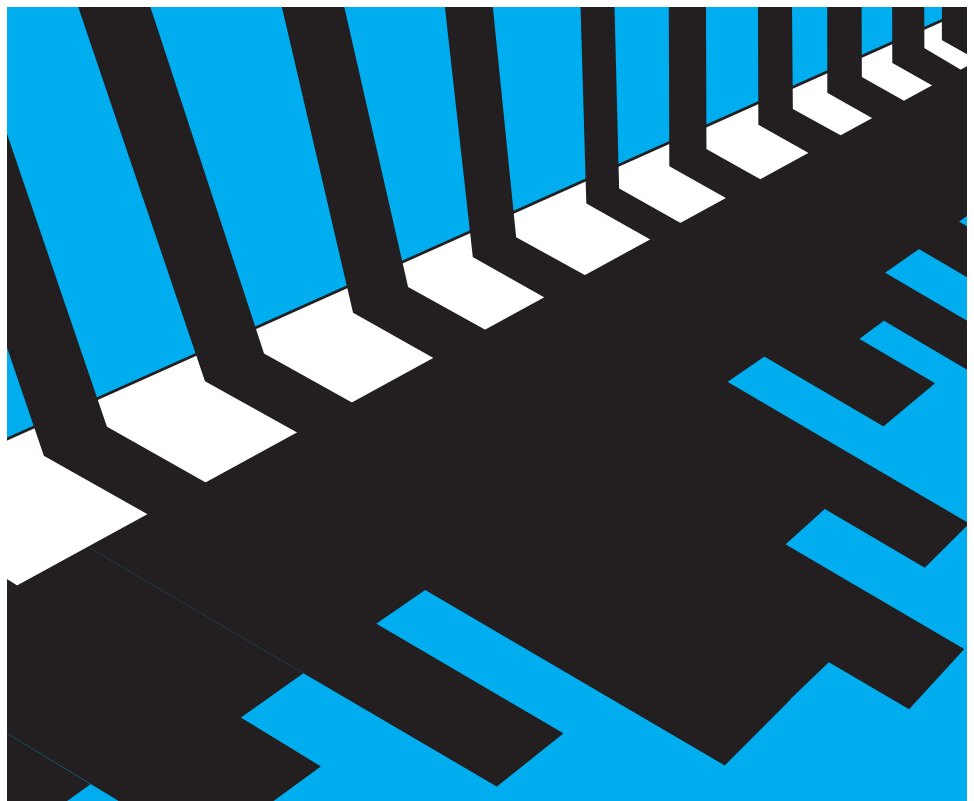
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Section Three: Satisfying Justice

A selection of initiatives that attempt to avoid the use of custody, with or without some reparative elements



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Introduction

This section presents a wider selection of initiatives that, for the most part, are focused primarily on providing sentencing dispositions that are in the better interests of the offender or the victim than a sentence to imprisonment. They tend to be offender-centered, facilitating more effective access to the health and social services that are needed. Some emphasize attention to family and social environment. But few include attention to victim-offender communication or reparative and restorative concerns. And few can be considered to be truly involving the community at the grass-roots level; they tend to be in the hands of agencies that are surrogates for the community (although some draw on significant pools of volunteer citizens).

Many of these agencies and services are also severely overburdened and understaffed; this can greatly reduce their ability to provide the quality attention needed for a disposition to be meaningful and have credibility as an alternative to a prison term in the mind of the public. A more “restorative justice” approach, however, is beginning to emerge in some highly innovative initiatives; this development could greatly enhance the ability of these measures to provide more satisfying justice to the public.

While these initiatives are helping to avoid custody for some individuals, they have not reduced the use of incarceration overall. They are also “widening the net” in two ways. They can be applied to exercise greater coercion and control on individuals who would not otherwise be charged or sentenced so severely. Some have also become popular “add-ons” to prison sentences, rather than a replacement for them; they “make sense” as a disposition, much more so than jail, but justice officials are unable to let go of the seductive appeal of imprisonment as a symbolic token of “tough action” on crime. The use of these measures has therefore had the unfortunate effect of increasing the bureaucracy and cost around crime, more than it has succeeded in reducing reliance on incarceration as intended.

This need not be so. We have highlighted in this section the cases we found that best illustrate the effective use of these dispositions as genuine alternatives to custody in cases of a more serious nature. The question must be repeatedly asked: **why not more often?** And each time incarceration is tagged on and used anyway, it should be scrutinized more closely: for what purpose is this necessary? On whom is it having the desired effect? Is it truly worth the extra cost, or could this not be done some other way?

There are other reasons, of course, why some of these alternatives remain under-utilized. Ironically, while some in the public believe justice is “too soft”, some offenders find the alternatives to custody tougher than jail because they are not yet ready to make the changes in their lives demanded of them in some of these interventions; for example, they would rather do their time in jail and go back to their drinking habits.

Overall, the selection of initiatives featured in this section represent some excellent and necessary

interventions whose impact on justice would be strengthened if they reinforced more restorative components and were used more boldly to replace imprisonment. They differ from the initiatives to be found in section four in that they tend to be more clearly driven by attention to the specifics of each situation and an attempt to replace incarceration with a measure better suited to meeting the intended justice objectives - as opposed to being driven more significantly by the institutional need to relieve the pressure of overpopulated prisons.

1. Diversion

Introduction

Diversion allows people to take responsibility and accept consequences for their wrongful behaviour while at the same time removing them totally or partially from the aspects of the criminal justice system which can have long-term stigmatizing and marginalizing effects. In Canada, there are a host of pre-charge and post-charge diversion schemes available for youth, as well as an increasing number for adults. Police and/or Crown decide whether to divert a case.

The offender admits responsibility for the alleged offence, then meets with a diversion worker to plan an appropriate response to the offence such as verbal or written apologies, restitution or community service work.

As a result of diversion, an individual does not get a criminal record, increasing the chances that they will not offend again. Diversion saves the courts time and a great deal of money. It frees up scarce justice resources for the trial of serious offences.

Diversion programs are criticized, however, when they lead to more cumbersome procedures and also increase the number of persons subject to sanctions and even increase the intensity of social control. Sometimes, the measures proposed by diversion programs are either perceived as “soft” or irrelevant, although some offenders find the process much more demanding of them than the impersonal courts. They will likely be more effective in providing “satisfying justice” the more they are tailored to be meaningful to the offender, the victim and the circumstances surrounding the crime.

Nova Scotia Adult Diversion Project - Dartmouth and North Sydney

A Story

The offender is a 38-year-old divorced mother of two children who was in receipt of social assistance. She was accused in a \$14,000 social assistance fraud case. It was agreed between the victim and the offender that restitution would be an acceptable resolution. As is the procedure with our program, the charge was laid (sworn) by police but not placed on the court docket. The police made the referral directly to our staff, contact was established with the victim to determine their wishes/concerns and the offender was interviewed to determine her interest in participating in the diversion option. Following an assessment interview with the diversion (probation) officer regarding the offence and the proposed resolution of it, a written agreement was signed by the client outlining her obligation to make monthly payments of \$100.00 each directly to the social assistance office.

The offender had a part-time job but is highly motivated to acquire a better job and hopes to repay the restitution more quickly. If she fails to abide by the condition of the diversion agreement, the matter will be referred back to the police for processing through Court.

Thus far this has worked very well for both the victim and offender. A Justice Department probation officer commented that this type of diversion "will aid in the support of restorative justice approaches becoming real options in the Criminal Justice System".

Program Description

The adult diversion project piloted in Dartmouth and North Sydney in Nova Scotia has several key objectives:

- to provide options for improving efficiency and effectiveness in the handling of cases;
- to offer an option to the criminal justice system that is visible, accountable and accessible to offenders, victims and the community;
- to provide victims with the opportunity to actively participate in a process directed toward achieving a successful resolution to the incident;
- to develop initiatives which promote responsible, pro-social behaviour on the part of alleged adult offenders and which are consistent with the protection of society;
- to lessen the possibility of the offender repeating their criminal behaviour.

Courts are backlogged with many relatively minor cases, causing costly delays in proceeding with more serious and violent cases. Based on an analysis of 1993 cases, the Nova Scotia Justice

Department estimated that as many as 600 cases in Dartmouth Court could be diverted through this project. In a preliminary evaluation of the project's first seven months, 180 cases were in fact diverted. The discrepancy between projected and actual referrals was explained partly by the continued declining of reported crime rates and changes in police charging policies for several minor offences.

Cases are referred by police to the probation officers operating the diversion project. The referral is directly from police, with Crown Attorney consultation only in those cases where the police consider it advisable or where diversion personnel feel it is required.

One issue which has arisen as a result of the police referral approach is related to the provisions in Bill C-41, Section 717 (Alternative Measures) which Parliament recently passed. It is framed similarly to provisions in the Young Offenders Act which seem to require referral to proceed through Crown Attorneys or agents of the Attorney General. Police can act as agents of the Attorney General but other players in the system feel safeguards for the offender could be reduced if the Crown is not involved in scrutinizing the referrals.

The diversion project is trying to work out a protocol with the Public Prosecution Service which would allow for the direct referral from police of agreed upon offence types with perhaps more serious offences being referred through Crown Attorneys. The referral system has been very successful thus far and there has been no evidence of "net widening" or any abuse of offenders' rights.

The options available for resolution of cases include restitution, letters of apology, volunteer community service work, personal service to victims and/or charitable donations. Should the offender fail to complete the agreement, the matter will be returned to court for processing.

While an early evaluation study indicates that most cases being referred concern shoplifting and minor assault, the fraud charge cited above illustrates the potential for even more serious cases being diverted. As people experience satisfying justice through diversion, public and professional confidence in diversion is bound to increase.

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But criminal law is not the only means of bolstering values. Nor is it necessarily always the best means. The fact is, criminal law is a blunt and costly instrument - blunt because it cannot have the human sensitivity of institutions like the family, the school, the church or the community, and costly since it imposes suffering, loss of liberty and great expense.

So criminal law must be an instrument of last resort. It must be used as little as possible. The message must not be diluted by overkill - too many laws and offences and charges and trials and prison sentences. Society's ultimate weapon must stay sheathed as long as possible. The watchword is restraint - restraint applying to the scope of criminal law, to the meaning of criminal guilt, to the use of the criminal trial and to the criminal sentence.

**Law Reform
Commission of
Canada, Our
Criminal Law**

British Columbia has operated an adult diversion project on Vancouver Island and the Lower Mainland since the 1970s; the program has recently been expanded to include the entire province.

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Community Council Diversion Project - Aboriginal Legal Services Toronto, Ontario

The **Community Council Project** of Aboriginal Legal Services of Toronto allows the native community in Canada's biggest city to take a measure of control over the way the criminal justice system deals with native offenders. Rather than a court trial and criminal record, an accused person who admits responsibility for an offence receives an alternative type of sentence such as restitution, community service, counselling or treatment. Any option but jail is available to those conducting a Council hearing as they begin the healing process necessary to reintegrate the individual in the community. **Most being**

diverted through the project have already been to jail before. Assault, soliciting, minor property and petty fraud offences are the most common charges being diverted.

"The concept of the Community Council is not new," a program description states. "This is the way justice was delivered in Native communities in Central and Eastern Canada for centuries before the arrival of Europeans to North America. It is also the way that disputes continue to be informally resolved in many reserve communities across the country... We know that the current system does nothing but provide a revolving door from the street to the jail and back again for most native accused."

This diversion project occurs at the "front end" of the justice system. The native approach it recommends is quite similar to circles or community or elders' panels which are taking place at a later point, i.e. at the time of sentencing. After the Crown consents to the diversion, the individual is required to consult with defence or duty counsel to have the Council process explained, including potential sentences and consequences for not complying with them. Those who feel they are not guilty of the offence are urged to go to trial. If the accused agrees to have the case diverted, charges are stayed or withdrawn by the Crown.

The project acknowledges that realistic and meaningful sentences will depend on adequate resources in the community; because many agencies are already stretched in serving clients, any expansion of the project will be guided by available resources.

If an individual does not comply with a decision of the Council, they are asked to reappear before the Council to explain themselves. A person who fails to comply with a decision is not allowed to use this option again. Charges, however, are not laid again if a person does fail to comply with an order other than in exceptional circumstances. Charges can be brought back if the individual failed to appear for the Council hearing.

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The Court Outreach Project - Helping the Mentally Ill Offender Ottawa, Ontario

A Few Stories

In Toronto, an elderly man who was nabbed for “theft under” is visibly confused during his first court appearance to face the charge. A brief adjournment is called while a community therapist does a quick assessment and determines the man is exhibiting some signs of dementia. A longer adjournment is granted and the therapist works closely with the man, finds him a bed in a nursing home and treatment from a psychologist. Back in court, the charge against the man is stayed as the crown concedes that a sentence and record will do neither the man nor society any good. The community worker keeps in touch with him.

In Ottawa, Sgt. Paul Taylor, a police court liaison officer with expertise in dealing with the mentally ill offender, sees a problem brewing in John’s life, one likely to end up in the courts. John is a 42-year-old male who has been diagnosed as developmentally delayed and schizophrenic. John has been living at a local shelter for men for almost eight years and Sgt. Taylor is concerned that he is being exploited by other residents; he also is familiar enough with him to suspect John will get into trouble with the law in the near future in order to secure attention and help. It has been his history before to do just that and end up with police charges.

Through Sgt. Taylor's initiative, an outreach worker in a pilot court project met with John and helped him find and move into a new residence. He is reportedly adjusting well.

Program Description

The Court Outreach Project provides a much needed flexible support service to individuals who are psychiatrically disabled, homeless or at high risk of being homeless and who are also in minor conflict with the law.

To date, only those charged with minor offences qualify. These include minor assault, vandalism, not paying at a restaurant or setting fires to keep warm. The Crown will still proceed with a case when the crime is serious such as homicide or assault with a weapon, or if the person is believed to be a danger to the community.

"They're people who are in the criminal justice system because of their illness," observes Crown Attorney Andrejs Berzins. "... The normal criminal sanctions don't really make a lot of sense to them."

Berzins began to notice an increase in the number of mentally ill people in court - currently about 10 a week, triple what it was three years ago. He predicts the numbers will continue to grow as the province closes more psychiatric hospital beds. These individuals, many homeless, try

to cope with little formal community support; some stop taking their medication.

The mentally ill person is referred through the project to two outreach workers who help to arrange for a shelter and permanent housing. They also look after medical appointments, psychiatric assessment and treatment, and contact with mental health workers. For the accused, it is an alternative to going through a trial or awaiting a psychiatric assessment in the regional detention centre. In the past, minor charges could also be dropped but only after several court appearances. As well, because of bed shortages at a local psychiatric hospital, some people were spending up to four weeks in jail waiting for assessments. They were there often because they were too confused to direct a lawyer for a bail hearing.

"Simply withdrawing the charge without a support net to fall into is not good enough," says Berzins. "We're trying to build some sort of net for these people."

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One consequence of changes in the mental health system has been the movement of the men-

tally ill out of that system's institutions and into jails. Some jurisdictions and service providers are addressing this and related problems of the mentally ill offender. (See Winnipeg's **Opportunities for Independence** program near the end of this section.) In British Columbia, as a follow-up to the Mental Health Initiative in 1987, an inter-ministerial committee surveyed mentally disordered persons with prior contact with the criminal justice system. The survey concluded individuals move across system boundaries; many in the community offended again and a number were incarcerated again. The lack of community support exacerbated the problem. Two projects addressing these needs were initiated. The **Mentally Disordered Offender Protocols** initiative in 1992 developed guidelines and identified areas where protocols were needed to improve the coordination of treatment services for mentally disordered persons in conflict with the law. The goal was to formulate a consistent, efficient, coordinated and humane province-wide response. The **Inter-ministerial Project** assists individuals in the criminal justice system who have psychiatric, behavioral or psycho-social problems, helping them reintegrate into the community and improve their quality of life by reducing the number of rehospitalizations and reincarcerations.



A Community Alternative to Jail for Sexual Offences Canim Lake, British Columbia

This diversion program was set up to deal primarily with sexual assault and related offences. Canim Lake is an aboriginal reserve in northern British Columbia which had been plagued by the problem of sexual abuse. In the words of one leader, imprisoning everyone responsible would leave very few men in the community. There was overwhelming support to have offenders undergo treatment and deal with consequences within the community itself as an alternative to incarceration. Besides, as one Crown Attorney explained, the community had been "driven to diversion because the strong arm of the law, which people originally wanted to protect them, had revealed itself to be a safety net with too many holes in it." A pure law enforcement response to the problem was too costly and ineffective, especially for isolated communities.

After a study which revealed the high rate of sexual abuse, the native band hired consultants who recommended it combine polygraph examinations and therapy to assist in monitoring and treating sex offenders.

The polygraph has been a controversial aspect of the innovative program. There must be mutual agreement among the victim, offender and Crown that the case can be referred. Offenders sign a waiver agreeing to the use of the polygraph as part of their treatment. They must submit to a police polygraph test in disclosing present and past offences. This is viewed as a form of “cleansing” and a step to initiate the process of community reconciliation. The first person referred to the program in January, 1994 admitted during the disclosure test to 21 additional sexual assaults. It was determined he had assaulted approximately 45 victims.

There was concern on the part of police and Crown about what to do when individuals admit to unrelated serious violent offences which would normally be prosecuted. It is understood now that offenders may be processed formally if the serious offences they admit to occurred in other jurisdictions off the reserve.

An integral part of Canim Lake’s two-year pilot project is working with victims.

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The Micmac Diversion Council of Lennox Island Prince Edward Island

This project relies on the principles of “reintegrative shaming” and community involvement to keep people from reoffending. Reintegrative shaming is a phrase coined by Australian criminologist, John Braithwaite, to describe the positive process of denouncing a person’s behaviour without rejecting the person, avoiding any harmful stigmatization.

Lennox Island is located off the north coast of Prince Edward Island and is home to approximately 300 native people. When a person commits a crime, and admits responsibility, he or she meets with a local justice committee which includes an elder, a young person, someone from a single-parent family and someone from a two-parent family. Together, they decide what the penalty will be. The Council members know the offender and want to impose a sentence which will help the offender and satisfy the victim.

Again, as with the previously described Toronto aboriginal project, the Micmac justice project is an example of diversion and therefore at the front end of the justice system. Through the diversion council, the community becomes aware of the crime and is involved in its resolution. This project has been underway for over four years now and deals

with mostly minor crimes such as vandalism and other property offences. Repeat offenders may be eligible pending police approval. It encountered initial problems related to youth on the reserve not wanting anything to do with community justice. They preferred the anonymity of the city's youth courts, a good distance away from people who knew them. A project description notes that "the threat of standing before and being judged by one's own peers who know you and your family is considered shameful and generally more feared by natives than being processed under an alienating and depersonalizing Canadian criminal justice system." It is a reminder that, on the one hand, genuine community justice must be sensitive to these issues and, on the other hand, is perceived by some as "tougher" in the sense that it is more challenging to the offender.

This alternative system of justice is intended to encourage the evolution of a more effective justice system which will be sensitive to the cultural and social needs and aspirations of the native people of Lennox Island

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E.V.E. (Entraide vol à l'é- talage - Shoplifting) Montréal, Québec

A Story

This story concerns a 33-year-old woman charged with shoplifting who was facing the prospect of six months in prison because she had a previous record of nine convictions for shoplifting and one for drunk driving.

Manon was very nervous when she was caught shoplifting from the "Pharmacie Jean-Coutu"; she cried and begged the security officers not to call the police. This was not her first arrest, she was very familiar with the criminal justice process and she knew that, unfortunately, local justice officials (judges and prosecutors) were also becoming very familiar with her as well....

Despite her pleas, however, she was charged with shoplifting goods for a value of \$180.00 and she asked her lawyer what sentence she could expect if she pleaded guilty. When advised that the prosecutos intended to request six months in prison, Manon was very upset. She is the single parent of a two-year-old boy and did not want to be separated from him. At her insistence, her lawyer promised to look into the possibility of some alternatives.

On the morning of Manon's first court appearance, the liaison worker for the E.V.E. (Shoplifting) program was on duty as usual to inform all the women accused in courtroom #1 of the Municipal Court of Montréal of the existence of that program. Manon listened with interest as the worker explained that:

- *the program is an alternative to prison sentences in cases of shoplifting;*
- *it is geared to women of 18 years of age and over who are charged with shoplifting and who admit responsibility for the offence;*
- *it consists of 12 weekly group sessions of two hours each;*
- *from a clinical point-of-view, the intervention aims to prevent repeat theft.*

Manon asked to participate in the program, her lawyer agreed and the judge consented to a request that he wait until the program was over before ruling on sentence. Manon met with one of the program workers who accepted her into the program which she followed from September 5 to November 21, 1995.

In the course of the program, Manon was particularly interested by the discussions and the exercises done in group. She thought a lot about the consequences of her behaviour, both personal and social, she drew up a balance sheet of the advantages and costs of shoplifting and identified effective means she could use to stop herself from doing it again. At the end of the program, the worker for her group was able to advise the Crown and defense lawyer that she

had successfully completed its requirements.

At her sentencing hearing, the judge emphasized to Manon that participating in the E.V.E. program had allowed her to avoid a sentence of six months in prison; she received a two-year suspended sentence.

In Manon's own evaluation of what the program had meant for her, she commented that meeting a woman in her group who had already done some time in prison made her realize all the more how terrible that would have been for her and her child. The worker had helped her find some practical ways to stop stealing. "For example, I now often go to the food bank in my neighbourhood.

Before the program, I didn't even know it existed."

Program Description

This diversion program for shoplifters is run by the Elizabeth Fry Society of Québec and is modelled on similar programs offered by the Elizabeth Fry Societies of Calgary and Toronto.

The program **Entraide vol à l'éta-lage** originally received referrals from a variety of social agencies to respond to the needs of women experiencing a problem with shoplifting even though they may not have been in trouble with the law. After a year of operation it began to specialize in offering an alternative to women who had been through the courts and were

repeat offenders. In seven years, it has dealt with over 1,100 women referred from the 27 municipal courts with whom it has a service agreement. It has been able to provide service to 72 groups thanks in part to a large number of volunteer professionals who have donated their time.

The program varies according to the needs of participants but tends to emphasize accountability and “reality therapy” vis-à-vis their law-breaking activity. Some common themes relate to self-control methods, various causes of shoplifting and the different effects of the behaviour for businesses and their employees, the criminal justice system, family and spouse. Ninety-seven per cent complete the program successfully.

The program has revealed that the majority of the women who have shoplifted are financially underprivileged and facing a very difficult economic situation. In 1994-95, 85.7 per cent were unemployed and 51.9 per cent on some type of social assistance or unemployment insurance. Over 59 per cent live alone and 30.6 per cent are single parents. While 39 per cent were first offenders, at least 26 per cent had a record of more than six to ten previous infractions. Some women have been found to be suffering from depression or addictions and the program becomes an opportunity to make other appropriate referrals as well to work on underlying or associated problems.

At the Municipal Court of Montréal, a prosecutor is specially assigned to liaise with the shoplifters’ program. Once the woman has been accepted into the program, a meeting is held with her and her lawyer to closely examine the file and to indicate to the woman what sentence will be suggested to the judge if she fulfils all the requirements. This is usually a joint submission with the defence and has almost always been accepted by the court. The management of all these shoplifting case files has been streamlined and many court costs have been saved because only nine per cent of all cases ever referred have ever had to go to trial.

Court officials believe that this is a good example of an alternative to imprisonment. According to prosecutor Maître Suzanne Béchar, sentences can be more individually tailored and need not be as concerned with seeking a deterrent effect because the program itself reduces the likelihood of recidivism.

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Youth Mediation Diversion Project Shaunavon, Saskatchewan

A Story

A group of frustrated parents in southwest Saskatchewan who were feeling helpless about “out of control” youth are now part of an imaginative, problem-solving, community action program.

Shaunavon is a small community of about 2,500 people. Eleven youths were charged with offences in 1993, including those involved when a private house party got out of hand. Leslie Goldstein is one of those parents who wanted to develop an alternative sentencing process among other initiatives. The outcome is an approach similar to a native sentencing circle, operating through a youth mediation diversion program. Ms. Goldstein believes this is beneficial to the community because of an increased accountability that now exists between the offending youth and victims. Parents are pleased that the early intervention and mediation enable them to play a larger role in dealing with their child and his or her problems. They appreciate the improved communication among social workers, schools and police.

One parent convinced of the circle’s superior form of justice is a woman whose son experienced both a circle and a court case last year because of two unrelated break and enter charges. In the court case, he was fined \$70. For the charge which went to a circle, the boy, 12 at the time, received a 50-hour community service order along with an essay to write. His mother comments: “If you get the kids right away, I think the circle is far more beneficial,” she said. “You have far more interaction with the community. It makes the boy think and see what he did. It makes more people in the community know and look out for him. In the court, it was a judge from another city. Here is your sentence. Good bye.” The RCMP officer acknowledged in hindsight that the second break and enter charge could have been referred to a circle as well.

Program Description

The youth mediation committee involves the youth, parents, the R.C.M.P. and three community members. It was set up by the Parents Support Group in conjunction with Saskatchewan Social Services, the Department of Justice and the local RCMP detachment.

Mediation groups decide the sentence rather than a judge in the court if the young person admits to committing the crime. The youth, his or her family and the victim have to agree to use the mediation process. No criminal charges are laid against the offender. A wide variety of sentences is available, including anything from restitution to community supervised probation.

It allows everyone to have equal input in clarifying the problem and in finding solutions. The process respects concerns relating to confidentiality, privacy and the right to consult with a lawyer. Cases that might take eight months to go to court are resolved within a month of the offence.

While the break and enter charges in the story are relatively minor, the diversion process melding mediation and a sentencing circle underscore the potential of this justice process in communities for more serious offences.

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Alternative Measures Programs

A Few Stories

A 14-year-old youth charged with “theft under” came into the Alternative Measures inquiry with his mother to choose some tasks to help him learn to make more responsible choices in the future. His overall behaviour at school and at home over the past three or four months had gone from bad to worse. He had been suspended from school once for fighting, had several detentions and was starting to skip as well. She noted that his reading skills were poor but there did not appear to be a disability.

The John Howard Society of Waterloo-Wellington had just developed a co-operative literacy program with Frontier College, believing that the root to some misbehaviour may stem from the lack of self esteem created by illiteracy. Students for Literacy at Wilfred Laurier University developed a one-on-one program for those 12 to 15-year-olds that were not covered by other reading circles. It is not intended to instruct but rather renew in young people a desire to read whatever - comics, magazines, street billboards, signs, etc.

The youth signed up for both the Partners in Reading and some community work. The Wilfrid Laurier University student met with him five or six times and what happened following these visits was quite remarkable. His mother noticed his attitude

changed in the home. He was happier, more compliant with her requests, and willing to help out. She received calls from his teachers at school asking what had happened in the home because his behaviour at school improved so dramatically. His principal recognized and rewarded his positive disposition with major league baseball tickets.

In the words of one John Howard director, "here was a youth with the potential to become enmeshed in the criminal system through theft, possible truancy, possible association with criminal others and familiarity with the Criminal System, and yet through personal attention from focused positive young student volunteers he was rerouted to a better sense of self and his future."

A few years ago in Windsor, on New Year's Eve, 27 kids were involved in vandalizing a local school. Some youth had a police record. Some didn't. They faced the prospect of break and enter charges. Instead, Project Intervention, a pre-charge alternative measures program, facilitated a process which included meetings with the youth, school staff and parents and led to restitution of 30 hours of community service and each youth paying a portion of the damages.

Program Description

Alternative measures are ways that disputes and certain offences can be dealt with rather than using expensive and unnecessary formal court proceedings. A bill passed in Parliament in 1996 allows the use of alternative measures for adults by permitting each province to set up and administer its own program similar to one used in various jurisdictions for young offenders. A recent Prince Edward Island study cited various reasons alternative measures make sense for adults as well as youth: they would help the person who may have made a mistake contrary to the way they usually live; they recognize there is little difference between someone just under 18 and someone just over 18; they help deal with people who have a mental handicap; they allow for discretion when offenders are influenced by difficult circumstances; they speed up the court system; and they make a person accountable.

The provisions of the program for youth are designed to determine whether a case that is submitted by the police will go to court, be filed without further action or resolved using an alternative measure. Alternative measures are intended to involve the community, put greater emphasis on victim-offender reconciliation, lessen the negative impact of incarceration for less serious cases and free up scarce resources to deal with more serious cases.

Commentary

Where the programs are working well, youth learn to take responsibility for their actions after realizing that their lives do affect many people. Alternative measures can teach them a method of restoring trust and peace, sometimes through restitution or reparation. The young person avoids the much slower and formal court process and does not acquire a criminal record.

Examples abound in the country. Newfoundland's twenty-two programs are run by community volunteers on Youth Justice Committees; they encourage victims to participate in mediation sessions with the youth. Project Intervention has existed since 1978 as a pre-charge program in Windsor; police reduce the number of charges they lay but increase the number of referrals to social services for troubled youth and families. An extensive review of Prince Edward Island's program reported high satisfaction with their alternative measures, including support for the suggestion they be applied to adults; they were carried out much more quickly and more successfully with lower recidivism rates than in cases which went to court.

However, a series of National Crime Prevention Council cross-country consultations also pointed to disturbing weaknesses in the **implementation** of alternative measures. In some places they are

not used very widely and too rarely promote the fundamental YOA principles of community involvement, reintegration of young people and reducing justice system intervention where appropriate. People told the Crime Prevention Council that Alternative Measures programs are:

- widening the justice net by involving mainly young people who would not be brought into the justice system, but would merely receive a warning if the program did not exist.
- rewarding service groups and agencies that don't question the existing system, with contracts to manage Alternative Measures programs.
- reducing rather than expanding the range of community-based programs helping to reintegrate young people, by cutting funds to community programs not selected for Alternative Measures programs.
- restricting these programs to a narrow range of options such as essay or apology writing, which do not speak to the unique needs and realities of many young people and which do little to address the harm done or to reintegrate the young person into the community.
- exclude Aboriginal and minority youth because these youth are not seen to have the skills or family support to benefit from such programs.

"I saw people with almost nothing buying what they want - not stealing. In my case, I have everything and instead of working for it, I resorted to stealing. I learned through my community work to give a little back to the community and not take things for granted...."

Youth in Alternative Measures Program

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2. Curative Discharge Program - Yukon Territories

A Story

This story concerns an innovative sentencing option for a man who was facing up to two years in jail for his fifth conviction for impaired driving.

(taken from a transcript of a C.B.C. Radio program)

JANET PATTERSON: Members of the Whitehorse RCMP Detachment lay more drinking and driving charges than they do for any other type of crime. Many of those charged are repeat offenders. They

usually get sent to jail only to end up back on the road again once they're released, causing a danger to the public. But there are a few success stories, people who manage to beat their drinking problem and become safe and law abiding citizens. Some of these people have benefited from a little known program that's available by means of a special sentence from the court. It's called a curative discharge. Yukon Morning's Becky Streigler tells us the story of one man who made it through the program and changed his life.

BECKY: *Driving is a privilege that many of us take for granted. But for Jack Simpson (not his real name) it's a privilege he's lost many times as part of his punishment for impaired driving. He's also served time behind bars. In 1993 the 39-year-old Whitehorse man was facing up to two years in jail for his fifth impaired. That was scary enough. But he also had another experience that made him realize his alcohol addiction had got way of hand.*

JACK: *I was in a blackout for up to almost 14 days. I don't remember anything. At one point in time when I came out of the blackout I was in my cabin and I realized I'd missed two weeks somewhere. I found a note in my pocket from a friend who'd gone through a similar thing 14 years before, saying when you're ready to talk come and see me. That's kind of what started it all.*

BECKY: *Jack stopped drinking and took the residential alcohol treatment program at the Crossroad Centre in Whitehorse. But he still had to go to court for his impaired charge and face a major jail sentence. That's when he learned about the curative discharge program.*

JACK: *My lawyer mentioned it to me, saying I could either do the two years or whatever time I get, or this would be an alternative. I wouldn't do any time as long as I did everything I was supposed to while I was in this program and didn't screw up.*

BECKY: *Jack wanted the territorial court to grant him a curative discharge. That meant he would avoid going to jail, but he had to show that he was determined to stay dry. He'd already done that in part by successfully finishing the alcohol treatment program. But there was something else he had to do, something that is key to the curative discharge program. He had to submit to blood tests every month for two years to prove that he wasn't sliding back into his drinking habit.*

JACK: *It was no problem for me because I had nothing to hide. The only problem was because of my job I'm out of town a lot for weeks at a time. But I could always make arrangements to get around that and get the blood tests as soon as I got back or before I left.*

BECKY: *Two years later, Jack has completed the program and has stayed away from alcohol....*

Program Description

The process to ask for a curative discharge usually begins with a defence lawyer requesting a medical-legal opinion. A doctor must show that a defendant is an alcoholic, that satisfactory treatment has been carried out or is to start and that there is a reasonable likelihood of success. The doctor's assessment goes both to the defence lawyer and Crown's office as the doctor wants to be viewed as an expert advisor to the Court rather than to any one lawyer.

If a curative discharge is granted, the Court usually gives a two to three-year probation, with the condition of follow-up alcohol and drug counselling and visits to the doctor for physical examination and blood testing.

Complete abstinence from alcohol is a requirement. The doctor will see the individual once a month for the first three months, three times a month for the next six months and then six times a month until the probation order is over. This method identifies relapses and allows the court to be advised to take action and protect the public from a possible drunken driver. From a treatment perspective, a relapse caught in the earlier stages is easier to treat. Relapses are considered part of recovery.

Commentary

Judge Heino Lilles estimates that only a handful of the drinking and driving cases end in curative discharges even though there were 240 charges laid in the previous year. People are not always ready to change and some resist the three-year monitoring period. "It's a heck of a lot easier, as people have told me, to go and do their three months, six months, nine months and get it over with and get back to their drinking." There has been a high success rate with people who received curative discharges, in large part because they had already decided they have to change. It is a reminder of how human nature and the human aspect of crime play an integral part in the success of these alternatives.

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3. Community Service Orders

Community service orders are usually combined with a probation order as part of a sentence. They require offenders to do a certain number of hours of voluntary community work to fulfil the conditions of the sentence by carrying out a “reparative” gesture that can benefit the community. A most powerful example of how effectively this can be used is reported on in Section One in *The Windsor Case of Kevin Hollinsky*.

Community Service in Nova Scotia

Some Success Stories

A judge in Nova Scotia wrote to encourage the greater use of community service orders, either to have the offender work for the victim or in the community.

“There are many, many success stories,” he said. “Two stand out. One is at the United Church in Pleasant River, Queens County where an offender sentenced to do 250 hours painted a mural of Christ at the front of their church. He was a talented artist. The other story is of the young lad and the 77-year-old caretaker at the Bridgewater Fire Department. One day when asked what he did with these lads he replied, ‘You see that truck over there? Well we washed it. You

see that floor? Well, we painted it. You see that bench? Well, sometimes we sit down on that bench and just have a talk’. Have you noticed all the “we’s” not “he” did that? Could we ever use a lot more like that man!”

The judge noted that community service programs are approximately 93 to 95 per cent successful with a very low rate of repeaters. In Lunenburg and Queens Counties, since the inception of the program, over 115,000 hours of community service have been performed. “Multiply that by \$5.00 per hour totals over three-quarters of a million dollars put back into the community,” the judge commented.

Youth Alternative Society Halifax, Nova Scotia

Youth Alternative Society is a non-profit organization working with youth in conflict with the law through community service orders (as well as Alternative Measures and a Stoplifting program).

These programs work with urban and rural youth; in each community, the youth, families, victims and volunteers who facilitate the programs set the terms for the agreements deriving from mediation sessions and establish con-

tacts in the community. Over 120 trained volunteers facilitate these programs.

In 1994, Youth Alternative Society worked with 770 youth between the ages of 12 and 15 years of age, a figure sure to increase now that it has begun working with 16 and 17-year-olds as well.

Youth Alternative Society is also designing a community-based, justice alternative aimed at youth at risk of re-offending. The program would be tied to the use of art, recreation and self-help therapy.

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**Travaux communautaires
(Community Service
Orders - Québec)
Québec**

A Story

This story concerns a man in his thirties convicted of sexually abusing his six-year-old daughter.

Upon arrest Paul lost his job as a paralegal. His marriage broke up and he

was forbidden contact with his three children (two sons as well as the daughter) except for visiting privileges every second Saturday. The probation officer who prepared the pre-sentence report felt that he was very repentant for what had happened and wanted therapeutic assistance to help prevent it from ever happening again. She also felt that he was suffering from depression and isolation and that a determining factor of his rehabilitation would be to help him develop self-confidence. For all these reasons, a plan was proposed and accepted to tailor the sentence to meet these challenges. Instead of being sent to prison, he was sentenced to do 120 hours of community service in a large community agency that offers rehabilitation programs for people suffering from physical disabilities due to accident or illness. This placement was specially chosen for him to provide opportunities for social contact that could help build his self-esteem, at the same time as he was required to attend group therapy and AA.

The plan was in fact very effective. The exposure to people going through difficult experiences of their own stimulated him to reach beyond his tendency to egocentric self-pity and to become more aware of consequences for others. He also found the work very gratifying and his placement was a huge success; after the required hours had been completed, he continued on his own and was chosen as the centre's "volunteer of the year". He also went back to school to pursue further studies.

Program Description

In Québec, community service orders are administered by Probation Services, to whom some cases are referred by the judge for a report to be prepared prior to sentencing, especially if the possibility of a community service order is being considered. Community service is never ordered without this kind of assessment to determine eligibility. In addition to referrals from judges for this specific purpose, probation officers carrying out pre-sentence assessments are searching for cases for which this alternative could be considered by a judge to whom it may not have occurred prior to receiving this information. They look for reliability, motivation, attitude, physical and mental capacity to make a positive contribution as a volunteer; they also consider whether there are any outstanding charges that could still result in a prison sentence, and whether community service would be a means of promoting a particular person's reintegration into society.

The probation officer discusses with offenders the kind of placement that most interests them and then gives them the directory for all local non-profit agencies so that they can choose for themselves and make the initial contacts on their own initiative.

The success rate has been very high. Most clients to whom this

is proposed are very eager to participate. They see it as an opportunity to benefit from a genuine alternative to imprisonment.

Two more examples in the province:

This story concerns a 36-year-old woman charged with trafficking drugs who was facing the prospect of a prison term because she had a previous record for impaired driving and this was her second arrest for possession of drugs.

This woman had been addicted to cocaine since the age of eighteen. In this particular instance, however, the arresting police officer spoke to her in such a way that the experience had a profound impact on influencing her to want to turn her life around. By the time the pre-sentence report was done, she had already taken steps to make changes in her lifestyle and was in therapy. Instead of being sent to prison, she was sentenced to three years on probation and 100 hours of community service in an agency where she was particularly exposed to young families and family life; the plan was to provide her with an opportunity to work with people that would strengthen her self-esteem, and integrate her into social life and a work environment. The placement was very successful. Her contribution to the work of the agency was highly valued. She also enrolled in a special course to prepare her for employment and eventually qualified and was hired as a front-line worker in a therapeutic setting.

This story concerns a young man of 20 years charged with armed robbery who had shot his pistol in the air in the convenience store during the incident but had not directly attacked anyone. All the money from the robbery was recovered.

Antoine had no previous record and didn't present as "antisocial personality." To the contrary, he appeared to be someone with a long-standing pattern of hard-working, law-abiding behaviour who had found himself in a life crisis that he could not handle: he was suffering from burn-out from carrying two jobs and going to school; after giving up one job he had unfortunately been laid off from the other; he had experienced failure in the hockey career he had been trying to build up; he was experiencing financial difficulties because his unemployment cheques were not coming in; and he had been trying to protect his parents from his problems because they already felt inadequate for not having had sufficient money to support his development in hockey. He felt overwhelmed by his situation and had taken some drugs; he felt bitter towards society and was struggling with guilt vis-à-vis his parents' expectations.

The probation officer felt that this was a situational crime and, though Antoine was very repressed emotionally, he was capable of gaining some insight into what he had done. His parents' reaction to his crime caused him to reflect on the many issues with which he had been struggling.

By the time the case went to court, he had finished the course he was taking and had put in 70 applications for employment. He was expecting to receive a jail term but was hoping to be allowed to serve it on weekends so that he would not lose another job. Instead, he was sentenced to pay \$250 as direct compensation to the store owner within 6 months; and he was also sentenced to 180 hours of community service in a seniors' residence carrying out maintenance tasks that made use of his job training and allowed him to use his skills to benefit society as a gesture of reparation for what he had done.

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Community Service Orders - An International Perspective

Sentencing to Service - Minnesota

Sentencing to Service is a jail reduction program born jointly out of very different needs of the Minnesota Department of Corrections and the Minnesota Department of Natural Resources. Corrections was concerned about the increasing jail population. Natural Resources had insufficient staff, funds and time to care for millions of acres of land, water, forests and recreational trails which they manage. Sentencing to Service was intended to access a labour force which would benefit the public by improving management of the state's natural resources, increase sentencing alternatives for the court and decrease incarceration of non-dangerous offenders.

Private foundations funded the initial project efforts and the project was later expanded and funded by county, state, and federal resources. Politically, sheriffs and county commissioners report the public supports putting offenders to work and likes the work projects they complete.

Initial evaluation indicates uniform state standards must be developed because of the particular mechanics through which this CSO program is being integrated

into the justice system there. Within the state, some offenders are getting one day off their sentence for every three days on the program, while others are getting a day for a day. Some judges allow an offender to get out of jail to work off a fine but give no credit for jail time. Others do. Project staff want to design proper evaluation in order to determine what jail costs are really saved, what per cent of people complete the program and which type of offenders are most successful.

Cautions

Like other alternative sanctions, Sentencing to Service (STS) may become an add-on sanction and simply broaden the net. There are other concerns about a "chain gang" approach to the project that can fuel a punitive more than a reparative orientation. There is also the potential threat to union employees. "Failure to remain sensitive to the turf of union employees will result in the demise of the program. STS is not intended to replace existing people and it should not," says John McLagan, project director. As well, a Sentencing to Service project has a cost associated with it. In rural Minnesota, it is estimated that a crew can be supported for about \$43,000 per year. Cost savings come in the benefit from the labour, and jail days saved, but there is the counter-argument that "unless jails are so crowded that they need to pur-

"The vast majority of recent sentencing reform efforts have not resulted in the use of alternative dispositions for offenders who would previously have been incarcerated. Instead, sanctions such as restitution and community service appear to have gained increased acceptance throughout the criminal justice system, but almost entirely as additional conditions imposed upon offenders who would otherwise have received more traditional probation orders."

**Professor Alan Harland
Temple University**

chase bed space elsewhere, the true cost savings is negotiable," McLagan notes.

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Community Service - Norway

In 1991, Norway's penal code was amended to include community service orders (CSO) as an independent sentence. A CSO of up to 360 hours may be imposed for an offence that otherwise could have resulted in a prison sentence of up to one year (there are exceptions permitted where a CSO may be applied for even more serious offences). The CSO sentence includes the term of imprisonment which may be imposed in a case of default. A CSO is possible only when the offender is in agreement and deemed suitable.

The probation service may arrange community service through official and municipal institutions and private or voluntary organizations. Examples include hospitals, nursing homes, sports clubs, religious organizations etc.

There were 1026 community service orders in 1994, up from 944 in 1993. The breach rate was 29 per cent.



Community Service for Adults and Juveniles - The Netherlands

Traditionally, the Netherlands has had a tolerant attitude in general towards crime and consequently there has been a small number of custodial sentences and little need to resort to alternative sanctions. Rising crime and pressure on the prison system reversed the Netherlands' infrequent use of alternative sanctions.

In 1981, an experiment started with community service and other dispositions as an alternative to short-term imprisonment for adults (six months or less). A few years later, community service for juveniles in the form of work projects was introduced. Community service orders are considered a kind of alternative sanction which can be imposed for juveniles by either the prosecutor or judge for all sorts of offences (property, violent, sexual and drug) and were to replace all existing traditional sanctions, including custody, fines and suspended sentences. Juveniles can receive alternative sanctions of up to 150 hours, and in very serious cases, of up to 200 hours.

Peter H. van der Laan reports that youth involved in alternative sanctions are held personally responsible for their acts; they have to fulfil tasks useful to others. Wherever possible, they are confronted with the harm, injury or damage they have caused. They must repair this damage, or make symbolic repairs of benefit to the community.

Cautions

Evaluation indicates that net-widening is occurring in some instances. There were initial problems related to too few girls and youth from ethnic minorities receiving alternative sanctions. Significantly, those alternative sanctions were replacing fines and suspended custodial sentences more so than actual custodial sentences. Disappointed about the impact of alternative sanctions on the use of custody, the Netherlands introduced the Quarterly Course three-month day program, comparable to the intensive intermediate treatment program in England.

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Community Service - Zimbabwe and Swaziland

Community service orders have helped level off a recent dramatic upsurge in Zimbabwe's prison population.

A weak economy had been blamed both for people turning to petty crime and others being unable to pay fines. Wanting another option to prison besides fines, the government began promoting community service sentences; in 1992, 60 per cent of the country's prison population were serving sentences of three months or less. Between January, 1993 and October, 1995, approximately 6,000 people undertook community service working in childrens' and seniors' homes, hospitals and environmental projects. Community service in lieu of a prison sentence permits those convicted who had a job to keep on working and generating income, helping prevent other members of the family from turning to crime.

Penal Reform International was instrumental in establishing this project and finding funds. Volunteers from Prison Fellowship Zimbabwe eased the magistrates' workload in managing the community service programs. There was also a public awareness campaign and training about the purpose and operation of community service.

In Swaziland, an older but more modest community service program has prisoners released part-way through their sentence. The Swaziland Association for Crime Prevention and the Rehabilitation of Offenders runs this service with overseas funding.

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Legal Aid Youth Office

4. Intensive Supervision Probation

Intensive Supervision Probation generally consists of a probation order to which are attached numerous, very strict conditions that are tailored to varying degrees to the specific client. These conditions can include curfews, travel restrictions, educational and/or employment requirements, treatment programs and the like. Unfortunately, the conditions imposed are sometimes also too strict for the client to realistically follow, resulting in an admission to prison even when there has been no further criminal offence. As well, few probation orders are reparative in nature, and not all are meaningfully related to the offence or to what needs to be accomplished in each situation.

Project Edmonton and Calgary, Alberta

A Story

Lawyer Jim Robb described the girl as a “throwaway”, sentenced to two years in secure custody no doubt for her offences but also for the justice and social services systems giving up on her. This girl was typical of the street kids who may indeed have a “justice problem” in the courts but also have a “housing problem, an addictions problem and an education problem”.

Robb’s Legal Aid Youth Office Project agreed to represent her on an appeal. His project strung together a case plan of five separate programs which existed in a number of different provincial and territorial jurisdictions; project workers would co-ordinate the plan.

When the judge heard the proposal, he reduced her sentence from two years to the three-and-a-half months already served in custody, releasing her to begin the first of her programs.

Program Description

This pilot project was launched more than two years ago in the youth courts of two major Alberta cities, Edmonton and Calgary. Although the project was not intended as a “youth crime project” - it is actually comparing the cost and quality of a staff model to the traditional judicare model of delivering Legal Aid-, there have been significant lessons with respect to alternative sentencing.

Working with youths requires much more than conventional legal work, even if the latter is the primary objective. The project employs a total of 14 lawyers and three youth workers who collaborate closely together. As the aim is to prevent the client from returning with further charges, there is a heavy emphasis on preventive work, rehabilitation and treatment. Staff search for programs in the community as a distinct alternative to incarceration. Help is also provided for youth who have been acquitted or had their charges withdrawn. Youth are encouraged to call at any time for help rather than wait for a full-blown crisis or further charges.

Robb refers to the “horizon problem” endemic in this type of work with youth. For example, a child welfare worker may look for resources in Edmonton and report back that there is nothing for a youth. “But the best program for that particular kid may be up north in Uranium City,” he said. “We will look anywhere.” The Legal Aid project moves across the boundaries of provinces and various systems to identify the programs most helpful for clients and get them there. In Edmonton, staff make referrals to over 70 agencies in Alberta, British Columbia, Saskatchewan and the North West Territories. A recent sample of about 140 youths for whom case plans had been developed indicated that over 800 referrals were made for those youths. The case plans are obviously multi-faceted, intended to address issues of poverty, homelessness, substance abuse and mental health. Only ten of those 140 youth had their case plans rejected by the courts. As the girl’s story illustrated, there has also been reductions in sentences, primarily for native, rural youth.

This project has encountered many challenges. A major problem is sheer volume, dealing with over 2,000 youths each year. There is a lack of community resources, worse for those in the younger group aged 12 to 14 years. It has also been tiring “swimming against the tide of government and public opinion

“In our view, the press for more and longer incarceration is madness. We do not view youths in categories - they are individuals who have significant personal problems that must be addressed. Some of our most significant ‘turn arounds’ have been with 16 and 17-year-olds with long prior records and a past history of repeated incarceration.”

Jim Robb
Legal Aid Project

which creates a lot of conflict... We have groups of offenders who are vastly over-represented in the system - native youths are obvious. There tend to be fewer resources for females, particularly those who live on the street."

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Community Reparative Probation Program Vermont

In 1994 and 1995, the state of Vermont embarked on a new course in corrections rooted in the belief that prisons frequently fail to serve society's needs and that a vital component - the community - has been missing from criminal sanctions. Part of the new initiative was a community **Reparative Probation Program** whose central theme is for an offender to come face to face with the community, a meeting at which an agreement is negotiated specifying ways that the offender will make reparation to the victims and the community. The goal is to have a probation sanction that responds to crime without unduly burdening

the courts, corrections and other partners in the criminal justice system. Reparative Probation is an alternative to traditional probation because the program focuses mainly on issues related to the crime and repairing injuries to victims and the community. As well, victims and community citizens are provided opportunities to confront offenders for the purpose of promoting victim empathy.

Unlike traditional state probation which contains 12 standard conditions, the administrative probation order under this program is limited to one standard condition stipulating no further involvement in criminal activity, and any other specific condition pertaining to the specifics of the case. Through the program, the offender appears before a reparative board consisting of five citizens from the offender's respective community. At the meeting the board members and offender discuss the details and impact of the offender's behaviour. The result is an agreement between the Board and the offender stipulating specific activities that the offender will do to complete the program. Agreements focus on activities that are related to four goal areas: restore and make whole the victims of crime; make amends to the community; learn about the impact of crime on victims and the community; and learn ways to avoid re-offending. The person on reparative probation is not under traditional

supervision. Compliance with the terms and agreement is the responsibility of the offender. Once the sanctions are agreed on and assigned by the board, the offender has 90 days to fulfil the agreement and complete the program. Upon completion, the board may recommend discharge from probation.

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The Dos Pasos Project for Pregnant and Addicted Women Arizona

U.S. observers have noted that more women than ever are going to prison in that country, often for a variety of minor thefts, less serious crimes and prostitution. (This is increasingly true for Canada as well.)

Many of those women are substance abusers, with alcohol or other drug problems.

Many female offenders are also pregnant or have small children. Estimates of drug use during pregnancy are escalating.

All of these factors on their own are serious enough but taken together they pose a formidable crisis. In Arizona, people started to acknowledge the severity of this growing national problem and its local impact. Substance abuse treatment providers, the social service community and some representatives from the criminal justice system joined together to develop strategies to prevent, discourage and treat maternal drug use. Early intervention with pregnant, substance-abusing women increases the likelihood of prenatal care, for better health for mother and fetus, delivery of a drug-free infant and increased opportunity for success in drug/alcohol treatment. The initiative led eventually to the creation of the **Dos Pasos Project** to develop alternatives to incarceration programs for addicted women who are pregnant or a high risk for pregnancy.

Dos Pasos has a liaison coordinator who ensures that the court is aware of all available options before making a decision. Liaison activities include mediating disputes between staff from different agencies or systems. The project is intended to intervene during the arrest, booking, adjudication and sentencing stages. Client evaluations are done by Dos Pasos case managers who frequently go to the jail to interview women before their initial court appearance. There is a comprehensive intake procedure and

“ Dos Pasos believes that not only will the project reflect short-term cost savings, but will save the “hidden” costs to our public health systems as well. The additional benefits of interrupting the impacts of intergenerational substance abuse and criminal behaviour can only be estimated.”

Elaine Calco-Gray
Dos Pasos
Supervisor

“ At the moment, eight out of ten dollars that we give the provinces (for youth corrections) goes to custody costs. Well, that’s easy in a sense. It’s lazy. It just makes sure we build more facilities with locks on the doors.

I’d rather see that money... I’m going to negotiate it if I have the chance to see... that money spent in the other proportion over the next few years so that 80 per cent of it goes to alternatives.”

**Justice Minister
Allan Rock**

evaluation. Women in the Dos Pasos program are often on probation. When they are released, they contact Dos Pasos to access case management services and referrals for their additional needs. That could include treatment programs, referrals to support groups, other prevention and education groups, prenatal care and assistance in obtaining housing, food, furniture and household items.

Early evaluation of resources had indicated there were virtually no programs available to address the special needs of pregnant women. Through collaborative effort and federal funding, Tuscon developed additional residential and day treatment programs that served the pregnant, addicted woman specifically.

Federal funding for The Dos Pasos project ended in February, 1996 and it was unclear whether there will be other funds obtained to continue it.



Alternative to Custody Program for Youth Kitchener-Waterloo, Ontario

The John Howard Society of Waterloo-Wellington offers an **Alternative to Custody Program** to help young offenders to develop more effective ways of coping with every-day problems and stresses.

The new program accepts all court referrals for an assessment but tries to limit entry to the program in order that it remain a true alternative to custody; part of its evaluation will be to assess if and how it achieved this goal.

Alternative to Custody builds on leading research by Dr. Alan Leschied who has identified a number of risk factors that increase the likelihood of delinquent behaviour:

- impulsive behaviour
- moral immaturity
- underdeveloped communication
- lack of empathy
- lack of conscientiousness
- unstable family life
- egocentrism
- low level of supervision
- undesirable peer group
- exhibited anxiety
- aimless use of leisure time
- exhibited frustration and anger
- lack of interest in school and future

Participants learn how to think through and evaluate the consequences of their behaviour, specifically in terms of how it impacts on themselves and others. An important skill area is critical thinking. Youth also learn to recognize alternative solutions while assessing their own decision-making processes.

Alternative to Custody Program accepts referrals from probation and youth court judges for youth

aged 12 to 15, concentrating on older youth involved in more serious offences. The program consists of three sequential phases which will last approximately four to six months. Clients and coordinators develop and implement a discharge plan to increase the youth's involvement in the community and encourage ongoing participation in pro-social activities. Follow-up is conducted on a quarterly basis for one year to monitor progress and evaluate program success. This program is funded by the Ministry of Community and Social Services which supports community-based alternative to custody programs that provide high frequency and high intensity services. The program operates in Kitchener, Cambridge and Guelph.

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Second Chance - Restitution Lloydminster, Alberta and Saskatchewan

Sometimes judges are reluctant to sentence youth to fines because the teens find it difficult to earn the money to pay and so end up in jail anyway. The **Second Chance** program offers the courts an intermediate option between custody and community service by helping youth to find employment and earn money to pay fines or restitution. The program strives to encourage youth to take responsibility for their actions and compensate the victims for their losses.

The money the youth earns from employment is funnelled directly into an account through the Saskatchewan courts. Restitution funds are forwarded to victims when the account covers the amount. The teens are given a small amount of money out of their pay for spending to discourage them from petty thefts and to learn they can earn money and see the benefits from work.

Young people found guilty of charges like theft, break and enter, vandalism and highway traffic offences are eligible for Second Chance. The program serves both native and non-native youth in this area close to the Saskatchewan and Alberta border; it is a joint venture of the Alternative Measures Program of Saskatchewan Social Services and

The Lloydminster Native Friendship Centre.

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“It costs \$120,000 a year, just for salaries and maintenance, to keep a youth at the Whitbourne Youth Centre. This doesn’t include lawyers’ fees, counselling, transportation or other costs...

In spite of the cost, there hasn’t been “a drop of evidence that young people who go there do better when they come out” ...

Gale Burford Memorial University, Newfoundland, quoted in St. John’s Telegraph



Intensive Intervention Program St. John’s, Newfoundland

Newfoundland’s Social Services department has recently launched an **Intensive Intervention Program** for youth funded in part by re-directing some of the money now being spent on custody to community-based programs. In Newfoundland, it costs \$120,000 per year for one youth to serve a secure custody sentence and \$70,000 for a youth in an open custody home. Interestingly, when those figures were cited in a conference and subsequently reported in a newspaper, a provincial court judge hearing a case the next week refused a social worker’s recommendation for a custodial sentence, citing the figures mentioned in the newspaper story.

The hope is that an intensive intervention program will reduce the risk of being sentenced to cus-

tody and the time spent in custody. Ten additional social workers and two community service workers were hired to provide services to a limited number of families and youths who are identified as being at high risk of being sentenced to custody. Social Services has control of who enters the program, choosing youth already on probation. If they have new charges pending, the judge can take the Intensive Intervention Program into account.

Selection of youths for referral to the program will be determined within Social Services by the youth corrections supervisor rather than as a sentencing alternative by the Court. However, when a youth is selected for intensive intervention, and is also due to appear in Court for a new disposition or custodial review, the intensive intervention plan will be presented to the Court. The Court might then issue a community disposition which may contain conditions that reflect and support the intervention plan. The action plan for the social worker is to be guided by many intervention strategies, including family support, individual and group counselling, crisis planning through a co-ordinated multi-agency response, community integration, advocacy for support services and organization of day programs, supervision and behaviour management.

In order to reduce the rates of committal to custody, the intensive intervention program must both provide a legitimate alternative for those who would otherwise be sentenced to custody and strive to reduce the risk of re-offending.

Intensive intervention continues as long as the potential for a positive impact can be expected. Its termination will be based on several factors, including the expiry of a court order, reduced risk, other options available for service delivery or a decision that further intervention will not be productive.

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We also provide a contact for a British Columbia program, Fraser Valley Youth Supervision Program.

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Eastwood Outreach Program Edmonton, Alberta

A Story

The following letter is from a youth attending the Eastwood Outreach Program. We did not correct his spelling.

"In 1990, I was fighting, steeling and steeling cars. I quite for about a year then in 1993 I kiked a boy in his mouth and broke his two front teeth. In 1993 I waz samashing school windows and in 95 I waz arrested three times for steeling cars but I learned my lesson when I went to jail and got out Oct. 31 and came to the program and it changed me for a long time."

His mother also wrote, confirming her son's story and adding that she had basically given up on him as she was unable to get him away from a group of boys persistently in trouble.

Program Description

About 20 of Eastwood's students are "hardened" youth with long criminal records. They come to Eastwood on probation, either directly from the courts or a youth facility. The program is located in a small storefront office and is designed for students who are experiencing personal or academic difficulties and are likely to quit school. Teachers strive to develop "success-oriented attitudes and behavioral norms".

The classroom is opened 90 minutes before class. During this time, students share current home or school concerns with the teacher, privately at first, then later as a group. Morning exercises involve academic, work and social skills. In the afternoon, the students concentrate on job shadowing and volunteer activities.

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Rideau Street Youth Enterprises Ottawa, Ontario

This story describes intensive programming to assist and train youths in trouble with the law in order to prevent the likelihood of custody.

A Story

Don moved from a small town to Ottawa with his family during Grade Eleven. He began attending Rideau High School and, as he put it, "had too much fun". He soon got caught up in a lifestyle of smoking marijuana and drinking. He was refused entry into high school the next year. At the age of 17, Don was charged with the possession of a narcotic for the purpose of trafficking, convicted and given a sentence of 18 months probation and community hours.

At the time, he was out of work, had no fixed address and was receiving social assistance. Subsequently, he was charged with breach of the earlier probation on three counts, including failure to complete community hours and running a red light on a bicycle. At the suggestion of a friend, Don came to Rideau Street Youth Enterprises while waiting trial for the above charge. In February of 1995, he worked as a casual labourer on the Initiatives side (job bank) of the program and was accepted into the RSYE No-Sort Recycling program in July. In October, he went to court for sentencing on the three

counts of breach. The director of the program wrote a letter to the judge explaining the program and how Don had become more stable, found an apartment and was taking high school correspondence courses. At sentencing, the Judge told Don that he had originally planned a custody sentence but decided against it to keep Don in the program. He was given a sentence of three months probation.

At this time, Don, 20, is one credit away from completing his grade twelve and plans to either join the military as a field engineer or go to college and take drafting. He was adamant in wanting to keep improving his situation. Don would definitely recommend the program to others as it gives them employment, helps them to get identification papers if they have none, puts them back in school, gives them spending money and increases their morale and self-esteem. He recommends it especially for those in trouble with the law.

Program Description

Rideau Street Youth Enterprises is classified as a training program serving “hard to serve” young adults, age 18-24, including many who have been in trouble with the law and are often between court dates. The program itself involves the running of a recycling business called “no-sort recycling”. Contracts are made with small businesses to pick up their recyclable products that are brought to the warehouse, sorted

and then sold to hauler/processors. Revenue is fed back into the program. When clients graduate from the program, they are eligible for a \$2,000. voucher which is given provided the client is going to work or to school. Clients have one year to collect the voucher.

This program reduces the use of custody in that the judge at the time of sentencing receives a report stating that the youth is involved in this program and will often refrain from giving a custodial sentence so that the youth can continue with Rideau.

Participants attend Rideau Street Monday to Friday from 9:00 a.m. to 4:00 p.m., acquiring job skills and attending correspondence classes, mandatory weekly meetings with a career planning counsellor and visiting a support worker from the Youth Services Bureau to deal with any problems such as housing, addiction etc. They earn \$200 weekly. To be accepted into the program, the applicant must at the time of application **not** be: working, going to school or living in a stable environment. Every nine months, Rideau Street can work with approximately 10 youth although they receive about 50 applications for the same period.

The program began in May of 1994, with funding from the federal government. Funding continued to be provided by Youth Services Canada but ended in

Punitive measures are measures of despair. They reflect our frustration with youth and an aging population that fears youth more and tolerates youth less. But measures of despair do not breed confidence in the justice system nor do they act to reduce criminal activity. They act to build further divisions between generations and allow the older generations to ignore the increasingly difficult economic, employment and otherwise highly stressed environments that our children are raised in today.... Our young people are too vulnerable and too valuable to use them as a balm for unrelated public anxiety.

**John Howard
Societies of Canada,
Alberta and Ontario
Nov. 20, 1995**

March, 1996 when it was hoped funding could be renewed by private/corporate donors. Funding remains the major obstacle to the program in addition to the difficulty of employing individuals who have little to no work experience and therefore take a great deal of time to train.

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Sober Streets Kitchener-Waterloo, Ontario

Sober Streets is a John Howard Society program trying to change the thinking of hardcore recidivist impaired drivers through a “confrontational, non-punitive approach”. In the Kitchener-Waterloo region, there were some 1100 impaired driving charges laid in 1994; studies indicate about 60 per cent of impaired drivers had been charged earlier.

Many enrolled in Sober Streets are referred by probation. Most have an average of five impaired driving charges. This ten-week group program asks participants to look at the rationalizations they have used to allow themselves to continue drinking and

driving in the face of serious public anger towards this problem. They look at costs of their behaviour, from both the victim perspective and their own emotional and financial circumstances. A highlight is a guest speaker from M.A.D.D. (Mothers Against Drunk Driving), the presentation often triggering genuine remorse and personal motivation to change. **“This is something that they all disclose has been absent in them up to this point, something that time in custody or other punitive methods could not achieve,”** commented program coordinator Alex Smart.

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Repeat Impaired Driving Project Prince Edward Island

The Repeat Impaired Driving Development and Demonstration Project wants to reduce the social and personal harm caused by impaired driving by providing a range of more intensive services to those convicted and sentenced for this offence.

In Prince Edward Island, about one-third of the total impaired driving convictions are repeaters - about 200 convictions yearly. The island's conviction rate is higher than the national average. It is estimated that for each impaired driving detection, the driver has actually driven impaired anywhere from 900 to 2,000 times. Upwards of 80 per cent drive after disqualification.

The project has as its immediate goal a more intensive case management, treatment and follow-up for clients. The first few individuals in the project have had adjustments to fines but not to custodial sentences. The project's model is proposing to look at possible use of adjournments, using a probation order with repeat offenders and introduction of conditional sentences, in accordance with changes to the Criminal Code in 1996 (provisions under Bill C-41; there is always the danger, however, with conditional sentences, that an excessive or unrealistic number of conditions placed on the individual will in fact lead to future incarceration, even though no new criminal offence took place).

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Adolescent Addictions Program Prince Edward Island

This story concerns a youth convicted of "theft under" who was provided while on probation with intensive intervention related to an addictions problem.

A Story

Carl (not his real name), 17, is the middle child of three boys. Carl's parents were married at a young age, only 17 themselves when their first child was born.

Carl appears to have been raised in an environment which valued honest work and family. However, at the same time, his dad gave him a double message. Carl stated that throughout his childhood he was aware of his father's illicit drug use. Carl said he had happy childhood memories but prior to his parents' separation in 1991, he recalls a significant amount of turmoil in his home. His parents separated on his thirteenth birthday. He continues to have difficulty with the separation. He started using drugs at 14. He kept this hidden from his mother for almost three years until one day his school principal telephoned to tell her Carl had been caught using drugs.

He was expelled from school in November 1994.

Carl was later charged with "theft under" and a condition of probation was his attendance with the Adolescent Outpatient Detoxification

The impact of drunk driving on the justice system is enormous. In the five jurisdictions where justice statistics were provided (Quebec, Saskatchewan, Nova Scotia, Prince Edward Island and Yukon) impaired driving was the most frequent offence dealt with in the courts - in each case more than double the number of any other type of offence.

Statistics Canada report, December 4, 1995

“Indeed, in 1991 our rate of youth sentenced to custody was 447 per 100,000. In England and Wales, it’s 69. In Scotland, it’s 86. Collectively, Canadian governments spend over \$250 million each year locking up young offenders whose most serious offence was non-violent. Five out of six young people in custody are there for non-violent offences.

... to keep a young person in secure custody costs more than \$100,000 a year in seven Canadian jurisdictions and it reaches as high as \$300,000 in the territories. That’s a shocking amount of money.”

**Justice Minister
Allan Rock
Nov. 20, 1995**

program. He would have been given custody if he did not fulfil this condition. He began the program with a positive drug reading and successfully completed the program with a negative one. He was accepted into an Educational Alternative program. He successfully completed his year and is registered at the senior high school.

Carl has a good relationship with his older brother and his paternal grandparents. He fights with his younger brother when “he is on edge” but this has improved. Carl had a slip on July 1, 1995 and another in October. He re-entered the 12-week program and continues his studies at the high school.

Program Description

This comprehensive **Adolescent Addictions Program** includes prevention, education, detoxification, treatment and aftercare, using an integrated service delivery model. It is offered through a partnership of Prince County Addictions Services, Young Offender Custody Programs and the island Western School Board. It is part of an overall plan to increase the accessibility of clinical services to all youth who need them.

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Multi-Agency Preventative Program (MAPP) for High-Risk Youth Brandon, Manitoba

The Brandon Youth Services Committee, which consists of 22 agencies, established the **Multi-Agency Preventative Program (MAPP)** as one of a series of initiatives to benefit high-risk youth. MAPP, acknowledging that youth are also part of family and community systems, endorses a holistic approach which is intended to have an impact on permanently changing behaviour and ensuring a safer community. The project pulls together key agencies on a monthly basis to develop coordinated case management plans and monitor strategies which include community and family support.

MAPP will focus on the forty highest-risk youth in Brandon. More specifically, it has hired three individuals to develop and test strategies of tracking the ten highest-risk youth who are also on probation. The project will attempt to determine whether or not intensive monitoring of these youth is effective in reducing the problem behaviour which might otherwise lead to custody in the future.

Workshops on parenting skills and support groups for parents are part of MAPP's overall strategy. Organizations involved in the program include schools, police, probation, prosecution, mental health, child welfare, social agencies, addiction treatment and native groups.

Meanwhile, the **Assessment, Intervention, Monitoring Program (A.I.M.)** is a new probation supervision program for youth in the Brandon area stressing intensive monitoring. It is described as "strict, holds the youth accountable and has built-in levelling systems that are more or less restrictive depending on

the behaviour of the youth... Rules and expectations are very clear and every possible attempt is made prior to a breach." It has been approved by the local judges, Crown's office and defence counsel representative.

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5. Family Preservation Model

The Family Preservation Program is an intensive, in-home service offered on a voluntary basis to families who have youth between the ages of 12 and 17 who are in custody or who are at high risk to spending some time in custody. Family Preservation focuses on the family, not the "problem child", with a strong commitment to maintain children in the home wherever possible. The program both builds on family strengths and identifies how family functioning along with its values and beliefs may be contributing to the youth's unlawful behaviour. The community is also a target for

change. Family Preservation attempts to decrease the youth's undesirable community involvement, develop adequate formal and informal supports and make good use of relationships with other service providers.

Allan Leschied and others have identified this approach as an effective alternative to custody. "The treatment is brought to the family," notes therapist Scott Henggeler. "We haven't invented a new treatment. We've taken the best of what's out there, integrated it effectively and then overcome barriers to change."

Family Preservation Program La Ronge, Saskatchewan

A Story

In May of 1995, a 15-year-old named Jeff was referred to the Family Preservation Program by the community youth worker of the Young Offender Unit. In the referral, it was stated that Jeff was to appear in youth court on three charges of break, enter and theft. Since Jeff had previously been convicted on two other separate occasions for property related offences, he was considered a likely candidate for a custody disposition.

Upon entering the Family Preservation Program, Jeff and his family participated in a risk, needs and strengths assessment. The purpose of this assessment was to determine what factors were influencing Jeff's behaviour and what resources would be needed to deal with those behaviours. Additionally, any family strengths or possible supports within the extended family could be shown as well.

From the assessment process, it was noted that: Jeff was not currently enrolled at school, and had not been there for some time; there were indications that he was using drugs quite frequently; the relationship between Jeff and his mother was constantly in conflict; there were no rules of clear boundaries in the home.

Based on these issues, a case plan was designed by Jeff, his mother and the Family Preservation Program worker in which he would: enroll and attend an alternate educational school program; attend outpatient drug and alcohol treatment; participate in anger management counselling; assist his mother in establishing rules of behaviour at home; abide by the conditions of an intensive supervision program provided through Family Preservation Support services.

On completion, Jeff, his mother and worker attended court and presented this case plan. The Youth Court judge sentenced Jeff to one year probation with conditions. An estimated four months in custody was avoided.

Program Description

Families are usually involved with the program anywhere from three to five months, with workers given small case loads in order to maintain frequent contacts and be available 24 hours a day in case of a crisis. Workers may help the youth and families develop effective conflict-resolution skills, identify positive ways to deal with stress, assess the role of peers in the youth's conflict with the law, find appropriate accommodation, enhance parenting skills and act as liaison with schools and agencies.

Saskatchewan Social Services estimates that the Family Preservation Program is keeping 22 youths per day out of secure custody and 15 youth per day out of open custody. The program has saved an estimated \$500,000 compared to having the same number of youth in custody facilities and Community Homes. La Ronge is one of six provincial sites.

A La Ronge program report notes that the greatest factor contributing to causing delinquency is “poor family relationships marked by negativity, over-criticism, conflict and especially rejection. Child/youth’s self-esteem needs to be a goal of service.”

Family Preservation Program workers note it is difficult at times to convince Crown attorneys or police to work in this way with “dysfunctional” families. “Sometimes, they want to keep them out of the community for a long time,” commented one worker.

Evaluation has identified several factors that may undermine the success of a family intervention: working with older teens; a history of prior placements which has reinforced rejection issues and increased likelihood of delinquency; lack of family motivation for services; multiple and severe problems, especially psychiatric; substance abuse problems; larger families; high on child protection

risk assessment; any history of chronic, long-term low parental and child functioning.

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Community Support Services - St. Lawrence Youth Association
Kingston, Ontario

Community Support Services - St. Lawrence Youth Association offers a family preservation approach for young offenders currently on probation and at risk of being placed out-of-home. As well, this organization works at family reintegration and reunification for those youth in secure or open custody. Since 1989, Community Support Services has provided intensive, short-term flexible support to 174 youths to prevent residential placements of high-risk 12 to 15-year-olds at the “front end” of the service delivery system and to assist high risk youth at the “back end” of the system in returning to the community.

A cost analysis indicated that for every \$1.00 spent on Community Support Services, about \$1.48 might have been saved in residential costs. These savings are likely understated as they do not reflect savings in other children's sectors and cannot account for the program's impact in preventing problems in siblings. Yet, Community Support Services, similar to other programs in the country, faces a fiscal crisis and a possible cessation of government funding.

As well, studies in Ontario point to an increasing reliance on custody with dramatic increases in committal rates in the past ten years; this is a troubling development when, according to an Ontario study, two-thirds of the 456 youths discharged from custody are involved again in the justice system via breaches and Criminal Code offences within six months.

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U.S. Family Preservation Programs

Numerous family-based programs have been implemented during the 1970s and 1980s, serving clients from child welfare, mental health, juvenile corrections and other service areas. Here are two examples.

The Simpsonville South Carolina Family Preservation Project

This "multi-systemic treatment" approach developed by Scott Henggeler has therapists work with only four families at a time, each over an average of four months. The youth and the family may be seen as often as once daily, usually in the home, with therapists also available on a 24-hour basis.

Research reported on the project included 84 violent and chronic juvenile offenders who were at risk for out-of-home placement. Results indicate that a year later, after family preservation programming, there were significant positive differences in incarceration, arrests and self-reported offences. Over two years following treatment, recidivism rates significantly favoured a multi-systemic treatment group over another group who relied on traditional services.

The cost of family preservation treatment averaged approximately \$2,800 per client, as compared to the average cost of \$17,769 for institutional placement in South Carolina.

The Family Ties Program - New York City

Modelled after the Homebuilders approach to family preservation in the child welfare system, this program has allowed judges to suspend a residential placement order for up to eight weeks. The needs of each child are identified and the family is assisted so that the youth may remain at home. Family Ties emphasizes the special needs of adolescents. Youths get help to resist peer pressure and manage their anger. Parent-child relationships and the role of authority are addressed. Youths must attend school and adhere to a curfew. Concrete services such

as babysitting and helping with household chores are provided by Family Ties and help to ease pressures which lead to conflict. A recent independent evaluation indicated that probation was recommended at the end of the eight-week adjournment in 65 per cent of the cases, with continued exploration of placements in the rest. The city of New York and the state were estimated to save \$2.7 million dollars in one year alone, about \$3.00 in residential costs for every \$1.00 spent on the program.

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6. Alternative Placement/Residential Programs

Several jurisdictions run a variation of residential placements in the community that provide a creative alternative for keeping youths in their home communities and out of more traditional facilities or institutions. Some offer specialized services for certain groups of offenders.

Opportunities for Independence - The Developmentally Disabled Winnipeg, Manitoba

A Story

This story concerns a conviction for sexual assault on an 10-year-old girl for which the offender was facing the prospect of an 18-month prison sentence.

To ensure client confidentiality, Jim (an alias) is a hypothetical individual, as are the circumstances described. The composite situation described is drawn from years of actual experience and represents a very typical scenario.

As a child, Jim was removed from the family home at an early age as a result of breakdown in the family unit and suspected abuse. Jim resided in a variety of foster care placements and eventually was incarcerated at a youth correctional facility. Jim resided in this institutional placement until the age of 33 when he was discharged to the care of a surviving parent.

As an adult living in the community, Jim was unemployed and frequently involved in petty crime such as vandalism, petty thefts and fights while intoxicated. Jim's mother is unable to assist Jim and the relationship has deteriorated to where the mother wishes him to be taken from the home. The local police warn Jim when he becomes involved in petty incidents, and do not arrest him as he is "mentally handicapped" and there are difficulties in proceeding with charges. At the age of 36, Jim is arrested as a result of allegations of a sexual assault on a 10-year-old neighbourhood girl. He is seen by a psychiatrist while being held in custody and the resulting classification of dual diagnosis is reached. (Jim is functioning in the mental handicap range of intellectual functioning, and has been diagnosed as suffering from a mental illness.) Jim was found guilty of the offence and was required under an order of probation to parti-

cipate in a treatment program. There were concerns that the possible 18-month sentence would have made Jim vulnerable within the prison and that he would not benefit from correctional treatment programs. It would likely make his situation worse. Jim was referred to Opportunities for Independence and accepted for assessment and treatment.

Jim resided under 24-hour supervision in Opportunities for Independence, Phase One Residential Care facility, where he lived with three other individuals of similar circumstances. Jim participated in a wide variety of life skills, vocational and recreational training programs, along with group and individual treatment. Through peer-based, problem-solving groups, and ongoing literacy and work skills upgrading, Jim found himself gaining a sense of accomplishment and control in his life. His feelings of rejection and abandonment were addressed in treatment along with the many distortions surrounding his offending. Over the two years Jim was assisted in finding employment, improving his relationship with his mother, addressing his deviant fantasy cycle and finding new friends. He developed a non-offending lifestyle through practising an "offending-control plan" consisting of access to key supporting people; sticking to safe environments, activities and people; and watching for the thoughts, feelings and actions that lead to a possible re-offence. After two years, Jim began a transition to a less restrictive environment in the community. He was introduced to a

Community Support Worker in Opportunities for Independence Apartment Living Support Program. Over the next six months, he purchased the necessities for apartment living and located an apartment in an area away from schools and bars where he tended to have trouble.

With the assistance of ten hours a week of one-to-one support, Jim continued to develop independent living skills, while attending aftercare treatment groups once a month. Two years have passed and, despite a re-involvement for petty theft, Jim continues to reside in the community, working full-time and living in his own apartment now with five hours a week of ongoing support from his worker. To date, Jim has not re-offended sexually.

The overall cost in treatment and support of Client X was: approximately \$40,423.75 per year for the two years in the Phase One Program; \$7,280.00 per year for the ten hours per week of support for the two years in the Community Support Program; and \$3,640. per year considered a long-term maintenance cost in supporting the individual as required through the Community Support Program.

Program Description

The composite story above is a description of how **Opportunities for Independence** helps an individual. The project is dedicated to the development and delivery of community-based programs specifically geared towards devel-

opmentally disabled adults who are in conflict or at risk of conflict with the criminal justice system due to inappropriate behaviours. Its work promotes their rights to equal and appropriate membership in society while diverting them from correctional institutions ill-prepared to meet their specific needs.

Opportunities for Independence was founded in 1976 by a group of professionals who perceived a need for this work. It received approval from the Department of Family Services to begin operation of the first residential facility in Western Canada specifically designed to address the needs of this unique group.

To be accepted into the program, the client must be assessed as being learning-disabled; amenable to treatment; on probation, parole or presenting some risk; and suitable for community placement.

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Community Homes Program Saskatchewan

The **Community Homes Program** in Saskatchewan offers an alternative placement to keep youth **in** their communities and **out** of more traditional facilities.

Sentences are served in approximately 70 private homes that provide lodging, care and supervision and are designated as a place of open custody. Each home is approved for one or two youths who remain close to family, school and employment opportunities. In Saskatchewan, the natural family of the youth is involved wherever possible in case conferences, visitation and through temporary releases to visit home.

A court can send a youth directly to one of these families or they may be transferred from an open or secure custody facility. Youths in these homes may be there as part of a sentence, probation or voluntary placement, increasing the options for judges and service providers who do not want them at home and yet realize an institution is unnecessary. Many young people also do better in individual residences dealing with at most one other youth in the program rather than a group facility where there may be twelve.

The cost of a placement in one of Newfoundland's 30 community custody homes is approximately \$800 a month compared to the almost \$6,000 fixed cost per month for each bed in a group home. In Prince Edward Island, youths may reside for an average of two to six months in a foster home, supervised room and board, group foster home or with relatives.

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Expansion-Femmes de Québec Québec City, Québec

Two Stories

A woman was facing a prison term for having defrauded the Humane Society of \$84,000. A court liaison worker for Expansion-Femmes introduced herself to her at the Court House and described in general terms that Expansion-Femmes was available for assistance. The woman was adamant that she had not taken that much money and indignant that the victim was exploiting the situation. At that point Expansion-Femmes' role was to simply support her through the court process. Some time later, the prosecutor initiated exploration of the involvement of Expansion-Femmes' residential services as well (as a possible alternative to demanding a jail term), because, although strong evidence existed for an amount of \$25,000-\$35,000, the rest would be very time-consuming to prove. A plea-bargaining process took place with the woman's defence lawyer. The woman admitted to responsibility for the whole amount and agreed to plead guilty, to be sentenced to probation with a condition to reside at Expansion-Femmes, where intensive case work was carried out with her and a plan followed to help her make some changes in her lifestyle, in collaboration with other community resources.

A woman was charged for having defrauded a local church committee of \$76,000. She had been trying to help her father cover the debts of her brother who was seriously addicted to drugs. At the same time, her husband was dying of cancer. The prosecutor suggested that she consult Expansion-Femmes. An alternative placement there was accepted.

Program Description

Expansion-Femmes de Québec is a community residential centre for women that has been in operation since 1983. It proactively offers its services to the courts and to women in conflict with the law to provide an alternative residential placement for women so that they can remain in the community instead of being sentenced to a prison term.

A liaison worker closely monitors the cases of women before the courts that are likely to result in a request by the prosecutor for a prison sentence. Contact is established with the women themselves to provide support and make them aware of the resources available. Overtures are made repeatedly and persistently to the prosecutor even when there initially appears to be little interest or sensitivity to the possibility. Close contact is maintained with the defence to ensure that the client's best legal interests are being served in taking this initiative, in an attempt to minimize a net-widening effect (i.e. the risk that women who could avoid a convic-

tion or prison sentence altogether will be needlessly subjected to a greater degree of coercion by the referral to this resource).

The agency considers that its central mandate is to offer services to prevent recidivism; supervision and control are the entry points that enable them to provide a framework within which this can happen.

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Maison Thérèse-Casgrain Montréal, Québec

A similar alternative to imprisonment is made available to women in Montréal by the Société Elizabeth Fry du Québec. Examples have included a 50-year-old single mother who was employed at a salary level of \$20,000 and who was convicted of defrauding welfare over a period of several years for a total of up to \$80,000. By being sentenced directly to this residence she was able to avoid custody altogether and maintain all her social supports while compensating through community service work for the harm done to society by her crime.

Another woman who was given some access to this alternative was a 25-year-old addicted to drugs and alcohol

who was also a single mother. She was living on welfare and her child was in foster care. She had a history of family violence, assaultive behaviour and a "borderline" psychiatric disability. She was convicted of seriously injuring her baby while under the influence and could have been facing a sentence of two years. She herself was worried about the seriousness of this loss of control and the terrible impact on her child. A plan was developed whereby she was sentenced to six months in prison, to be followed by one year at the halfway house and two years of close follow-up on probation. The jail term of six months appears to have been handed down strictly for its symbolic effect, as the plan was to release her after one month to reside at the halfway house.

The offences for which women have benefited from this alternative have included armed robbery, arson, shoplifting and fraud. Some are sentenced to be there only for very short periods or on weekends. The sentences are often combined with a community service order.

While this alternative has been available in Montréal for 17 years, its use to replace a sentence of imprisonment is only rarely accepted by prosecutors and judges.

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"Over the years the thrust, fuelled by public opinion, has been to put all people convicted of any crime in jail and to throw away the keys so long as it did not affect a family member or a friend.

We, the judiciary, have quietly adopted that philosophy until all the jails are double-booked overcrowded to where we are at the revolving door concept whereby to let someone in we must let someone out with little thought to rehabilitation or the protection of the public.... The time is long passed when we should have been looking at alternatives. We are now in a crisis situation. We are moving not because it is a proper move, but because we must move."

**Justice Hiram Carver
Supreme Court of
Nova Scotia**

Residential Program for Adolescent Sexual Offenders Ottawa, Ontario

In 1990, when the Children's Aid Society of Ottawa-Carleton operated 23 group residences, staff noticed an emerging problem related to young males who were exhibiting offensive sexual behaviour. As one director put it, these youths were "in the beginning stages of developing disturbing and dangerous lifetime patterns."

It was decided to open a unique residence exclusively for these individuals in order to develop an intensive treatment program and reduce the risk of revictimization of others living in those different homes. This community-based residential treatment program is designed to serve up to six youths between the ages of 12 and 17 who are at "low to medium risk of sexually re-offending". For three years now, the residence has been designated as an open-custody facility and accepts referrals from probation. Youth stay an average of one year.

The primary goals of the program are for the youths to gain an understanding of their sexual behaviour, to develop appropriate controls and to enhance their capacity to care for others. The residential aspect of the program aids in confronting denial, mini-

mizes avoidance of treatment and allows the response to treatment to be broadly evaluated.

Because many adolescent sexual offenders exhibit a wide range of other problems, the program does not look at the youth's sexual behaviour in isolation. These youths often have trouble in forming relationships and so are helped in dealing with issues related to control, dominance, respect for others, empathy, mutuality and caring.

The program has a clinical rather than a legal perspective. As a result, staff notice conflicting demands placed on a youth and family when charges are pending and a defence lawyer may advise them to remain silent and acknowledge no responsibility. "It becomes a case of getting at the truth which is not what an adversarial system like the courts always does," a program staff commented. "We have turned that around and ask everyone what is in the best, long-term interests for the kid."

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Maple Star Foster Care Colorado

This story concerns the placement in family-based foster care in the community of a 15-year-old young woman with convictions of attempted murder, assault on the elderly and robbery.

A Story

The referral on this case came from a very experienced county caseworker on May 1, 1995. Maple Star was one of twelve agencies contacted for placement of a 15-year-old mixed race female. After spending eight months in the local Criminal Justice Center, the youth was moved to a juvenile detention center where she had been for the past three weeks pending placement in a foster home, group home, or residential child care facility.

The youth had been charged as an adult with felony convictions of attempted murder, assault on the elderly, and robbery. Eleven of the agencies referred to turned the case away because of the seriousness of the charges. A Maple Star social worker agreed to interview the youth along with the caseworker to see if an appropriate foster home could be located within the agency.

During the interview the youth indicated that she felt she had paid her debt to society and wanted to get on with her life. Her goals were to return to school, graduate in two

years and attend college. She also expressed her desire to go back and live with her mother but understood that the court had ordered out-of-home placement because neither parent was viewed as adequate nor wanted to accept responsibility for her. She also did not view her crime as a serious offence and that is probably why other agencies were not willing to place her.

The youth was placed in a Maple Star foster home May 10, 1995 under house arrest. The plan was to provide as much supervision as possible within a home atmosphere. The youth could get a job after she proved to be responsible in the home.

The service team, headed by the foster parents, did some creative planning. The school district denied admission to the youth based on a Colorado law that schools do not have to accept convicted felons or habitual youth offenders into the school system. The foster parents advocated for the youth to attend the local high school. After interviewing the youth and the foster parents, the school counsellor became very supportive and agreed to assist the foster parents in developing a home school program for the youth. The school has agreed to accept the credits earned through the home school program. The youth will be evaluated at the end of this school year and if she is doing well, she will be admitted into school as a senior this fall. To date, it looks as though she will be attending the local high school in August.

This youth will be on adult probation for the next four and a half years. She is an example of what society can do if we are creative enough and committed to helping people make changes in their lives.

Program Description

Maple Star manages treatment foster family care programs in Colorado and Nevada. High-risk youths in conflict with the law are among Maple Star’s client population. One or two youths live with each family. They may come to Maple Star on a probation order or while charges are pending, with the program advocating on their behalf.

Specialist or treatment foster family care strives to stabilize youth within supportive families and communities. Some studies indicate that family-based foster care is a responsible and cost-effective alternative to institutional placement; delinquent youth in family-based foster care exhibited improved behaviour and were less likely to recidivate than those in a more restrictive setting.

Each family care program is based on significant principles:

service teams- they are responsible for developing and monitoring plans for each person in care;

normalization - plans are directed towards creating an environment in which the person in care may live as normally as possible and develop new skills;

community support networks - activities develop and strengthen networks of community support;

reducing stigma - labelling or stigmatizing the individual is avoided along with efforts to reduce the harmful effects of past stigmatization;

inclusive care - there are attempts to bring about the inclusion of family members, including birth parents as active program participants.

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Pennsylvania Auditor General Reveals Financial Impact of Prison Crowding

Despite a prison expansion that cost U.S. taxpayers approximately \$760 million, Pennsylvania Auditor General Barbara Hafer said that “we simply can’t build prisons fast enough to alleviate the chronic problem of prison overcrowding.”

Citing projections that PA’s prison population will reach 33,000 by the year 2000, Hafer suggested that although it will have added eight new prisons in five years, the state prison system will still be 41 percent over capacity.

To reduce a correctional budget which she estimates will reach \$1 billion by the year 2000, Hafer suggested implementing a wide variety of alternative sanctions, specifically developing less expensive sentencing programs for non-violent offenders. This way, she said, additional resources could be allocated both for violent, dangerous, and persistent offenders and for crime prevention programs.

Youth Futures Residential and Day Attendance Program

Lower Fraser Valley, British Columbia

The Youth Futures Residential and Day Attendance Program is a sentencing option for youth who require more than probation supervision but do not need incarceration.

The 16-week program, located in the Lower Fraser Valley, engages both youths and their families, with most youths continuing to reside in their homes or in approved alternate residences while attending day school, evening and weekend programs. Families are strengthened through the provision of practical home support and they are invited to be partners with the program in working with their child. There is a high degree of direct, structured individual supervision and monitoring of youths; in most cases, a curfew is enforced by telephone or in person.

During the first few weeks, youths are observed in their own families, staff noting strengths and weaknesses (rules, routines, forms of relocation) and past experiences with school and the community. Then, for a period of two to four weeks, the youths are placed in a pre-selected “host family”, staff exposing the youths to a healthy family environment and further observing them in a

neutral site. An individualized program is then designed covering the entire four-month participation; workers meet once a week with youths and families to review the schedule for the next seven days.

This program, according to an information pamphlet, is geared mainly to “youths who may be one step away from jail. These are youths who do not have severely disturbed behaviour but may have poorly developed social skills and problems such as minor substance abuse, behavioral acting out or attention deficits. These problems are often exacerbated by family dysfunction, educational breakdown, weak community linkages and negative peer relationships.” Youth Futures indicated that youths not appropriate for the program include violent offenders, sex offenders and those with severe substance abuse problems.

Youth Futures is based on the premise that when positive changes take place in experience and environment, a youth begins to shed the negative behaviour that led to criminal and antisocial behaviour. The approach minimizes intervention and dislocation of the youths from their own communities while integrating supervision and support.

The day school devotes four of its five days a week to computer-assisted learning activities developed by the Centre for Educational Technology at Simon Fraser University. The evening program, offered three times a week, emphasizes emotional, social and technical skills such as public speaking, self marketing, anger management and negotiation skills. Several weekends a month, youths enjoy a wide range of recreational and cultural pursuits.

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El' dad Ranch for Mentally Handicapped Adult Men Steinbach, Manitoba

This story concerns the alternative placement of a mentally handicapped man who had already served previous prison sentences.

A Story

"My life was pretty rough. So far I have been to six foster homes. In one home I was always beaten. Whenever I moved I didn't really trust my foster parents. I feel afraid of them. I always thought I was going to be beaten. I got in trouble when I was 18 years old. I started drugs and alcohol when I was 19. I finally ended up in jail. When I came to El' dad it was a new experience. I thought it was going to be a hell hole. After awhile, I was beginning to learn more things and people really care for me, but, the most credit I have to give is to staff members. They always helped me when I feel depressed. I hope my stay here will help me to live a better life and to have a good job and to be a more loveable person...."

"For youth who might otherwise receive custody, there's a need for a wider variety of options to be available to judges offering more effective supervision and intervention than the traditional caseload of a youth or probation worker permits."

**Justice Minister
Allan Rock
Nov. 20, 1995**

Program Description

El'dad Ranch is a residential treatment center near Steinbach for borderline mentally handicapped adult men in conflict with the law. Individuals charged or already in court are approached to consider this alternative to incarceration. Residents stay an average of two years.

El'dad, an agency of the Mennonite Central Committee (MCC) of Manitoba, provides life skills instruction as well as counselling in the areas of employment, budgeting and personal development. There is a heavy emphasis on working, including the woodlot, gardening, assembling honey bee frames and yard maintenance.

Among El'dad's objectives are to provide addiction counselling and supervision as well as residential services in harmony with a Christian home environment. El'dad is licensed by Community Services to provide living quarters for six residents and it receives funding from the province of Manitoba and MCC Manitoba.

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7. Bail Option Programs and Administrative Sanctions

Many offenders do not have the money to pay for bail and therefore end up spending the time awaiting their trial in prison, in effect being punished before they are tried. Research has shown this can also increase their likelihood of being convicted and sentenced to further time in prison.

Bail option programs allow for the release of the offender into the community under responsible supervision. Fine option programs allow for administrative and other alternatives to serving time in prison because of the inability to pay for a fine.

Judicial Interim Release for Youth Saskatchewan

Youths who have been arrested but not yet convicted or sentenced may avoid spending that interval time in custody by getting a judicial interim release into the community under intensive supervision. This is a short-term alleviation of the enforcement of imprisonment although studies have also shown it can impact favourably on the eventual sentence.

A Story

A 16-year-old was arrested and charged with assault causing bodily harm and breach of probation. This youth is already currently involved in the youth justice system, having been sentenced in the summer of 1995 on other charges and assigned and supervised by a youth worker from the Department of Social Services. After his current arrest, the youth was detained in a remand facility to appear before the court the following morning. At the court appearance, the Crown opposed the youth's release and a request was sent by the Youth Court to explore the possibility of a judicial interim release. The investigation included interviews with the youth and support persons as well as a review of official data. The youth resides with a legal guardian with whom the father has a relationship. The youth does not have contact with his mother. The youth was released once before on judicial interim release in

December 1995 and successfully completed it. The youth at this time is suspended from Cochrane Collegiate due to his "negative attitude, defiance, belligerence and vulgarity" but will be readmitted following a two-week residency in an alcohol and drug facility. The principal stated that the youth had been performing well in the Intensive Classroom Experience program prior to the suspension. The youth has agreed to follow the directions of his legal guardian and father if released and the legal guardian is willing to have the youth back in her home and provide the necessary supervision and direction for the youth to do well. The judicial interim release was granted provided that he keep the peace and be of good behaviour, maintain his residence, have a 9:00 p.m curfew, participate in educational, vocational and/or recreational programs, not communicate with certain persons, abstain from alcohol and drugs, and follow instructions of the worker in obtaining alcohol and drug treatment.

Program Description

By allowing the youth to remain in the community while awaiting the outcome of a case, the opportunity is provided for the youth to prove he or she can behave in a responsible way in the community. The hope is that the youth can continue daily activities with little disruption and discuss with family what may be causing the offending behaviour and how to stay out of any further conflict with the law.

The judge bases this decision primarily on whether the youth will return to Court and whether there is a risk to the community. Helping the judge is a recommendation from a judicial interim release worker who investigates the youth's history of involvement with the law, current personal and family situation, the availability of an appropriate residence, involvement with drugs, alcohol or other substances and whether there is a responsible adult able and willing to supervise. A youth who is released must agree to keep the peace, be on good behaviour, return to court when required to do so and follow other conditions.

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Ma Ma Wi Wi Chi Itata Centre Winnipeg, Manitoba

The **Ma Ma Wi Wi Chi Itata Centre** provided judicial interim releases for aboriginal youths through contracting with Community and Youth Corrections of Manitoba. This program of the centre is no longer running due to lack of funding. The judicial interim release worked in much the same way as the Saskatchewan

program cited earlier. Statistics showed that those on judicial interim release compared to others being held in custody on remand tended to be less likely to receive a custodial sentence after their trial.

In addition to judicial interim release (bail option) programs, the centre provided legal aid, temporary absence and intensive probation supervision. The latter supervision is geared specifically to high risk native youth who would otherwise get a custodial sentence. It is intended to reduce recidivism, particularly because the programming and supervision involved are culturally sensitive. This Centre also conducted family group conferences for the youths. Many community-based initiatives like Ma Ma Wi Wi Chi Itata could use the money now being spent to warehouse individuals in our prisons.

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Fine Option Program Yukon Territory

Court-administered fines always come with a default term of incarceration related to the amount of time to be served if the fine is not paid. For many individuals this

results in a jail sentence for a minor offence that would never have warranted jail time in the first place. Fine option allows them to “work off” their fine by doing volunteer work in the community for a non-profit agency.

The **Fine Option Program** is administered through the Community Correctional Service and provides offenders with the opportunity to perform community service work in lieu of, or in addition to, the payment of fines. This type of initiative was started because of the fact that so many people were serving short jail terms because they did not pay their fines, for a number of reasons. **Thirty-five percent of admissions into Canadian provincial institutions in 1992-93 were for fine default.** Participants enter into an agreement which specifies work placement at a charitable or non-profit organization and the number of hours of work service required to satisfy the fine. Since the program began, less than one per cent of those who received fines have served default jail time, and those that have usually done so because they are already doing jail time for some other offence. In theory, an offender could still choose to do the jail term rather than pay the fine or do community service work but that has not happened. If an offender fails to complete the fine option program or pay the fine, they can also be subject to administrative sanctions, described in the next program.

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Prince Edward Island runs a fine option program similar to that in the Yukon.

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Administrative Sanctions Yukon Territory

On October 1, 1995 administrative sanctions came into effect against drivers or vehicle owners who owe money for unpaid fines imposed under the Motor Vehicles Act or the Highways Act. Drivers could be refused when they tried to renew their licence or motor vehicle registration. They could even have their licence suspended.

During the previous summer, media advertisements and an

“It has come to the place that to jail someone for non-payment of a fine has been a joke, as when they are arrested and taken to jail, they are sent home. Worse of all worlds is that this news travels fast and you have people showing up and wanting to turn themselves in as they know there is no possibility they will be asked to serve out the time or at least all of it.”

**Justice Hiram Carver
Supreme Court of
Nova Scotia**

information campaign encouraged defaulters to pay their court fines before October 1 when the sanctions were implemented. Over 6,000 letters and statements of unpaid motor vehicle fines were mailed to defaulters. As of August 1, 1995, there was approximately \$530,000 in outstanding fines due to motor vehicle and highways act violations. By October, that amount was reduced by approximately \$130,000.

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In the context of a major policy shift away from the use of incarceration, Quebec is also planning to introduce wide-scale use of administrative sanctions.

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8. Client Specific Planning

Client Specific Planning is more an alternative process than an alternative sentence and therefore we thought it appropriate to refer to it at the end of this section of the compendium which highlights initiatives “that attempt to avoid the use of custody, with or without some reparative elements”.

The premise for this approach is summarized in a Solicitor General of Canada report written by Matthew Yeager: “The starting point for Client Specific

Planning is the question: Do any means exist to manage/punish this Defendant so that society is not assuming too great a risk? This is at variance with the vast majority of dispositions in North America, which use incarceration as the reference point from which offenders and their crimes are evaluated for sanctioning. In effect, each case begins with the assumption - not always true, however - that some form of suspended sentence/probation order can be granted”.

Client specific planning has been used to close juvenile training schools, as well as at the sentencing stage for both juveniles and adults, during pre-trial negotiations prior to the entry of a guilty plea and at parole.

Yeager notes “theoretically, the CSP model can also be used to de-populate adult prisons.”

As with other justice initiatives, there is the danger of net-widening in client specific planning; plans recommending alternatives to incarceration can indeed be added to a custodial sentence. This tendency can be overcome through ensuring both targeting an institution for closure or restricting intake for client specific planning to serious offenders who demonstrate a high probability of being imprisoned.

We conclude this section with a few examples of client specific planning projects.

Sentencing Advocacy Services: U.S. National Centre on Institutions and Alternatives

Often, client specific planning is a form of sentencing advocacy that has focused on the role of the defence attorney in creating alternatives to incarceration. Dr. Jerome Miller, who closed the Massachusetts Reform School system, coined the phrase. In 1979, the U.S. National Centre on

Institutions and Alternatives which he helped open started a project to provide sentencing advocacy services to defence lawyers, through the creation of alternative sentencing plans tailored to the background and criminal record of the offender.

Client Specific Planning - North Carolina

Programs emphasize case selection to assure that defendants who receive services are truly prison-bound. A risk assessment scale scoring sheet, developed by the University of North Carolina’s Institute of Government, is used to suggest the potential of imprisonment for a given set of offence and offender characteristics. Defence attorney and case development judgments are also used to modify these assessments.

Client Specific Planning - New Mexico

New Mexico has committed funds for a state-wide alternative sentencing program. One or two case workers or social workers staff each participating public defender office. Attorneys are encouraged to refer felony cases to sentencing staff early in the court process if they believe a prison sentence is likely.

“Every dollar attached to an inmate should follow that inmate into the community for at least as long as he or she would have been institutionalized.”

Jerome Miller
National Centre on
Institutions and
Alternatives

Sentencing plans emphasize an appropriate combination of drug or alcohol treatment, offender supervision, rehabilitative services, and community or victim restitution.

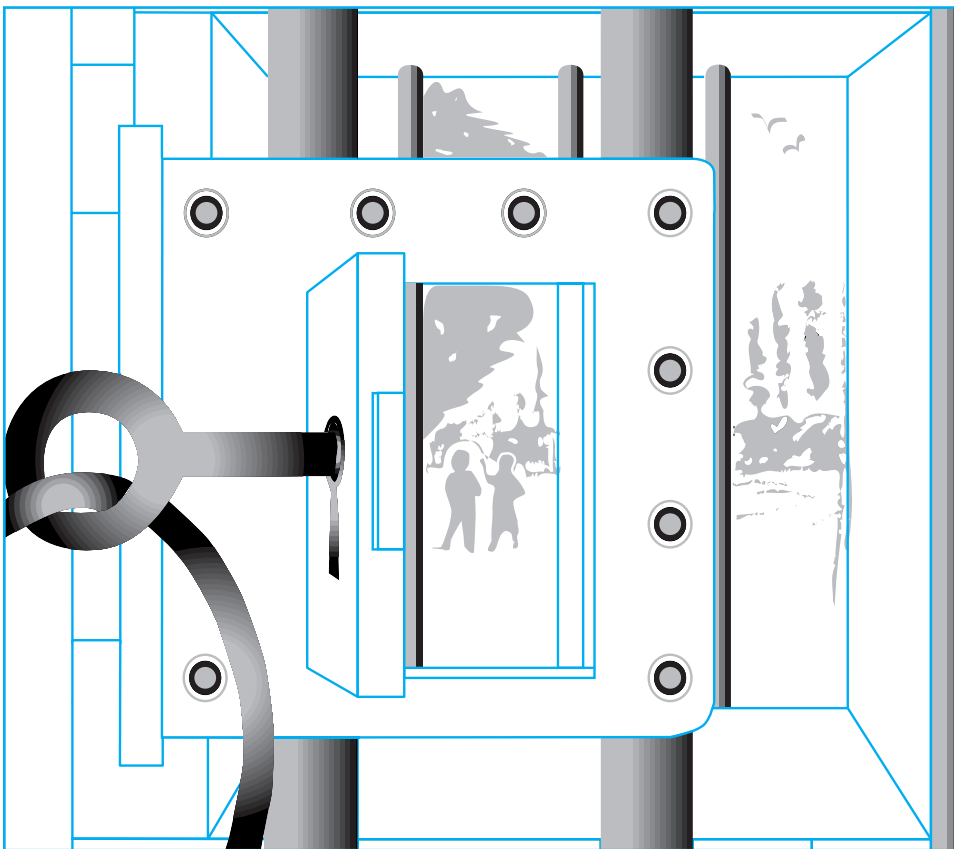
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Section Four: Satisfying Justice

A selection of initiatives that attempt to reduce the length of custody by alleviating the enforcement of imprisonment



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A selection of initiatives that attempt to reduce the length of custody by alleviating the enforcement of imprisonment

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Introduction

This section describes initiatives that attempt to reduce the use of incarceration by reducing the length of time for which that sentence is “enforced”, i.e. actually served in a prison.

The possibility exists in a number of jurisdictions for the judge to declare at the time of sentencing that the person is to be imprisoned only on weekends, and be released for the “intermittent” days. Another popular practice is as follows: a sentence of imprisonment is pronounced by the judge and the convicted person is admitted to a prison, but, at some point in time during the “administration” of the sentence, is able to benefit from an “early release”. A range of mechanisms has been created for this purpose in many jurisdictions throughout the world, with varying degrees of “supervision” attached to them: temporary absence programs; day parole; release into the community during the day only or, to the contrary, only at night with attendance at the prison for a work assignment or other occupation during the day; release (or partial release) to a specialized or supervised setting, or, simply back home. There also exist some important community-sponsored programming initiatives that provide prisoners with preparation for successful community reinte-

gration, thereby making earlier release from custody a more likely prospect.

These various forms of release, particularly those occurring very early in the sentence, are sometimes supervised, in part or in full, through electronic “monitoring” or “surveillance”.

Finally, in some jurisdictions, “wilderness camps” are also considered to be an alternative that alleviates the enforcement of incarceration in a more institutional custodial setting.

These initiatives may sound very appealing in theory and, in fact, the good news is that they are successfully keeping many individuals out of prison without added risk to the community. Contrary to the great public fear, there is overwhelming evidence to date that dangerous, violent crime almost never occurs in connection with “leaves”, “furloughs” and other such early releases (Mathiesen, 1995). However, when such a rare tragedy does happen, it attracts compelling media attention. It makes one wish the occurrence could have been prevented by virtue of a different policy or law. Yet we also know from a wide range of empirical prediction studies that it is almost impossi-

ble to predict the incidents of this kind that do occur. To guarantee that none would ever happen, countless successful early releases would have to be disallowed, frustrating and embittering many. This would further impact on prison costs and likely contribute to even more serious social problems in the future.

The other good news about these early-release programs is that they have not been affecting overall recidivism rates; to the contrary, for some offenders it is incarceration and longer confinement that seem to increase the risk of recidivism! (Lin Song, 1993.)

The bad news, however, is that these measures are not reducing the overall prison population in actual practice; they are reducing prison overcrowding, but keeping existing space filled, with the total prison capacity still continuing to rise. In addition, because they are a “trade-off” for imprisonment, stringent conditions may be imposed with a zero-tolerance approach to non-compliance so that a person may be re-admitted without committing another criminal offence, therefore increasing again the prison population.

Neither are these measures reducing costs, because the manner in which many are administered is still very expensive as well as cumbersome and ineffectual in at least some jurisdictions, as we

will see. Nor can it be anticipated that cost savings will ensue in the future unless a deliberate policy decision is made to reduce prison space, as Québec and New Brunswick have now announced. Without this, there has been little inclination on the part of prison administrators to favour early releases at the expense of empty prison beds. Yet there is overwhelming evidence pointing to the comparative “success” rate these community measures have had whenever and wherever they have been used, and to their enormous potential for cost savings if they were not tied to prison admissions and capacities.

More fundamental questions need to be asked about the purpose some of these measures are serving with the particular population for which they are being used; and about the necessity at all, in many of these cases, of going through the motions of pronouncing a sentence of imprisonment that then has to be administered so expensively. More cost-effective tools for “satisfying justice” could be found for most of the population now considered eligible for these programs. Some of these following initiatives then, applied with care to a broader range of prisoners, may more effectively help to reduce the overall use of incarceration in this country.

1. Community-Based Supervision Programs (Temporary Absence Permits, Day Parole, Intermittent Sentences)

Introduction

In theory, many of these programs have been set up to provide access to programs in the community or to disrupt as little as possible a person's ability to carry on with employment or family responsibilities. In practice, however, their utilization is fuelled in many jurisdictions by the need to relieve prison overcrowding. This has led to pressures to apply the provisions rather chaotically, and sometimes, due to acute prison space shortages, without any regard whatsoever for individual circumstances or plans.

Citing one example in a 1993 report about the use of such imprisonment in Québec, it was reported that the "week-enders" serving intermittent sentences are sent to a motel, an empty school or a halfway house to "wait out their time", or even back home. Those benefitting the most from this mode of sentence are the video rental concessionaries, as that is how many of these prisoners are kept occupied for their "day", under supervision in a waiting room (L'Association des services de réhabilitation sociale, ASRSQ, 1993).

Some worry that such administration of shorter sentences may change offenders' perceptions about the certainty and severity of punishment. Yet this concern seems unfounded given the overall lack of effect on violent incidents or increased recidivism. However, it does raise serious questions about the need for this sanction in view of its costs. Its use is usually justified by the need to send out "a message" to the community. (For example, a couple whose infant son drowned in the bathtub while they watched television "**had to be harshly sentenced to send a strong message to parents,**" which, according to the newspapers, is what an Ontario judge said... even though, he also said, he did believe the couple felt a deep sense of remorse and grief and didn't intend to harm the child... (The Canadian Press, Ottawa Citizen, Nov. 8, 1995). The mother got 60 days to be served on weekends. Yet, the best available research concerning deterrence argues against this as an effective tool. Isn't it just hearing of the death of the infant that has the real impact for parents? In such a situation, is one really deterred by the mere fear or threat of a jail sentence?

Worse on weekends

As many as 30 people serving intermittent sentences for assault and drunk driving were sent home when they checked in last Friday to serve weekend time at the Ottawa-Carleton Detention Centre ("Jail sends home weekend inmates because of strike," March 5)

Superintendent Ashraf Aial says, "None presented a risk to public safety." But striking guard Rob Jones called sending the weekend prisoners home a breach of public safety. Whom do we believe? The weekend prisoners are normally free weekdays. Are they a risk then? Or do they only turn dangerous on week-ends when OPESU is on strike.

*Don Hale, Nepean
The Ottawa Citizen,
March 6, 1996*

In the same report about Québec, it was also noted that, during the time period studied, 38.4 per cent of the provincial prison population had been sentenced to one day or less, 68 per cent to 30 days or less and that the average length of stay of a convicted prisoner was about 33 days, with the trend being to grant release to the community earlier and earlier due to the crowded conditions. This attests indeed to the fact that there is wide recognition, including among correctional administrators, that incarceration serves no useful purpose in a large number of cases. While the average length of sentences had increased by 20 per cent in the last year, the average length of time actually served in prison had decreased by 11 per cent (ASRSQ, 1993). It is noteworthy that the government of Québec has subsequently announced plans to close several prisons and to introduce a vigorous policy of diversion and administrative sanctions.

Similarly, in Canada as a whole, 66 per cent of all inmates admitted to provincial institutions are serving under three months (Statistics Canada), only 8 per cent are serving as much as one year to two years less a day, and 88 per cent of admissions of provincial inmates are for non-violent offences. This is the pop-

ulation by and large which after admission is receiving in increasing numbers the various forms of permits for community supervision. Ironically, this happens after being told by a judge, often with the full knowledge that this will happen, that they nevertheless “need to be sentenced to incarceration”. Again, here, they are being sentenced for the sake of the message, not because a need is seen for the actual experience of incarceration itself.

The bad news is that this makes it unnecessarily more stigmatizing and costly to deliver to them the services that are sometimes made available in the community when they are released. The good news is that some of these programs are quite helpful and effective, though they do not necessarily attend to all the reparative issues that would be required for satisfying justice. Among the examples given below, the first story told shows what can happen when members of a community take on responsibility to deal with all the surrounding issues ignored by the justice system’s penalty.

Sexual Assault - One Congregation's Story of Healing

This story concerns a man charged with sexually assaulting his daughter. He was sentenced to 30 days in prison to be served on weekends as well as a number of other requirements integrated into a plan developed by members of the church to which he and his family all belonged.

A Story

One Friday in June 1990, a member of the pastoral team at Oakview Mennonite Church was informed that Rob, a congregational member, had been arrested and charged with sexually assaulting his daughter, Sandra. (all names have been changed)

The congregation was informed by the pastoral team and began a difficult journey of developing a process to deal with the issues raised by the abuse and of providing support to family members and others. A conviction underlying this process was the belief that the church is for everyone, and that Oakview was called to minister to all persons affected: the offender Rob, the victim Sandra, other family members as well as other survivors of abuse.

Because there were no models which it could follow or adapt to its own situation, the pastoral team, in conjunction with several members who had expertise in relevant areas, developed its process one step at a time, never quite knowing what would follow.

The work was carried out at several levels. Within the first two weeks, separate support groups were established for Rob, and for his wife Carolyn and daughter Sandra. At another level, the team tried to minister to other survivors of sexual abuse or family violence within the congregation by arranging support meetings, paying for counselling, and providing other resources and support.

With respect to the charges against Rob, the congregation arranged for persons to be present with Rob at his court appearance and subsequent sentencing. Congregational members were instrumental in developing and presenting to the court a sentencing plan for Rob which included community service at a local sexual abuse treatment centre and allowed him to retain his job and his involvement with community members.

The congregational support and participation in the preparation and oversight of the sentencing plan made an impact on the court which imposed a custodial sentence much shorter than that normally given.

Later on, congregational members helped Rob set up his own apartment and provided transportation to and from the detention centre where he served his 30-day sentence on weekends.

This was a difficult but important experience for the congregation. There was a wide range of opinion and feeling about Rob and the appropriate role of the congregation in his case. There were differing opinions about the pace with which the congregation moved toward resolution. Yet two and a half years after the charges were laid, the members of the congregation gathered for a special service of healing which represented an official conclusion to the congregation's public processing of the charge.

While the healing goes on, church members point to the personal and corporate gains that have come from their willingness to stand and work with hurting people - both abused and abuser.

Adapted from "A congregation responds to both sexual abuser and abused", Mennonite Reporter, April 19, 1993.

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Keeping Kids Safe - Children and Sexual Abuse Yukon Territory

Keeping Kids Safe is a Yukon program that promotes a holistic approach to the protection of children from sexual abuse. While Keeping Kids Safe is not an alternative to a custody program per se, we include it in this compendium because it recognizes several key elements in a more effective, community-based approach to the problem of sexual offences in our midst. A program description acknowledges that neither jail nor offender treatment alone provides protection for children. Sexual offenders - both those who have served sentences and others who have never been caught - will continue to live in our communities. All adults who work or live with children should share the responsibility for keeping kids safe. Consequently, communities need help to manage and reduce the risk posed to children by those who commit sexual offences.

Currently, there are twelve offenders from five Yukon communities involved in the program's risk management teams which supervise them as they live and work in a community. All of them served a portion of their sentence in custody. The risk management teams are comprised of formal resource persons and individuals from the offender's family or social circle. They join with the offender on probation to first identify factors which put one at risk for re-offending and then set, monitor and enforce conditions to reduce these risks.

This approach gives families who may have an offender in their own family, social group or neighbourhood, the skills they need to best protect children. They learn to take away a person's opportunities to re-offend, e.g. never having a known offender babysit children.

The community safety aspect of the program has designed workshops to help adults understand, identify, respond to and prevent child abuse. They teach how to create environments which are safe for children.

Keeping Kids Safe started three years ago and is a joint venture of the Yukon Territorial Government, Health Canada and the Council for Yukon First Nations.

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Coverdale Courtwork Services Halifax, Nova Scotia

A Story

A woman was charged with 52 counts of shoplifting. She had a previous record for the same pattern of offences, had been sentenced in the past to serve one week in prison, and the Crown was looking this time for a more significant period of removal from the community.

Coverdale offered services to this woman to explore whether an alternate plan could be developed that would be acceptable to the Court. She had a pattern of making her negative choices around shoplifting in order to lavish gifts on her children. The focus of the work carried out with this woman was to develop suggestions for a sentence of "restorative measures" that would allow her to stay present with her family. She was married and her husband was supportive of her making restitution. It was felt that this woman needed a "wake-up call" about some aspects of

her life that were out of control. It was impressed upon her that if she wanted to stay out of jail there were a number of things she would have to attend to. It was also impressed upon her that the Coverdale worker herself was “going out on a limb” by taking the witness stand in Court to propose an alternative to the prison sentence requested. The judge gave her six week-ends to serve in jail and a suspended sentence to report to the Coverdale worker, who was to notify the probation officer if signs of “breaching” were to become imminent. There has been no further occurrence for over two years.

Program Description

Coverdale Courtwork Services is a community organization for women in conflict with the law whose funding originated through the support of the churches from money raised as a result of closing down and selling a minimum security prison for women. Coverdale employs court workers in Saint John, New Brunswick and Halifax, Nova Scotia to support women who are accused and to act as an intermediary with other helping organizations. It also provides a community chaplain in Halifax for individual counselling and casework to deal with such issues as abuse, grief, loss and anger management.

In their experience, the key elements in attempting to provide an alternative to incarceration which is accepted by the courts are the development of a definite plan and the willingness of the client to plead guilty. This has been effective in a number of cases, including the case of a woman charged with drug trafficking who had a previous record and for whom a sentence of at least 2 years in penitentiary had been expected. The alternate plan often includes counselling or therapy; an educational process with the woman; making links with her to other community agencies to help her meet different kinds of support groups; and reporting to probation.

Even well developed alternate plans, however, have not always been acceptable to the judge, as in the recent case of a woman charged with fraud and shoplifting who was sentenced to imprisonment anyway.

Coverdale staff have clearly observed that no long-term rehabilitation is possible through the jail sentences given women. Recidivism is a big problem because the minute a woman gets out she can only afford to live exactly where all the illegal action is. There is a lack of immediate support upon release; a core of well prepared volunteers with cars would be needed to meet the woman at the gate and help her through the first 48 hours, with a “buddy system” to fall back on for some significant period of time.

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Community-Based Supervision for Sentenced Offenders New Brunswick

The John Howard Society of New Brunswick developed **Community-Based Supervision for Sentenced Offenders (CBS)** to work with continuous/intermittent sentenced offenders in an Enhanced Temporary Absence program. It provides enhanced home supervision of non-violent, low-risk offenders, specialized workshop participation, and has a community service component.

A Story

John Doe has been under the community supervision program twice. On the first occasion, he had been convicted of common assault on his girlfriend and sentenced to 30 days in prison. He served the mandatory one-third of his sentence in prison and was then released into the community supervision program for the second third of his sentence in order to get into schooling and participate in anger-management therapy. There

was a reoccurrence of assaultive behaviour in the form of publicly yelled threats at his girlfriend at a later date. John Doe was convicted of two counts of assault and received a seven-month and a two-month prison sentence, to be served consecutively. He was released to community supervision following one third of his sentence. During this period, he enrolled in a vocational mechanics program, acquired a more stable living environment and lined up two part-time jobs that would not interfere with his schooling. He ended the program at the two-third statutory release point of his sentence.

Community supervision workers said he had become self-sufficient, was able to take responsibility, improve appropriate behaviour and acquire a more solid place in the community.

Correctional institutions select eligible offenders who have already served one third of their sentence. They are then screened by the program staff; in any cases where assault or abuse is the current charge, the victim will be contacted and the victim must give approval to the plan of release; approved offenders are sent home to serve their sentence in the community under the supervision of a Phone Monitor who contacts participants daily. There is a “zero tolerance” policy with regard to following all the conditions of their release. All participants must have a phone and make themselves available to take all Phone Monitor calls personally.

“The incarceration of 15,000 sentenced provincial and territorial inmates (and about 4,000 people remanded in custody) “eat” up 80 per cent of about one billion dollars annually. Why spend such a huge amount of resources to go through the process of admission and incarceration when incarceration of most of these offenders is not required for public protection? Why not seriously consider much cheaper and more effective alternatives?

...We must, as a society, adopt the concept that effective and efficient sentences for these offenders means, for the most part, non-incarceration. For these people, community sanctions must become the norm with incarceration as an alternative where necessary, rather than vice versa”.

**Willie Gibbs
 Chair, National
 Parole Board**

The majority of charges are for breaches of probation conditions or default of fine payment, frauds, assaults such as bar fights, though there have been some sexual offences. The average length of sentence for anyone in the program is seven days in the case of full-time sentences and three days for intermittent sentences, although any person sentenced to a provincial institution is eligible.

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**Community Service -
Intermittent Offenders
Barrie, Ontario**

In Barrie, Ontario, The Salvation Army offers a community service opportunity to offenders facing intermittent sentence dispositions at the Barrie Jail. This program assists in the effective utilization of limited physical resources at the jail by providing alternative, creative community-based programming which in turn helps offenders to function better in the work place and in the community. Successful applicants serve one weekend at the jail, then report to the jail on Friday nights only and then to the Salvation Army site for transportation to work locations related to park maintenance and clean-up. In the

event of poor weather, there is instruction and training related to alcohol and drugs, employment, education, health, etc.

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**Stop and Think Program -
Temporary Absence
Program for Youth
Halifax, Nova Scotia**

In Halifax, the YMCA has developed the program, "Stop and Think", for youth serving a provincial sentence. It provides an alternative to custody through a temporary absence in the last three months of their sentence. The curriculum, which is available for males and females, includes adventure-based counselling, cognitive/life skills development and community service work. Parental involvement is a key element throughout.

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Other Variations

Québec continues to make extensive use of “early release” provisions through a range of prison-initiated community work and training activities (**Programme d’Encadrement en Milieu Ouvert**) or referrals to community-based resources. Some resources are more innovative in offering an alternative to incarceration to specific offender groups, for example to women, (**Expansion-Femmes de Québec, Québec; Maison Thérèse Casgrain, Montréal**), or to First Nations offenders (**Maison Waseskun House, Montréal**).

Various jurisdictions are seeking ways to reduce the administrative costs of these alternatives, which continue to require the process of admission and incarceration. In **Québec**, strategies are being developed to get out of the business of housing and lodging offenders so that the financial resources can be devoted to the clinical, social and reparative tasks that need to be facilitated.

In several **European jurisdictions**, judges are being encouraged to convert prison sentences of up to six months to community service orders or other types of immediate permission to serve the sentence in the community. In **Italy**, a form of house arrest has been introduced to offer the offender the possibility of serving a sentence of up to two years at home, in another private residence or in a treatment centre. It may be applied to convicted persons in special circumstances: for example, pregnant women or nursing mothers; mothers with children under the age of three; the elderly or disabled; young people under the age of 21 having to study, work or fulfil family obligations; and people with delicate health.

(Alternative Measures to Imprisonment, Council of Europe, 1991)



Some Judges' Perceptions on Sentencing and Community-Based Programs

A number of Canadian judges have indicated to us that they are seeing the need to devise new and creative ways to approach their sentencing task: to relieve the overcrowding crisis, to look for different solutions and alternatives to incarceration and to respond to some communities and community agencies who want to take more responsibility for this.

A judge who has actually used "house arrest" feels it should be used more often in place of jail.

One judge expressed concern that, if the judiciary passes too much responsibility on to the community, they will not be able to provide the necessary services such as drug and alcohol programs, or anger-management counselling. It is for this reason that he continues, in cases of sexual assault for example - where the sentence would normally entail at least two years imprisonment - to resort to a sentence that keeps the offender close to home but may, as a fall-back position, have him incarcerated if community plans don't work out. To this end, he sees to it that arrangements can be made to allow him out on temporary absence immediately upon admission to prison (i.e. earlier than usual) and for as long as there are programs available in the community for his rehabilitation. Local correctional administrators participate in the sentencing hearing on such occasions, agree to the immediate temporary absence opportunity; and the probation order to be implemented at his eventual release is written so as to reflect this understanding.

"In essence what I have attempted to provide is a system whereby the community can, in fact, take full charge of an inmate using available programs in the community and yet maintain a sense of control by giving him a term of incarceration whereby the correctional service is in charge of the accused when he is not actually in a program which is beneficial to his rehabilitation. This I feel meets the demands and requests of the community that they become involved with the accused and yet satisfies the public that if the accused is not in such a program then he is under the control of the correctional institution."

However, another judge pointed out another additional element in sentencing, namely that society wants a period of incarceration for certain types of crime regardless of the likelihood of re-offending because they want the sentence to express punishment or abhorrence.

"... it may be that only a program of direct and measurable community benefit by way of substantial community service would satisfy the public that it is receiving greater overall benefit than through incarceration," he said. "I doubt whether society currently has the resources to establish/monitor such programs as a regular substitute for custody."

... Further, given the current economy and the difficulty in cost of finding assets to enforce payment, a program of heavy fines sufficient to make any realistic positive impact on the cost of the justice system is likely impossible. ...It seems to me that the current demand on the justice system to deal more strictly/punitively with offenders at every level will only change where society is persuaded by meaningful example that counselling/community service/rehabilitation will produce less future crimes/danger, at lower cost, than the current system."

2. Release preparation for successful community re-integration

The availability of parole, and initiatives to better prepare prisoners for release, are also an important consideration in any effort to reduce the use of incarceration. Research has shown that the longer a person is removed from society, the weaker his or her social bonds are with other people, family, work and the economy. Weakened social bonds resulting from incarceration are likely to increase an offender's propensity to commit new crimes after release. Adjustment difficulties after the offender is released from prison, such as social rejection, may also influence re-offending behaviour (source: Lin Song, 1993).

Aboriginal Elder-Assisted Parole Board Hearings Prairie Region, National Parole Board

The Prairie Region of the National Parole Board has initiated **Aboriginal Elder-Assisted Panel Hearings**, where the presence of an elder at the hearing provides a resource for the decision-makers and an inspirational force for the prisoner.

This initiative reflects the recognition that panel members unfamiliar with particular cultures and needs could benefit from the wisdom of someone intimately familiar with them. It helps the Board: examine the role of ethnocultural factors in attitudes, language, and values; identify sanctions and supports of a particular cultural community; assess their influence on the risk of re-offending, the reintegration potential of the prisoner and the management of risk on release.

In aboriginal communities, elders are spiritual leaders who have earned respect for personal wisdom and moral perseverance, through sacrifice, dedication and learning, and a holistic approach to issues. At the hearing, the elders' presence is affirming of the community; they are not strongly connected to the prison. Their role is to bring knowledge to the decision-makers, not to become experts on parole. The elder brings to the hearing an awareness and reminder of the spirituality of human beings. Prayer is offered to open the door for the Creator to enter; it is a request for honesty and respect among all involved, for protec-

tion of the board members, the offender and others, for the right decision to surface.

For the elder-assisted panels, the interviewing style and questions also differ slightly from regular panel hearings. The interviewing is to be conducted in a non-aggressive, non-confrontational manner and the questions are to focus on the offender's efforts towards healing of himself or herself, the victim and the community. The current situation, program participation and its benefits, and future plans are likely to receive more attention than the past or (the expression of) remorse. It is, however, the intention of every panel to address the risk assessment policies for parole decisions.

For the most part, the feedback has been very positive from staff, observers and offenders, whether they received a grant or denial from the panel. It is felt that the elder contributes to an atmosphere of respect unlike other hearings. Decisions are accepted without visible rancour, offenders tend to feel more satisfied with the process and the panel seems to be less tiring for board members and staff.

The Process for an Elder-Assisted Panel Hearing

1. Hearing assistant verifies with offender outside the hearing room, whether the offender wishes to be present for prayer (if he does not, the prayer is conducted before the offender enters the room).
2. In the hearing room, the hearing assistant or Board member shares with the elder a brief summary of the offender's file.
3. Offender, case management and others are invited into the hearing room.
4. Hearing assistant leads introduction and ensures that the offender's rights with regard to the process have been respected.
5. If requested by offender, the elder offers prayer.
6. Update by case management on offender's file.
7. Interview by Board members.
8. Optional for elder: clarification of viewpoints expressed, particularly those of an aboriginal cultural nature.

9. Offender's assistant is given the opportunity to speak to the Board members on the offender's behalf.
10. Optional: break for the Board's deliberation. During a break only the Board members, Hearing Assistant and elder will remain in the hearing room. Board members are responsible and accountable for the decision but they may seek advice, particularly cultural, from the elder.
11. Board members share decision with offender. All participants will be present for sharing of decision.
12. Optional for elder: share wisdom/advice with offender.
13. Adjourn

The following case history illustrates the kind of case and person who benefits from elder-assisted panels.

Criminal History

The offender is a 34-year-old male serving the remanet of an aggregate sentence of five years, six months, two days for possession for the purpose, assault, possession of goods obtained by crime, possession narcotics and three counts of break, enter and commit. The current term started in 1991 with a three-year sentence for the possession for the purpose conviction and 60 days concurrent for the assault conviction.

The assault was against his then common-law wife. Reportedly they were fighting over some drugs. Her injuries included a minor black eye, and some swelling and bruising of cheek.

There has been one prior conditional release granted. This was a day parole granted in April 1992 that was suspended in August 1992. The day parole suspension was cancelled in October 1992, with the day parole being suspended a second time and revoked in January 1993. While in the community on conditional release, the Offender committed the following offences: possess stolen property - 30 days consecutive; possess narcotic (Cannabis Resin) - 60 days consecutive; break and enter and commit, - 30 months consecutive.

The Offender's involvement with the law started when he was 18 years old and was convicted of Break and enter and Commit and received a \$400 fine and one-year probation. His previous criminal career has consisted of six convictions for possession of narcotics; Break and enter and Theft, Theft under \$1,000; and Break and enter and Commit. This is his first federal sentence. Previous sentences had involved 60 days, another of nine months, and the remaining were fines and probation periods.

Previous to this sentence, he had completed all periods of probation and supervision without incident.

Personal Profile

Offender grew up in interior B.C as the second of two boys. His brother

has had no criminal history. His father is now retired. His upbringing appears very normal. He reports that there was only one time that he remembers his father hitting him. He left school and home at age 15 because he did not want to abide by his curfew or his parents' rules. He never completed grade eight.

Since leaving home and school, he has been fully employed. Initially he worked odd jobs until he started working in the oil patch at 18. This is seasonal work and in between he has drawn unemployment insurance.

He was involved in his first common-law relationship at age 18. This lasted for seven years and they had two children, one of whom died at four. At time of sentence, he was involved in a second common-law relationship. His wife has two children from her previous relationship and they were expecting when he was charged.

While he has been convicted of assault, the information from his case management officers as well as police describes the offender as non-aggressive and non-violent.

Substance Abuse History

The offender reports having first used marijuana when nine years old. He has smoked hash and pot and used some cocaine. At one time he considered himself a drunk, just prior to this sentence commencing, but he now reports drinking only about once a week. Prior to this incarceration he never received drug or alcohol treatment.

Major Risk Needs identified through correctional assessment

- substance abuse treatment/counselling;
- emotional/relationship stability; and
- employment pattern.

Contact:

Irene Fraser
National Parole Board - Prairies
601, 229-4th Ave. S.
Saskatoon, Saskatchewan
S7K 4K3
Tel (306) 975-5286
Fax (306) 975-5892

The Prairie Region of the Correctional Service Canada is also preparing to pilot a project whereby 40 to 70 prisoners will be given the opportunity to participate in a "circle process" with members of the community significant to them, including the victim(s) of their offence. The circle process is intended to assist in the development of their correctional plan as well as at several points in the process leading up to decisions pertaining to their release.

Contact:

Rémi Gobeil
Deputy Commissioner
CSC - Prairies
Box 9223
Saskatoon, Sask.
S7K 3X5
Tel. (306) 975-4850
Fax (306) 975-5476



Entraide Détenu Anonyme - Early Release Program Québec

In Québec, an innovative program has been started by a community agency in collaboration with the local prison to assist chronic repeat offenders who are serving prison sentences. They are released early to live on their own in the community for the purpose of this program, rather than to the agency's half-way house.

Entraide détenu anonyme is particularly geared to prisoners who need support due to behaviour difficulties such as timidity, impul-

siveness or aggressiveness. The program, which lasts 14 weeks, begins with 10 weeks of day programming at the half-way house facility, using adult education learning approaches in a group of five people. It is based on a holistic process to gently mobilize the energies and will of the participants, using the principles and techniques of psychosynthesis. It provides simple tools and user-friendly aids for personal study and reflection to help each participant identify individual aspirations, set personal objectives and develop as a personal "project" some realistic plans to meet certain goals. The dynamics of the small group are very mutually supportive as members share on a daily basis the challenges they are encountering in resuming their life in the community. For the remaining four weeks each person receives individual support as he carries out the plans he has made. This initiative has received a very enthusiastic response to date from all those involved; its holistic approach appears to be particularly helpful for dynamically engaging offenders in their own self-motivated participation in a constructive lifestyle in the community.

Contact:

Guy Dalphond
Maison Radisson
962 Ste-Geneviève
CP 1075
Trois- Rivières, Québec
G9A 5K4
Tel. (819) 379-3623
Fax (819) 379-3464

What was the average annual cost of incarceration by security level in a federal institution during 1993-94?

Security Level	Average annual cost per offender
Maximum security	\$65,371
Women's facilities	\$78,221
Medium security	\$40,008
Minimum security and Correctional farms	\$39,171
Community Correctional Centres	\$27,001*
Average annual cost	\$45,753**

* Community Correctional Centres (CCCs) primarily house offenders on day parole and are designated as minimum security institutions

**The average annual cost per offender includes those costs associated with the running of the institutions only and does not include parole related costs, transfer payments and operational costs of headquarters and capital expenditures; it also excludes the COR-CAN revolving fund.

Basic Facts about Corrections in Canada 1994 Edition



In **France**, a new program has been set up offering information and guidance for prisoners recently freed in the Paris region. This new service is original in that it brings together in a single location a team of social workers and a number of representatives from institutions and associations, responsible for emergency housing, social security, employment, health and so on. The aim is to propose ways of integrating the person concerned who can thereby regain his personal, professional and social identity (**Alternative Measures to Imprisonment, Council of Europe, 1991**).

Interesting initiatives to offer resources to assist prisoners upon release have also been taken in other jurisdictions, by community members who are former prisoners themselves, by other community members and by specialized agencies.

Groupes sentences-vie Montréal, Québec

Community volunteers coordinated by **Le Conseil des Églises pour la justice et la criminologie** reach in to prisoners serving life sentences by attending the meetings of the **Groupes sentences-vie**. They assist them in maintaining and strengthening their ties to family and community,

and actively preparing for their judicial review when required.

Contact:

Huguette Sauvé
CEJC
2715 chemin de la Côte Ste-Catherine
suite 322
Montréal, Québec
H3T 1B6
Tel. (514) 738-5075
Fax (514) 731-0676



Life Line Windsor, Ontario

Life Line, a project of St. Leonard's House, Windsor, was specifically designed to contact all the men and women serving life sentences in federal penitentiaries in Ontario, and facilitate a structured and individualized release plan for each one. It begins by reaching in to the Lifers in the prison to assist them in managing the course of their sentence while incarcerated, and to prepare for their judicial review and/or parole. The majority of Lifers (75 per cent) have never been in a penitentiary before. In many cases, this homicide is the first crime they have ever committed. They have the highest success rate of never repeating their offence - 98.4 per cent. The goal is to provide them with community support and an opportunity for gradual and supervised reintegration into the community with public safety as a prime con-

sideration. They are also working to encourage other communities to assume this responsibility and make the national exchange of resources for Lifers possible across the country.

Contact:

Skip Graham
St. Leonard's House
491 Victoria avenue
Windsor, Ontario
N9A 4N1
Tel. (519) 256-1878
Fax (519) 256-4142



Project Another Chance Kingston, Ontario

Project Another Chance (PAC) is a new, non-profit organization established in Kingston to provide women who are or have been in conflict with the law access to a range of services and resources. The project tries to help these women address their physical, emotional, intellectual and social needs in a caring manner which promotes a sense of personal growth.

Comprised of a tiny staff and over 40 well trained volunteers, including several ex-offenders, P.A.C. is forging a community link for Prison for Women inmates and ex-offenders through the maintenance of an up-to-date data bank of information on community resources, a prison newsletter and a crisis phone centre. The "Right-On Line" will

offer inmates a sympathetic ear within local calling range whereby they can vent their feelings of rage, fear, anger and confusion. Volunteers are trained in suicide intervention and active/supportive listening skills and are equipped with the information to give service users further referrals whenever necessary. Future workshops will train volunteers in such areas as anger, self-injury, sexual assault, and grief and bereavement.

Sensitive to the particular problems facing native inmates, Project Another Chance offers special training on native culture/issues as part of its volunteer orientation.

The participation of ex-offenders in the project offers a special link for parolees experiencing the difficulties of re-entry into the community-at-large. P.A.C. founder Melissa Stewart recounts the story of one woman she peer-counselled upon the latter's release on parole. "Marge" had lost many of her life-skills during her sixteen years in prison. For Melissa, Marge's hurt, confusion and lack of self-esteem upon re-entry into society were evocative of many of her own early reactions to parole. Over many months, Melissa provided Marge a sympathetic ear and practical information on basic cooking, math and English skills. Gradually, Marge's confidence grew; she was able to upgrade at school, and was finally able to

"A life sentence condemns the prisoner and his family to a lifetime of longing and grief. The dull hopelessness I see in the eyes of many prisoners, including (my son) Peter is, to me, a manifestation of the evil of the justice system."

Joan Stothard
The fight of her life,
The Globe and Mail

feel comfortable as a member of the outside community.

The decision to make good on one's parole is a major change in lifestyle, and like any other, takes courage and commitment. The unconditional love and practical guidance that Melissa and Project Another Chance's volunteers offer women like Marge empowers them to make this choice.

Contact:

Melissa Stuart
Project Another Chance
P.O. Box 1801
Kingston, Ontario
K7L 5J6
Tel. (613) 544-9100
Fax (613) 544-4181



Post-Release Offender Project - Aboriginal Legal Services Toronto, Ontario

Aboriginal Legal Services of Toronto is seeking to establish a post-release offender project to integrate into the aboriginal community of Toronto the many aboriginal offenders who have little option but to remain there. It is believed that regaining one's Native spiritual heritage is a way of healing and reducing recidivism.

Contact:

Patti McDonald
Aboriginal Legal Services of Toronto
197 Spadina Avenue
Toronto, Ontario
M5T 2C8,
Tel. (416) 408-3967
Fax (416) 408-4268



Respect Program Brandon, Manitoba

The **Respect Program (Release & Employment Support Planning Effecting Constructive Tomorrow)**, sponsored by the John Howard Society of Brandon, supports upon release provincially-sentenced men who are at risk of re-offending because of a history of unstable employment. Their Release Planning Course also provides opportunities to hear from community resource people the options available in the community for various issues. As a result of this course, many apply for early release because they have renewed options in the community.

Contact:

Russell Loewen
John Howard Society of Brandon
220 - 8th Street
Brandon, Manitoba
R7A 3X3
Tel. (204) 727-1696
Fax (204) 728-4344



The arguments that psychiatrist Thomas Szasz directs against involuntary commitment to mental hospitals apply equally to the involuntary incarceration of offenders - the political nature of the process, the violation of civil rights, the inevitability of abuses in places hidden from public view, and the corrosive effects of the institutional routine upon everyone connected with it.

The End of Imprisonment,
Robert Sommer

3. Wilderness Camps

Wilderness Camps offer residential programs in a wilderness environment to young offenders, some of whom are currently serving open custody or are on probation.

In some jurisdictions they are designated as “one-below containment”; they are thought to reduce custody, in that youth sent there would otherwise be placed in custody. **Camp Trapping** in British Columbia and **Project Dare** in Ontario are two examples of wilderness camps that combine a challenging outdoor survival and cooperative living experience with group counselling that seeks to strengthen self-awareness and develop self-confidence and self-esteem.

Wilderness camps are positive experiences for some youth. However, while in theory this program can prove to be enhancing for some young people with an otherwise stable home environment and lifestyle, any short-term benefits can be quickly undermined if the youth goes back to the same difficult community conditions that contributed to his or her criminal behaviour to begin with. Research indicates that intensive follow-up supervision enabling youth to pursue education, training, treatment and counselling back home are the key factors to whether or not

a camp experience will be seen to be having a lasting positive impact (National Crime Prevention Council, 1995).

Unfortunately, there exists a broad spectrum of types of camps ranging from the wilderness model described above to increasingly discipline-centered and military-style boot camps.

Regrettably, the political climate which is currently fostering a new interest in promoting more “camps” for young offenders is fuelled significantly by a desire to increase the punitive dimension of the response to youth crime; politicians recommending this development stress the elements of suffering and harsh labour to send a message about deterrence and punishment that they believe will reduce future crime. The best available evidence, however, points to the fact that this is not an effective tool for this purpose; unfortunately, there is now a great risk that this message will erode the positive elements of wilderness camps such as those described above.

It is understandable that people are frustrated with the justice system; they know that what we have been doing is not working. They want to “get tough” on crime and they believe, because politicians are not telling them otherwise, that the way to do so

is to put more people in jail and keep them there longer. Politicians who want to save money by decreasing prison populations and prison costs are attempting to create alternative forms which are appealing because they will increase the suffering during the sentence. This is not a smart way to get tough, nor to save money. It merely increases the waste of tax dollars because it fails to address the real problems.

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Because of this pressure for more punitive camps, it is important to recall American research which cites evidence from more than 65 U.S. boot camps that they do not reduce recidivism (MacKenzie and Souryal, 1995). Another study of eight boot-camp prisons revealed that programs which provide only physical training, hard labour and discipline may actually increase rates of recidivism (MacKenzie and Souryal). There is evidence that they reduce prison overcrowding only if program admissions are tightly controlled to ensure that spaces are provided solely to prison-bound offenders. However, this is often not the case; boot camps typically admit to their programs non-violent offenders with no prior incarceration record, in other words those who might otherwise have been sentenced to probation or community-based alternatives rather than prison. As such, correctional costs may actually rise with the implementation of boot camps while the

prison population remains relatively constant or even increases (Parent, 1995). Some state boot camps even cost as much or more per day than regular prisons (Cronin, 1994). Arizona Corrections is terminating this sentencing alternative because it is not an effective use of prison funds or staff time. Wilderness Camps in British Columbia have also recently been suspended pending an investigation.

When people are frustrated with the system, what they are often really calling for is a response that deals with offenders more effectively, and a response that gets tougher on the causes of crime as well. Wilderness Camps may help a few individuals but they are not an alternative that can answer to these needs, nor provide satisfying justice.



4. House Arrest

A Few Stories

A man in his seventies was convicted of tobacco fraud involving approximately \$10,000 in cigarettes. The judge sentenced him to two years probation and fined him \$10,000, with the first three months to consist of house arrest. Two other men convicted for the same incident received a jail sentence.

For those three months, this man was: not to be more than 500 feet outside his home and could only leave his property for authorized medical treatment; not to consume alcohol; to restrict visits to family members, only two at a time, on Sundays between 2:00 p.m. and 4:00 p.m. (in addition, the judge named three family members who could not visit together).

While the judge cited the man's age and health as reasons contributing to the non-custodial sentence, this man's probation officer felt the sentence was "an excellent one that would make sense for others not as old or sick". The probation officer said this man found the sentence quite onerous. He was relieved when the house arrest ended.

A judge wrote us to recommend house arrest more often in place of jail. He recounted a case where a man was charged with sexual assault, "not a serious kind but it was sexual assault". Before his

arrest, he had been considered a model citizen. His wife had died violently leaving him with a 16-year-old daughter to care for. He began drinking and the offence occurred while under the influence. "I had the option of sending him to jail whereupon he would have lost a well paying job and left a daughter vulnerable. There was a human cry to jail him. Instead of jail I chose house arrest. I suspended his sentence for one year, placed him on probation with the following clauses: he was allowed to leave his home at 6:30 each morning to drive from the South Shore to his job at the Halifax waterfront, returning by 6:30 p.m. He had to attend for treatment as well. Except for travelling to and from his place of employment or counselling, where he could travel alone or going for groceries when his daughter had to accompany him, he had to remain at home. To monitor him, a probation officer was assigned to phone him at random hours. The sentence worked without a hitch. No cost for jail, no loss of employment, treatment for his sexual and alcohol misbehaviour and, most important, the family remained together."

The judge felt an electronic monitoring bracelet system should be tied to house arrest. We look at this option next.

5. A Note About Electronic Monitoring

Electronic monitoring or surveillance as a correctional measure consists in verifying the presence of a convicted person in a given location by means of high technology equipment. This is done either through telephone checks (passive surveillance) or the continual monitoring of individuals as they wear bracelets which emit signals (active surveillance). This active system is the one which has been most frequently implemented, as well as a combination of the two methods.

The objectives of electronic monitoring are universally stated to be to reduce the prison population and to protect society effectively with minimal social and economic costs. It was invented in the United States and its use has been experimented throughout that country as well as in England, several European countries and several Canadian provinces. In the U.S. alone from 1987 to 1991, its use tripled every year (Schmidt, 1985). This popularity can be attributed to prison overcrowding, the economic crisis and disillusionment vis-à-vis probation case-loads that are feared to make supervision highly ineffectual (Latulippe, ASRSQ, 1994).

According to a recent study by the U.S. National Institute of Corrections, there is growing evidence that the system needs re-evaluation: the technology and methods are far from error-free and offenders often disappear from their homes. Such technology is not what can be counted on to ensure public safety. Electronic tagging also fails to address the many other socio-economic conditions and reparative issues related to justice and crime prevention; the John Howard Society of Newfoundland operates one of the only “bracelet” programs to include a rehabilitative component. In many programs, offenders must themselves pay for all or a portion of the cost of the program. Poor offenders often do not have the funds, nor decent housing in which to spend their sentence, nor a telephone, and are therefore not afforded equal access to this sentencing alternative.

While electronic monitoring has been known to put additional stress on some families, many have experienced it as a more humane form of sentencing than incarceration. And it would appear that it has posed no greater risk to society than incar-

ceration would have: its recidivism rate is almost nil, according to all the literature reviewed by Latulippe. There is a good chance that this can be attributed, however, to the very select population that is allowed to benefit from it, rather than to the program itself. The research indicates that it is often added on to probation for people who would not otherwise be jailed, or used for people released from prison who could have more appropriately been referred to other existing resources. It has, in fact, also incurred greater costs than anticipated and has not reduced prison populations or prison costs in most jurisdictions.

Electronic surveillance has been aggressively marketed by high-tech companies and there is cer-

tainly a profit to be made not only from equipment requirements, but from all the derivative gadgets that are surfacing to “disarm” the equipment, to “detect” the disarming equipment, and so on. It also necessitates that a minimum population be serviced, which has led at least two Canadian jurisdictions to widen the net with low-risk offenders in order to meet the quota (Latulippe, ASRSQ, 1994).

It is a technology for whom a clientele has been artificially created and inflated, rather than a technology put to rational good use in service of the community’s real needs. Its main function is strictly to “reassure the public”, and at the moment it is providing an illusory and needlessly expensive “false” reassurance.



Conclusion

We were astounded to discover that the many initiatives described in this compendium have not reduced the overall use of imprisonment in Canada.

Despite many good intentions, they too often end up, in the words of Irvin Waller, as “long-term wolves in short-term sheep’s clothing”. Nearly all European countries have also introduced some of the “alternative sanctions” to a greater or smaller

extent, and results there have been similar: these have not, by and large, replaced sentences of unconditional imprisonment, which have themselves increased in length, and there has thus been no declining effect on the demand for prison capacity as seen in relation to the crime level (Council of Europe, 1991). Moreover, the situation is expected to worsen here unless other administrative, legislative and

1996-2005

Projected Rate of Incarceration for federal institutions in Canada



Correctional Services of Canada Information Management System - Year End

educational policies are also introduced. (Some jurisdictions have begun to do this with greater success than we have had to date, as will be discussed in the **What Can Be Done** section of this **Conclusion**)

Signals of a Worsening Situation

The demand for increased prison capacity in Canada can be expected to multiply partly because the dramatically rising number of youths being criminalized at present will put additional pressure on the adult system; it is well known that punitive imprisonment often increases the risk of recidivism and that “even a short spell in custody is likely to confirm them as criminals” (Council of Europe, 1991). In addition, it is anticipated that changes to legislation and related initiatives will further burden the system, i.e. Young Offenders Act, Task Force on Violent Offenders, Firearms Control, Corrections and Conditional Release Act amendments, Sentencing, and Immigration Act amendments (Government of Canada, 1995). Such government action also reinforces the belief among Canadians that incarceration is the appropriate and effective response to crime.

Why do we persist in using unconditional imprisonment?

Yet this escalation in the use of imprisonment is not warranted by any of the evidence about its impact on community safety, the overall crime rate or the particular requirements of its use strictly to contain violent behaviour. The majority of crimes are still property crimes. More than half of violent crimes are non-sexual assault and do not involve a weapon or serious physical injury. Canadians tend to significantly over-estimate the extent of crime and particularly violent crime. There has been virtually no change between 1988 and 1993 in the proportion of Canadians who reported being a victim of crime. (Government of Canada, 1995).

It would appear that, as has been said of their use in Europe, the vitality of custodial sanctions is due, among other factors, to the emphasis laid on the symbolic or expressive function of punishment (Council of Europe, 1991). Yet it is a costly symbol indeed when one considers its true effects in practice.

Research has shown, for example, that money spent on the very ambitious and expensive prison construction program that California embarked on in the 1980s purchased nothing when it came to curbing the rate of violent crime (Ekland-Olsen et al., 1992); in fact, the rate began to go up in 1986 and has continued going up since (Doob, 1995; Guardian Weekly, April 10, 1994). This is consistent with previous findings elsewhere on the effect of incapacitation on offenders convicted of murder, rape, robbery, and aggravated assault.

“It is judges who impose sentences... but it stands to reason that judges will modify their approach if we reduce the number of spaces available in prison.”

Lysiane Gagnon
La Presse
April 22, 1995

“Many of these individuals must have committed their offences as impulsive responses to the situation confronting them, sometimes under the distortions of alcohol or drugs, sometimes by a transitory loss of control in a condition of fear or anger. No incapacitation policy is going to prevent many crimes committed under these circumstances. It is likely that our cohort is fairly representative of experiences elsewhere, and that a large number of the violent crimes cleared by the police are of this character - first offences committed under stresses and influences inaccessible to the preventive processes of the law.” (Van Dine et al., 1979)

This is by no means to deny that these offenders must still be held accountable, and the safety, justice, reparative and healing issues must be addressed. But the use of the expensive tool of punitive

imprisonment cannot be justified by any evidence that it will deter others from such violent crime. Of course, as Doob has pointed out, while they themselves are in prison, they aren't on the street committing crime. “The question, then, is not whether ‘one crime would be avoided’ by some incapacitation strategy. The questions are ‘What is the cost’ and ‘Would some other strategy for the use of scarce resources be *more* effective in saving lives?” (Doob, 1995). Studies have concluded that the current strategy, while having little impact on the overall crime rate, has the additional disadvantage of carrying with it a high degree of inaccuracy: many offenders who would not have offended after release will nevertheless be detained longer, (Roberts, 1995), at a high financial and social price.

Between 1982 and 1993, California spent \$14 billion on prison construction; the prison population rose by 500 per cent and the overall crime rate increased by 75 per cent (“Real Answer to Stopping Crime”, Guardian Weekly, April 10, 1994). In 1992, a comparison was done with Texas, which had dealt very differently with the pressures on its own prison system in the 1980s; constrained by a state economy in recession, it had opted for less prison construction and more reliance on parole. The only difference found between the two crime rates was some increase in repetitious property

offending patterns, but with some indications that this could also be attributed to the heightened unemployment rates that Texas was also experiencing during those same years (Ekland-Olsen, 1992). There is simply no conclusive evidence, based on the best available knowledge, that the use or varying length of incarceration serves as a greater deterrent than do other options, even for property offences (Song, 1993; Ekland-Olsen, 1992; Roberts, 1995; Doob, 1995). As stated earlier, there is some reason to believe the opposite: recidivism rates of offenders sent to prison are higher than those of individuals who receive non-custodial effects (Roberts, 1995) and harsh penalties may in fact increase crime rates (Lilles, 1995).

So what happened to deterrence?

This evidence about deterrence is of course highly contrary to popular public belief and, as such, it deserves considerable public clarification. While deterrence may “work” with some people when there is a certainty of apprehension for parking tickets and a fine, for example, the strict conditions that are required for deterrence to “work” cannot be met in the area of crime. Doob explains this as follows:

“The idea behind deterrence... assumes that people will examine the probability that they will be caught for what they are about to do, and determine that there is a reasonably high likelihood of being caught. It assumes that they know what the likely penalty would be and it assumes that they believe that if they are caught they will receive the penalty. Finally, when one looks to increased penalties to deter people, it assumes that people would be willing to commit the offence and receive the penalties currently being handed out, but they would not commit the offence if the penalty were harsher.

But people are not thinking about being caught.... They may be thinking about how not to be caught, but few people commit offences assuming there is a high likelihood of being apprehended” (Doob, 1995).

A further problem is that for many crimes, if offenders were to calculate coldly and rationally what the probable penalty would be, they would realize that they have a very low likelihood of being apprehended, let alone convicted - for robbery, for example, about 10 percent. The research shows that those who are convicted are in fact sentenced much more severely than most Canadians estimate (almost always a prison term, often two to three years in penitentiary). There is no evidence that poten-

“Crime rates rise and fall according to laws and dynamics of their own and sanction policies develop and change according to dynamics of their own: these two systems have not very much to do with each other.”

**Patrik Törnudd
Finland, 1993**

tial offenders go through a process of deciding that the crime is worth it for the present penalty, but would not be worth the risk if the penalty were four or five years, for instance (Doob, 1995).

Another explanation is given by Mathiesen for the reason punitive imprisonment does not have a “deterrent” or “general prevention” effect on most crime. He points to communications research to suggest that deterrence, if it works at all, probably impacts on those who did not need it to begin with because they already shared values and allegiances with the rest of society’s dominant group. But for those on whom imprisonment is most likely to be imposed - often the impoverished and the already marginalized - the attempt to send out a preventive “message” through the punitive element of the sentence is distorted by a number of well documented social, psychological and economic factors, including how the punishment itself is experienced. **Some** social pressure or threat may make people conform but, beyond a certain point, the severity of the punishment in relation to the context is experienced as an injustice, a rejection, a scapegoating (all the experts say that this point beyond which the message is ineffective is well below the sentences commonly handed out in Canada). Labelling and separating people, we now know, leads to the emergence of coun-

terculture, as opposed to increased conformity to the dominant culture: people who are imprisoned the most tend to come from social groups who know very well that even if they don’t break the law they still won’t “make it” in our society (Mathiesen, 1990).

Even if there were a little deterrent effect, some serious questions must be asked. Not only are the monetary costs no longer sustainable, but the enormous injustice and social harm done by prisons to a disproportionate number of Blacks and Aboriginals, for example, far outweigh any other consideration at this point, especially when any benefit would be negligible and remains speculative. **If Canadians knew the facts, wouldn’t they prefer this money to be spent on programs that are essential such as health and education, and, as Galaway found in Alberta and Manitoba, on directing resources towards job training, and community programs rather than prisons?** (Galaway, 1994)

It is not necessary, of course, to give up on deterring people from committing crime, or on denouncing behaviour that violates members of our society and community standards. Nor is it necessary to give up on protecting ourselves, or on seeking justice and healing when we have been harmed. The point is that

imprisonment is rarely an effective tool for these purposes. They can be pursued more successfully with other means, that can be less harmful and usually less expensive.

There are a myriad number of other ways of approaching the kinds of problematic situations that currently get criminalized and often result in imprisonment. And problematic situations can be handled in a wide variety of much more human and civilized ways than exclusively through adversarial courts and punitive incarceration, making room for more responses that are specifically appropriate to unique circumstances and needs in each situation. This compendium has presented a number of examples of this.

Why haven't these alternatives reduced imprisonment?

The short answer to why these alternatives have not reduced imprisonment is because "prison" is still the norm people associate with "justice".

In addition to this, these "alternatives" do not all provide an experience of "satisfying justice".

Prison, of course, is also often found lacking in this regard. But prison has been allowed to coast along, partly because, until

recently, there have been no other options for victims or communities; and partly because many assumptions have gone unquestioned, about the effectiveness of the symbolic value of a prison sentence as an utterly destructive moral condemnation, which carries a quality of doom that has not yet been matched by any "alternative" no matter how hard it has tried. We are now seeing how it is the very strength of the "negative stranglehold" of this sentencing measure that has been society's downfall and will ultimately bring about the demise of punitive imprisonment as a rationally defensible or justifiable response to crime. This should be a warning to us about the orientation we choose to give to other options if we want to avoid repeating a similarly destructive and self-destructive pattern.

Another important factor is the fact that billions of dollars have remained invested in the prison industry and there has been no effort yet to move those resources out of prison maintenance in order to redeploy them in the areas of more positive endeavour. This has created the very counter-productive dynamic of **vested interests** in keeping all existing prison bed space filled to "cost-effective" capacity: it is better to use what is already being paid for than to spend "additional" money on alternatives while some beds are "wasted".

"One problem with Canadian corrections at present is that it does not have a clear purpose. While corrections departments purport to rehabilitate and reintegrate, because of budgetary constraints and public pressures, those functions are often neglected and replaced by warehousing. Correctional officials, various segments of society and the public at large have differing views as to the purpose of corrections, as to who should be incarcerated and for how long. Public education is essential in this regard.

Incarceration should be used only as a last resort. Incarceration as a cure-all solution when we could resort to more creative and cost-effective solutions is a terrible waste of human and financial capital...."

Canadian Criminal Justice Association Congress '95 booklet

Criminal policy, it appears, is at a deadlock.

The problem seems to be, as we have cautioned at various points in presenting the different initiatives, that many alternatives have been introduced most extensively to relieve prison overcrowding in places where prison sentences are also extensively applied and, because of this, they have tended to be given a much more punitive character than would be required for their actual effectiveness. All kinds of “intermediate sanctions” contain different formulas of coercion and control in order to give them a more punitive appeal that increases the level of suffering or hardship associated with them by the public, regardless of any content meaningfully related to the nature of the offence, or to the problems or needs of victim, offender or their surrounding communities.

Almost every type of punishment is inevitably linked to imprisonment; the waiving of imprisonment, in part or in full, is made so conditional upon so many factors that breaches for reasons other than a further criminal offence can often result in incarceration anyway. New provisions for “conditional sentencing” in Canada may actually further increase the prison population for these reasons, even though the opposite is intended: the symbolic message of its “hammer” will be tempting to add where there is thought to be little likelihood of it

being implemented, resulting in the eventual incarceration of people who would previously have been given a non-custodial sentence.

With conditional sentencing, we will thus have come “full vicious circle”: a prison sentence will be the add-on to the alternative, in the same way that alternatives are currently used as add-ons to the prison sentence.

This is the infamous “widening of the net” phenomenon, which is by now well recognized and documented, but not overcome. It creeps insidiously into most, (but not all), of our best initiatives. As Peters and Aertsen have pointed out, most alternative sentences have been unable to separate themselves from the prison sentence. Anyone who is not directly sentenced to imprisonment will at least be put in the prison waiting room.

The current application of alternative sanctions facilitates access to incarceration: they lower the structural threshold of imprisonment.

This will not change unless communities become more attentive, proactive and better resourced and unless governments initiate administrative, legislative and educational policies that shape distinctly new directions, positive messages and community-building values for the work of justice in Canada. What can we learn

from other jurisdictions who have also been attempting to reduce their use of incarceration?

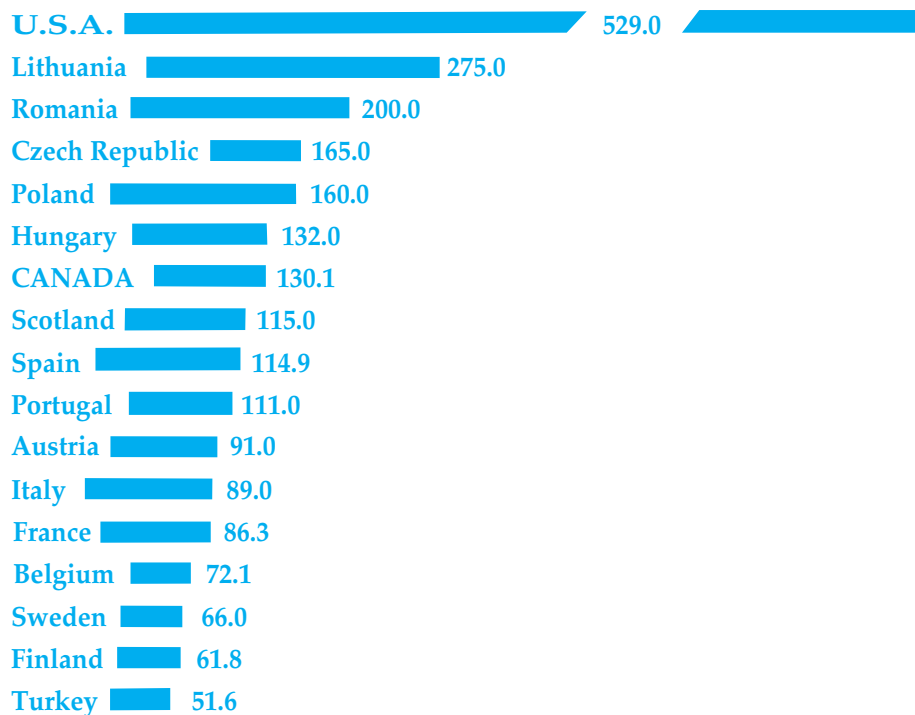
What Can Be Done

A review of international initiatives to reduce prison populations indicates that a few coun-

tries have introduced new national policies that are meeting with some success, the most notable of which, by far, are **Finland** and the former **West Germany**.

Finland has successfully accomplished a deliberate reduction of its prison population, which had

Number of Inmates per 100,000 Population



Basic Facts about Corrections in Canada, 1994 Edition

A number of existing practices and programs for young offenders and adults reflect some of the concepts and principles of restorative justice:

- *A Victims Fund has been established to provide resourcing for services for victims of crime.*
- *Alternative Measures (diversion) is available for young offenders. As well, a number of projects have begun for adults. Victim-offender mediation is one method to resolve conflict. Two youth projects, one in Shaunavon and another in Regina, are piloting models with expanded community involvement.*
- *The courts have employed sentencing circles for a number of Aboriginal offenders.*
- *Victims are routinely contacted and consulted in the preparation of pre-sentence and pre-disposition reports.*
- *The courts direct restitution to be paid to victims as part of a court order. These orders are monitored to ensure offenders fulfil their obligations to victims.*

reached 250 per 100,000 during the peak years (Canada's is currently 154 per 100,000). Since the mid-1960s, a number of factors have led to a consistent 30-year decrease down to its present level of about 60 per 100,000.

According to Matti Joutsen, Director of the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), "few of the essential factors could be described as a 'program, project or initiative' in the strict sense of the word". The strategy was enhanced by conditions that are more easily facilitated in a smaller jurisdiction, for example a close association between research and policy, and the building of close collaborative relationships between the key persons in policy-making, research and practice. But most importantly, "above all criminal policy has remained non-politicized."

"However, the fundamental factor could be created in any country: the realization that a high prison population is not a solution, is in fact a problem. The key persons must reach agreement on two tenets (1) prison rarely rehabilitates, rarely deters, and often increases the risk of recidivism, and (2) a strongly punitive and law-and-order approach to complex criminal justice problems in general brutalizes prisoners, prison staff and society at large.

Without broad agreement on this, attempts to reform criminal justice will very likely lead to a twisting of the purpose of new non-custodial sanctions, of new attempts at mediation, of new attempts to shorten sentences, and so on." (Joutsen)

The Finnish used a **comprehensive strategy** of legislative and policy changes decriminalizing certain offences (such as public drunkenness), thereby decreasing the number of fine default prisoners; and de-emphasizing imprisonment, including reductions in penalties for theft, other property offences and drunk driving, lowering the minimum time served before eligibility for parole, and increasing the use of suspended sentences, and the use of community service to replace prison sentences of up to 8 months. They also relaxed the earlier strict conditions related to the use of "conditional" sentences; for adults there is no supervision, only the threat of having to serve the penalty if the offender **commits a new offence** during the probationary period which can last up to three years.

Finnish officials believe that the decisive factor in accomplishing this goal was the "attitudinal readiness of the civil servants, the judiciary, and the prison authorities to use all available means in order to bring down the number of prisoners".

“Regardless of what happens in the future one important lesson has been learned. It proved possible to significantly reduce the use of imprisonment without repercussions in other parts of the system. The scarcity of other sanctions available and the pressures related to rising crime rates weighed less than the express will to create a more civilized sanction system.” (Tornudd, 1993)

The former West Germany has also shown that the prison population can be significantly reduced without any apparent increase in the risk to the public. The largest proportionate reduction in the use of custody has been for young offenders. **The most compelling explanation for the decrease is changing behaviour of prosecutors and judges.** Fewer charged persons are remanded in custody. Prosecutions decreased as prosecutors acquired broad discretion to dismiss cases and even to impose sanctions on their own. **As in Finland, it is believed these changes have been achieved not so much through legislative measures but through close collaboration and cooperation among lawyers, the judiciary and prosecutors.**

Many other jurisdictions are recognizing the pressing need to reduce their prison population. Some are taking more radical steps in their use of existing measures. The following are just a

few examples of the initiatives that are being taken:

- introducing administrative sanctions, such as confiscation of drivers’ licenses, gun permits or passports instead of jail sentences (Italy); or applying outstanding amounts owed on fines to income tax returns instead of jailing the defaulters (Québec);
- reducing the restrictions on the seriousness of the offences that are eligible for alternatives to imprisonment (Austria, Scotland, Ireland);
- discontinuing proceedings or postponing them to allow for other social or health solutions to be put in place (The Netherlands, Portugal, Japan);
- establishing a system of informal and formal “cautioning” of offenders instead of a court proceeding, to address social and health causes, and sometimes involve the victim (United Kingdom, New Zealand);
- closing prisons and putting “caps” on the prison sentences that can be handed down (Québec, some American jurisdictions) or insisting that for every jail cell there are an equal number of community measures (Ohio);

- *The court has the option of ordering offenders to perform community service or personal service. This provides some reparation to the community as a whole.*
- *Family Preservation programming for young offenders is an example of a family-centred service model which aims to promote time-limited, integrated services which maintain and strengthen family relationships, and connect families with other resources in their community.*

Saskatchewan Dept. of Justice Policy Paper April, 1996

Quebec launches prison reforms

by Rhéal Séguin
(Globe and Mail, April 3, 1996)

The Quebec government is proceeding with a major reform of the province's prison system, closing as many as six institutions and calling for fewer jailings of non-violent criminals.

The cost-cutting measures are expected to save \$16-million a year for the government. But perhaps more important, Quebec will go against the North American trend toward tougher criminal sentences.

"Adopting a less repressive approach toward crime is not something easy to fulfil. In this regard Quebec is going against the conservative trend sweeping across North America", says a report by the Ministry of Public Security and released yesterday. "We are forced to recognize that the repressive approach adopted in the United States has taken hold in the western provinces. Quebec has turned its back on the repressive model

Others are shifting their understanding of what is needed for justice and therefore introducing new approaches and measures.

- directing the justice process to take a forward-looking approach offering social alternatives and recognizing the need for "integration" rather than "re-integration" because so many offenders already led such a marginal existence to begin with (France); and recognizing that social services are the cornerstone of the implementation of crime policy (Portugal);
- giving new social and family-oriented dimensions to existing measures (Belgium, New Zealand, Scotland);
- giving a more reparative orientation to the justice response, by relating community service orders more meaningfully to the offence (Sweden, France) or encouraging mediation processes (Norway, Belgium, Portugal, Austria); **Belgium has structurally reinforced a pro-victim policy by hiring social workers, criminologists and mediators to work right in the prosecutors' offices;**
- developing an "integrated justice service delivery model" to rethink justice in a social policy context (New Brunswick); its aim is to work more collaboratively with other agencies and sectors of society on the broader social policy implications regarding the provision of justice services in four key areas of delivery: pre-emptive services, monitoring services, resolution services, and enforcement services;
- replacing the retributive justice correctional model with a two-track system for "Risk Management Services" and "Reparative Services" (Vermont). The Reparative Services Track focuses on a "Restorative" theme that provides opportunities for offenders to atone for their behaviour and repair the harm caused to both victims of crime and communities where those crimes are committed. Members of the community negotiate the details and activities of how the offender will make redress to the victim and the community. **Professional staff roles are redefined, from being casework supervisors to being community resource specialists, organizers and facilitators;**
- establishing the position of "Restorative Justice Planner" to implement state-wide use of reparative sanctions (Vermont, Minnesota).

It is too early to know the results of many of these initiatives in terms of long-term reduction of the use of imprisonment, or community satisfaction with the experience of “justice”; we think the two will be ultimately linked. But there is clearly sufficient evidence that a country **can** substantially reduce the level of imprisonment and more effectively manage higher risk offenders *if the will is there to do so*.

One of the biggest barriers to overcome is the false belief among the public, politicians and even some criminal justice officials that tinkering with penalty levels or other parts of the system will improve community safety in Canada. Accurate information which contradicts this view must be made known, without discounting people’s legitimate concerns.

Clearly, members of the Canadian public are not content with sentencing, as they presently know it. But as the research of Doob, Galaway, Mathiesen and others, has pointed out, it is just as clear that they would be more content *with individual sentences* if they had better information from the judges about how individual sentences were determined and what the nature of the case was. Policy decision-makers collectively may be poorly informed regarding citizen support of criminal justice reforms. Much of the information we give to ordinary members of the public does not allow them to

evaluate the nature of crime in our society or the operation of the criminal justice system. At the same time, many views expressed by members of the public on the operation of the criminal justice system are likely to come from various “opinion leaders” (political leaders, criminal justice officials, spokespeople from various groups) (Doob, 1995).

Hopefully, more communities themselves will begin to insist on more satisfying justice and better value for their money, forming councils like the **Abbotsford Community Sentencing Project** in British Columbia, or the **Miramichi Community Corrections Council** in New Brunswick. The day may not be too far off when, as in the health field where there is a growing demand for “evidence-based treatment”, in the criminal justice area we will see a growing community pressure for “**evidence-based sentencing**”, that is the requirement to justify the expense or intrusiveness of sentencing measures meted out with scientific support for their necessity or anticipated benefits.

Criminal justice officials have a particular responsibility to serve the public with accurate information about the impact of the present system, what it can and cannot do in the community’s interest. **Members of the judiciary** are in a particularly good position to **use their judgments** to raise important questions, and to foster

Four jails to be closed

FREDERICTON - New Brunswick plans to close four of its 10 provincial jails over the next three years because locking up people for non-violent crime is not working as a deterrent, says Solicitor-General Jane Barry. “We have a revolving-door syndrome,” she said yesterday as she announced a radical reworking of the jail system. She added that 87 per cent of people in New Brunswick’s jails are repeat offenders: “They’re not learning anything by being incarcerated.” -CP

Globe and Mail
April 11, 1996

better community awareness of the problems that the community must address.

- **Judges** can insist on getting better information before sentencing, they can request that some kind of good healing process of communication take place to gather it; they can ask to consult with the community in this way, or ask that someone consult the community on their behalf and have the community bring some recommendations before them.
- They can speak out in their judgments about positive purposes and healing needs related to their cases, and about deficiencies in local community resources or opportunities to help address these deficiencies.
- They can draw the attention of the community to certain economic or social problems related to the situations they have to rule on; they can tell it how their observations lead them to believe it needs to make more resources available for certain interventions.
- They can use the opportunity of their judgments to extricate from the label “punishment” some of the positive benefits people are seeking when they use that word and include in their disposition elements that seek to meet these positive aims without assuming that only punitive imprisonment

can do so (such aims as holding offenders to account, denunciation, reparation and support for victims, assistance with fears in the community, a re-integrative opportunity in the shaming, etc.).

As for **Governments** who wish to reduce their jurisdiction’s spending on prisons, it would appear to be important to move on several levels:

- move money away from prison bed space into community-based alternatives;
- increase the availability and awareness of resources for alternatives that are effective and satisfying;
- provide legislative and policy measures that enforce their use as alternatives;
- encourage individual initiatives by community members, agencies and justice officials to use these alternatives every time possible;
- be ever-questioning each time jail is a component of a sentence: is it really needed, even as a hammer hanging overhead? Is the purpose for which it is being used really justifiable, or could a better option be found?
- examine and evaluate the whole variety of different uses and functions which sentences

“... I think we have to get tough as well. But we have to be smart about how we get tough. I have talked to people who are frustrated with the system, and what they are really calling for is a response that deals with offenders more effectively, and a response that gets tough on the causes of crime as well. When people talk about what they want to see, jail is not necessarily the answer.”

John Nilson
Saskatchewan
Justice Minister

to imprisonment are currently serving in the society (**see sidebar**); each must be addressed if it is not to insidiously work against an official strategy to reduce prison populations.

As we have seen, however, in seeking and promoting new options, tremendous vigilance will always be required if we are not to repeat past tragedies.

*“The modern prison, born just over two centuries ago as an alternative to corporal and capital punishment, contains an important lesson for those of us who advocate social change. The Quakers and others who championed the first modern prisons did so with the best of motives but, in reality, created a monster. This history warns us that no matter how lofty our motives and theories, **alternative processes** intended as reforms may be co-opted and diverted from their original purposes.*

*Only a grounding in **alternative values - indeed an alternative understanding of justice** - can reduce such co-optation.*

Change advocates must be aware that their reforms may go astray and should be careful about imposing their visions and values on others.” (Howard Zehr, 1995)

The many uses and functions of sentences to imprisonment...

- *the protection of people in the outside community from serious violent behaviour by those in prison, while they remain in prison;*
- *the limiting of freedom to protect from less serious behaviour;*
- *the punishment of low-risk non-violent property offenders;*
- *a “wake-up call” to alert certain minor offenders to the fact that a serious change in direction is required in their lifestyle;*
- *a symbolic message (of punishment, denunciation, deterrence) to ease public anxiety about crime, and the more deep-seated fear of “the evil that lurks in the hearts of all humankind”, including one’s own;*
- *a symbolic message of vindication for the victim;*
- *a place to provide programs or mental health services where they are still funded, or where it is believed that the “coercive” element will make compliance more likely;*
- *a place for some destitute people to secure a roof and “three square meals” a day;*
- *a subculture that gives a sense of belonging to some of the marginalized of society;*
- *employment of many citizens in a billion-dollar industry...*

Appendix

We thought it would be helpful for readers looking for programs, initiatives and cases relevant to their field of work or interest to provide the following general indices according to subject.

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Satisfying Justice - A Book About Credible Alternatives to Prison and Why There Aren't More

Canadians are facing a crisis in the justice system. Prison populations are soaring. The costs are no longer affordable. Yet people are feeling less safe and secure. What Canadians want and need is "*satisfying justice*" - a response to crime that takes victims seriously and helps them heal, a response that calls offenders to account and deals with them effectively, a response that "gets tough" on the causes of crime and does something about them.

Is it clear that filling our jails has just not been working.

Why are we doing this?

Couldn't all that money be put to better use to make us secure?

How can we get SMARTER about getting tough?

What can we do instead?

This book, **Satisfying Justice**, is both good news and bad news about credible alternatives to imprisonment now in place in Canada and elsewhere. It contains over 100 entries with program descriptions, contact information and many stories illustrating how the intervention works and feels. Yet these alternatives are still not significantly reducing prison populations. **Satisfying Justice** explains why and is intended to stimulate more imaginative approaches and new directions in sentencing.

