The Youth Criminal Justice Act: Implementing Restorative Provisions

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ABSTRACT

As the popularity and use of restorative justice continues to increase, many advocates express concern about the possible co-optation and dilution of the restorative philosophy. This is especially evident in Canada with the implementation of the *Youth Criminal Justice Act*. The Canadian government has decided to incorporate restorative provisions in the new *Act* due to frustration with the current way of doing things and the increased need to recognize victim issues. However, there are many potential problematic situations that may occur when implementing restorative initiatives, particularly in a legislated context.

The rapidly growing literature on restorative justice identifies a plethora of potential dangers. Through exploratory research, a number of these problematic issues are identified and discussed in specific relation to the *YCJA* and the Canadian situation. These potential downfalls include: accessibility of resources, funding issues, offender-oriented agencies and staff, the role of professionals and youth justice workers, marginalization and McDonaldization, community involvement, evaluation efforts, and issues regarding the public, the media and politicians.

Three youth justice conferences were attended to obtain data for this research. Beyond identifying potential hazards, the information obtained from these conferences produced a variety of implementation strategies, including: concentrating on the fundamental principles of restorative justice, the need for constant and appropriate evaluation, involvement of the community in all aspects of implementation, formation of strong Youth Justice Committees, and gaining support and educating the public, media and politicians. Overall, it is argued that implementation efforts must be guided by the

values of restorative justice in order to prevent the co-optation and dilution of the restorative philosophy.

Table of Contents

ABSTRACT i

Table of Contents iii

Dedication v

Acknowledgements vi

Introduction 1

Chapter I – Literature Review 5

The Canadian Situation 5
Youth Criminal Justice Act – Restorative Provisions 8
Extrajudicial Measures 9
Conferencing 10
Victims of Youth Crime 12
Principles of Restorative Justice 12
Best Suited for Juvenile Systems 15
The Need for a Fully-Fledged Alternative 16
Potential Dangers When Implementing Restorative Justice 18
The Need for Flexibility 18
The Role of the Community 20
Marginalization and McDonaldization 21
Victim Sensitivity and Involvement 23
The Punitive "Carousel" 24
The Role of Professionals 25
Due Process Protections 27
Is Restorative Justice Only for 'Soft' or 'Easy' Cases? 28
Public Safety Concerns 28
Funding Constraints 29
Evaluative Efforts 30
Implementation Strategies 31
Conclusions 33

Chapter II – Methodology 34

Exploratory Research 34
Literature Review 36
Conferences Attended 37
Burnaby Community Forums 37
Family Court/Youth Justice Provincial Conference 39
Restorative Justice Seminar – Justice Institute of B.C. 41

Chapter III - Discussion 43

Restorative Changes? 43

Potential Dangers Identified in Conferences 44
Accessibility of Resources 44
Funding Issues 45
The Pubic, Media, and Politicians 48
Offender-Oriented Agency and Staff 49
Statutory Time-Lines 51
Roles of Professionals and Youth Justice Workers 52
Marginalization and McDonaldization 55
Community Related Issues 56
Evaluative Efforts 59
Implementation Strategies 60
Conclusions 63
Conclusions 64
References 69
Appendix A 75
Appendix B 76
Appendix C 77
Appendix D 78
Appendix E 80
Appendix F 81
Appendix G 82
Appendix H 83

Dedication

In loving memory of my mother,
whose selflessness and caring
attitude has inspired me.

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For all those who supported me and believed in my abilities over the past year. You picked me up when I was down.

Introduction

Restorative justice is a way of being. I remember the first few times I heard people make this statement, and I really did not take them too seriously. However, as I have become more versed in the philosophy of restorative justice, I have realized that this statement is in fact very credible. Restorative justice is not just a way of responding to crime or wrongful behaviour, but is a means of viewing the world in which we live. It is a perspective that guides human interaction, whether it is how we react to daily pressures, view worldly problems, or the methods we choose to discipline our children. Fundamentally, it *is* a distinct way of being.

Restorative justice is most commonly associated with a way of responding to wrongful behaviour. However, it has recently been embraced as a method for dealing with conflicts in schools, managing disputes in businesses or corporations, and handling disagreements among community members. Restorative justice is a values-based approach to solving conflict, and it is the values that are intended to guide the implementation of initiatives, the functioning of programs and the evaluative efforts focused on assessing these endeavours. These values, which are at the heart of the philosophy itself, include: respect, honesty, trust, humility, inclusiveness, sharing, empathy, courage, forgiveness and love (Stuart et al., 2000). The ultimate goal of restorative justice is to have a just and peaceful society in which to live.

The principles of restorative are based on the traditions of indigenous cultures and religions from around the world. In particular, the ancient restorative movement is often credited to the Native people of North America and New Zealand (Zehr, 2002). The more modern movement can be traced back to the first victim-offender reconciliation

program that was established by the Mennonite Church in Kitchener, Ontario during the early 1970's (Zehr, 2002).

Since this time, the popularity of modern restorative justice has grown immensely. Many believe that this increase is due to both the dissatisfaction with the current justice system and the need to better respond to victims' issues. As the use of restorative responses becomes more prominent and are brought into the mainstream of criminal justice, advocates warn of the possibility that restorative justice may be diluted, co-opted or diverted from its principles (Umbreit, 1999; Zehr, 2002). It is suggested by virtually all restorative advocates that in order to overcome these potential downfalls, it is imperative to give undivided focus and commitment to the values that underlie the restorative philosophy.

With the recent implementation of the *Youth Criminal Justice Act* (*YCJA*), there has been heightened anxiety regarding the possibility that the restorative provisions incorporated into the new *Act* might add to the dilution and co-optation of restorative principles. The goal of this paper is to identify and discuss some of the potential threats to the integrity of restorative justice. Furthermore, this paper seeks to determine vantage points and strategies that can be taken advantage of when implementing the restorative initiatives, including the restorative provisions in the *YCJA*.

The opening chapter is a literature review that sets a foundation for the remainder of the paper. This section begins with a brief overview of the state of youth justice in Canada and the restorative provisions outlined in the *YCJA*. It also includes a discussion regarding why the youth justice system is a suitable starting point for the implementation of restorative responses in the mainstream of criminal justice, and why restorative justice

should be viewed and implemented as a fully-fledged systemic alternative. The bulk of this section identifies and reviews a plethora of possible hazards that may occur when implementing restorative initiatives. Such dangers include: the need for flexibility, the role of the community, marginalization and McDonaldization, victim sensitivity and involvement, the punitive "carousel," the role of professionals, due process protections, restorative justice only for the 'soft' or 'easy' cases, public safety concerns, funding constraints, and evaluative efforts. Special attention is given to the problems and experiences encountered in New Zealand and Australia, which are countries that have previously implemented similar youth justice legislation.[1] Finally, this section closes with an examination of potential implementation strategies that have been identified by the literature for implementing restorative initiatives.

The second chapter introduces the methodology used for this research by examining the nature of exploratory research. The goals of achieving new insights and identifying variables of interest are discussed, along with the other strengths and weaknesses of this type of research. The author also reviews how exploratory research relates to the overall scheme of qualitative research. Lastly, a description is provided of the three conferences that were attended to obtain data for this research, as well as the key speakers, purpose and a general explanation of each conference.

The final chapter is a discussion of the information gathered from the conferences as it applies to the *YCJA*. This data is also compared and contrasted with the literature in the opening chapter. A number of potential downfalls are identified and discussed in relation to the implementation of the new legislation. A variety of implementation

[1] See Daly (2000) for an overview of the differences between the Australian and New Zealand conferencing schemes.

strategies are proposed as a means of overcoming these prospective hazards. In the end, it is argued that legislation on its own will not produce the necessary changes. In addition, it will take a collaborative effort by all those involved (restorative advocates, practitioners, youth justice workers, and communities) to provide the opportunity for restorative justice to reach it maximum potential. To accomplish this feat, it will be necessary to give strict adherence to the *values* of restorative justice.

Chapter I – Literature Review

The Canadian Situation

Canada is commonly thought of as a leader in the development of alternative justice policies, including a number of innovative community and restorative justice initiatives (Church Council on Justice and Corrections, 1996). It has been argued that local communities are far ahead of policy makers in the movement towards restorative justice, as the emergence of restorative initiatives across Canada has occurred at the community level. It has also been suggested that this movement has been led in large part by Aboriginal communities that have attempted to develop community-based justice services that are designed to address the specific needs of their communities (Corrado & Griffiths, 1999).

Although Canada has assumed a lead role in the development of restorative initiatives, the fact remains that "Canada has one of the harshest regimes for young offenders in the Western world" (Mallea, 1999: 3). In fact, Canada incarcerates young offenders at twice the rate of the United States, and four times that of adults in Canada (Canadian Criminal Justice Association, 1999). Statistics also show that 34% of youth who go to court in Canada end up with custodial dispositions (Doob, 1999).

Research shows that the Canadian public is largely uninformed about the state of youth justice (Sprott, 1996; Canadian Criminal Justice Association, 1999; Mallea, 1999). A study by Sprott (1996) revealed that people tended to underestimate the harshness of the *Young Offenders Act* (YOA), and overestimate the amount of serious crime.[2] In

[2] Sprott (1996) also found that practically everyone who is not directly involved with the youth justice system gets their information from the news media. Griffiths and Corrado (1999) also suggest that the

actuality, research by Statistics Canada found that in 1998 Canada's crime rate was at a nineteen year low and dropped for a seventh consecutive year (Mallea, 1999). Another study shows that youth crime also decreased over the same period, with small reductions in violent crime and property crime (Tremblay, 1999).

Despite these facts, it has been argued that the often misinformed public has driven policy makers to "get tough" on youth crime, and to stress more punishment for youthful offenders (Mallea, 1999). This was the case when 1995 amendments to the *YOA* resulted in more and longer custodial sentences for youth. It has also been suggested that the *YCJA* has been developed in response to public pressure to "toughen up" youth justice legislation (*ibid.*). For instance, Mallea (1999: 5) feels that "while the new bill purports to divert more children out of the criminal justice system, it will in fact result in longer and more punitive sentences, allowing judges to incarcerate for non-violent, victimless and minor offences." She bases this argument on the fact that many of the new provisions are similar to adult-like sentences of incarceration. For instance, under the *YCJA*, custody is explicitly set out as a possible sentence for young offenders who have failed to comply with a previous non-custodial sentence, such as failure to report to a probation officer or failure to keep a curfew (*ibid.*).[3]

Since talks began about creating a new *Act* to replace the *YOA*, members of the justice community have questioned the need for new legislation. For example, the Canadian Criminal Justice Association (CCJA) argues that Bill C-3, an earlier draft of the

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media is partly responsible for the perception that serious violent crime is on the rise, and that the *YOA* has contributed to this increase.

[3] Mallea (1996: 6) also points to other provisions that many lead to more punitive sentences, including: new definitions for "violent" offences and the lowering of the age for mandatory adult sentences from 16 to 14 years of age.

YCJA, is merely an "illusion of action," as it intends to place more emphasis on dispositions that were already available in the *YOA* that were never properly implemented (1999: 4).[4] For example, the CCJA questions the federal government's renewed commitment to provide funding for alternative measures programs under the *YCJA* when these programs were so previously under funded.[5] The CCJA suggests that instead of spending money on creating legislation, public funds would be put to better use if "directed toward educational innovation, expanded diversion, public education, alternative measures, and new treatment modalities" (*ibid.*, 6). In the view of the CCJA, problems associated with the *YOA* were matters of implementation and do not require further legislation (*ibid.*).

When discussing the Canadian situation, it is important to point out that the federal government has sole jurisdiction regarding criminal law, whereas the provincial/territorial governments have jurisdiction over the administration of youth justice and related areas such as education, social services, and mental health (Griffiths & Corrado, 1999). The federal government has traditionally contributed to the funding of justice initiatives, and has announced that it will provide increased funding to the provinces and territories for the implementation of the new *Act* (Department of Justice,

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[4] Mallea (1999: 3) contends that the province of Quebec managed to deal with the contradictory goals of the *YOA*, as this province is much further ahead in terms of providing extensive diversion programs and multi-disciplinary approaches.

[5] According to the Department of Justice (2002a), nearly all those who participated in Alternative Measures programs under the *YOA* successfully completed their required conditions. To advocate for the increased use of Alternative Measures programs, the Department of Justice points to a recent national survey of youth court judges that found 54% of judges believed that half or more of the cases coming before them could have been dealt with through out-of-court measures.

2002a).[6] Overall, it is argued that Canada supplies an ideal situation for restorative initiative to flourish:

> despite political and legislative obstacles, the unique demographic, cultural, and jurisdictional attributes of Canada provide the framework within which there is unlimited potential for the development of restorative justice initiatives for young offenders. These initiatives have the potential to more effectively address the needs of victims, offenders, and the community, while at the same time assisting to mitigate the escalating costs of youth justice (Griffiths & Corrado, 1999: 238).

Youth Criminal Justice Act – Restorative Provisions

On February 4, 2002, the House of Commons passed Bill C-7, the *Youth Criminal Justice Act*. Replacing the *Young Offenders Act*, the new legislation was proclaimed in force on April 1, 2003. The *YCJA* has been developed to address some of the most significant problems that have been raised regarding the *YOA* and the youth justice system in Canada. These problems include:

- The system lacks a clear and coherent youth justice philosophy.
- Incarceration is overused – Canada has the highest youth incarceration rate in the Western world, including the United States.
- The courts are over-used for minor cases that can be dealt with better outside the courts.
- Sentencing decisions by the courts have resulted in disparities and unfairness in youth sentencing.
- The *YOA* does not ensure effective reintegration of a young person after being released from custody.
- The process for transfer to the adult system has resulted in unfairness, complexity and delay.
- The system does not make a clear distinction between serious violent offences and less serious offences.
- The system does not give sufficient recognition to the concerns and interests of victims (Department of Justice, 2002a: 2).

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[6] The Government of Canada has established a five to six year implementation phase for the Youth Justice Strategy, and has budgeted $206 million for the first three years of implementation. The government has suggested that it has also committed to providing long-term stability for the Youth Justice Strategy through sustained funding (Department of Justice, 2002b).

To overcome the problem of the lack of clarity in the fundamental principles of *YOA*, the *YCJA* contains both a preamble and declaration of principles that intend to clearly outline the objectives of the youth criminal justice system (see Appendix A). In addition to these two sections, the *YCJA* has other more specific principles that should be used to guide decisions at key points in the youth justice process. These principles include: Extrajudicial Measures, Youth Sentencing, and Custody and Supervision. The following section will examine the changes in regards to extrajudicial measures, conferencing and victims of crime provisions will be reviewed.

Extrajudicial Measures

Of particular interest to this research are the principles outlined in the Extrajudicial Measures section of the *Act*. According to the Department of Justice, experience in Canada and other countries has shown that out-of-court measures can provide effective responses to less serious youth crime (Department of Justice, 2002a). Therefore, one of the main objectives of the *YCJA* is to increase the use of out-of-court processes when responding to less serious crime. Statistics show that 43% of cases in youth court fall into four categories of less serious offences: theft under $5000, possession of stolen property, failure to appear, and failure to comply with a disposition (*ibid.*, 3-4).

Although the *YOA* permits the use of Alternative Measures, it has been argued that the *YOA* does not provide guidance in terms of appropriate uses and what the main objectives should be. The *YCJA* is intended to provide stronger legislative direction. For

instance, to address the need of increasing appropriate use of extrajudicial measures, the *YCJA* declares:

- Extrajudicial measures should be used in all cases where they would be adequate to hold the young person accountable.
- Extrajudicial measures are presumed to be adequate to hold first-time, non-violent offenders accountable.
- Extrajudicial measures may be used if the young person has previously been dealt with by extrajudicial measures or has been found guilty of an offence (Department of Justice, 2002a: 5).

The *YCJA* also distinguishes clear objectives to guide the use of extrajudicial measures which include: repairing the harm caused to the victim and the community; providing and opportunity for victims to participate in decisions; ensuring that the measures are proportionate to the seriousness of the offence; and encouraging the involvement of families, victims and other members of the community" (*ibid.*, 5). The role of police officers and prosecutors in the use of extrajudicial measures are also clearly outlined in the *Act*, which includes specific authorization to make use of various types of extra-judicial measures (see Appendix B). Overall, the extrajudicial measures sections outlined in the *YCJA* intend to "increase the use of effective and timely non-court responses to less serious crime (*ibid.*, 3).

Conferencing

The *YOA* does not specifically refer to or authorize the use of conferences, which are intended to be a major part of the youth justice system as proposed by the *YCJA*. The *YCJA* broadly defines a "conference" in the interpretation section [s. 2(1)] of the *Act* as: "a group of people who are convened to give advice in accordance with section 19" (see Appendix C for the contents of section 19). According to the Ministry of Child and

Family Development (n.d.), a conference is thought to include: Multi-disciplinary or Integrated Case Management Conferences (ICM), Family Group Conferences, Community Neighbourhood Accountability Programs, Youth Justice Committees, Victim Offender Reconciliation Programs, and Aboriginal Sentencing/Healing Circles (see Appendix D for definitions of these conferences). Furthermore, the Ministry of Child and Family Development believes that "the *YCJA* has been written with the intent, among other properties, of incorporating multi-disciplinary and restorative justice approaches into the Canadian youth justice system. One of the primary mechanisms of doing so is the conference" (*ibid*., 2).

One of the most significant implications of the *YCJA* conferencing provisions has been interpreted to include two distinct types of conferences: *judicially ordered non-court conferences* and *judicially attended court conferences* (Ministry of Child and Family Development, n.d.).[7] It is the role of the Ministry of Child and Family Development to coordinate and facilitate any judicial ordered non-court conferences. An example of this type of conference is the integrated case management conference, which will be facilitated by field probation officers and will be available in all court locations throughout the province of British Columbia. Another example is the family group conference (the preferred approach for restorative conferencing in B.C.), which will only be available in areas that have specialized staff (*ibid*.).[8]

[7] According to the Ministry of Child and Family Development (n.d., 2), *judicially ordered non-court conferences* are defined as restorative or multi-disciplinary conferences that take place outside the formal court process and do not include the presence of a judge. A report on the happenings of the conference would be submitted to the court. *Judicially attended court conferences* are defined as conferences that include the attendance of judges, crown prosecutors, defence lawyers, court staff, and others. This type of conference is to be held as part of a formal court proceeding (ie. sentencing circles).

Victims of Youth Crime

Another important change that falls under the scope of this research pertains to victims of youth crime. It had been argued that the *YOA* does not adequately recognize the interests and needs of crime victims. Thus, the *YCJA* has been developed to clearly acknowledge the needs and interests of victims, as well as to define the role of victims at different stages of the youth justice process.[9] Key provisions in the *YCJA* regarding victims of youth crime include:

- The principles of the *YCJA* specifically recognize the concerns of victims. Victims are able to be given information about the proceedings and given an opportunity to participate and be heard. They are to be treated with courtesy, compassion and respect for their dignity and privacy.
- Victims have a right of access to youth court record.
- Victims' participation in community-based approaches to responding to the offence is encouraged.
- If a young person is dealt with by an extrajudicial sanction, the victim of the offence has a right to be informed of how the offence was dealt with (Department of Justice, 2002a: 15).

<u>Principles of Restorative Justice</u>

It has been suggested that one of the major issues confronting those who show interest in restorative justice is the lack of definitional clarity (Harris, 1998). The recent explosion of published literature on restorative justice has enhanced the perplexity of defining restorative justice. Also contributing to the problem is the fact that much of the

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[8] The Ministry of Child and Family Development (n.d.) is hiring ten conferencing specialists across the five new regions in British Columbia to act as conference facilitators for judicially ordered restorative conferencing. The Ministry has also decided to base its restorative conferencing on the Calgary Community Conferencing model.

[9] Victims' rights are also addressed in the Criminal Code and in provincial legislation, such British Columbia's Victims of Crime Act (VOCA).

literature is practice-based, usually reflecting the distinct "settings, values, cultures and traditions within which they were developed (*ibid.*, 59). To avoid adding to this confusion, the following principles of restorative justice will be based on the works of Howard Zehr, who is one of the most widely quoted and leading advocates of the restorative movement.

In *Changing Lenses: A New Focus for Crime and Justice* (1990), Zehr suggests that it is the lens we use to view crime and justice that will determine how we define the problem. He makes the distinction between a retributive justice lens and a restorative justice lens. The retributive justice lens defines crime as a violation of the state, and focuses on determining the guilt of offenders**.** This lens uses a systematic process to place blame and disburse pain to offenders through an adversarial mechanism involving the offender and the state (*ibid.*, 181). On the other hand, a restorative justice lens views crime as an offence against people that causes damage to relationships and creates obligations to make things right. Justice through this lens is seen as a search for solutions by identifying the needs and obligations of those involved: the victim, the offender, and the community (*ibid.*, 186).

Zehr and Mika (1998) contend that the fundamental principles of restorative justice are: "crime is fundamentally a violation of people and interpersonal relationships, violations create obligations and liabilities, and restorative justice seeks to heal and put things right."[10] They also offer the following "signposts" as indications that we are working towards restorative practices:

- Focus on harms of wrongdoing more than the rules that have been broken

[10] See Mika and Zehr (1998) for a more in-depth discussion of each of these principles.

- Show equal concern and commitment to victims and offenders, involving both in the process of justice
- Work towards the restoration of victims, empowering them and responding to their needs as they see them
- Support offenders while encouraging them to understand, accept and carry out their obligations
- Recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable
- Provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate
- Involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community bases of crime
- Encourage collaboration and reintegration rather than coercion and isolation
- Give attention to the unintended consequences of our actions and programs
- Show respect to all parties, including victims, offenders and justice colleagues (Zehr & Mika, 1998).

In *Restorative Justice: A Vision for Healing and Change* (1998: 7), Sharpe proposes that justice from a restorative perspective should, to the greatest degree possible, accomplish the following: "invite full participation and consensus, heal what has been broken, seek full and direct accountability, reunite what has been divided, and strengthen the community to prevent further harms." Sharpe further defines restorative justice as a fundamentally different concept from retributive justice (*ibid.*). Restorative justice focuses its energy on the future by addressing the underlying causes of crime, rather than concentrating on the past event (Harris, 1998: 61).

Other proponents followed this theme and explain that restorative justice is a completely different way of thinking about the response to crime (Pranis, 2000). It is a problem solving approach that uses a set of clear values that suggest direction for policy, programs and practice (*ibid.*, 1). If these restorative values are not clearly defined, some suggest there is a great risk that reparative sanctions may be used as a means of punishing

offenders (Bazemore & Umbreit, 1995: 309). The importance of values is the major theme of this paper and will be discussed more thoroughly in the following sections.

Best Suited for Juvenile Systems

Many restorative justice advocates feel that juvenile justice systems are best suited for the implementation of restorative principles (Bazemore & Umbreit, 1995; Bazemore & Walgrave, 1999; Van Ness & Strong, 2002). There are a number of reasons why restorative justice might become a more plausible response to youth crime. First, there is a widely accepted notion that youth are at least somewhat less blameworthy than adults (Bazemore & Walgrave, 1999b: 61). Second, some advocates feel that the restorative justice model has some resemblance to the traditional rehabilitative focus of juvenile justice (Bazemore & Walgrave, 1999b; Van Ness & Strong, 2002).[11] Third, the notion of accountability for youth crime addresses the need to have family and extended family involved in the justice process (Bazemore & Walgrave, 1999b: 61).

Finally, there is some evidence (experiential accounts of crime victims, reports from victim advocates and qualitative evidence from focus groups) suggesting adult victims of juvenile crimes are more willing to participate in the mediation process (Umbreit & Bradshaw, 1997: 38), appear to focus more on the needs of young people, and are more concerned that youthful offenders receive appropriate treatment (Bazemore & Umbreit, 1995). Although many proponents feel that restorative justice can more

[11] Van Ness and Strong (2002: 171) argue that restorative justice and the treatment/welfare model share a similar long-range focus. Namely, repairing the harm caused is not only to make things right, but is also aimed at reintegrating the offender back into a more peaceful community.

easily gain a foothold in juvenile justice systems, some see this as a step in strategically implementing restorative justice into entire criminal justice systems (*ibid.*).

The Need for a Fully-Fledged Alternative

In *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (1999), Gordon Bazemore and Lode Walgrave propose a restorative justice system as a fully-fledged systemic alternative to youth criminal justice.[12] They contrast restorative justice with both retributive justice and the rehabilitative paradigm,[13] and declare, "Restorative dialogue necessarily challenges traditional political and criminal justice ideologies, as well as the assumptions of dominant youth justice paradigms (Bazemore & Walgrave, 1999a: 3). These two authors argue that in order for restorative justice to be seen as a fully-fledged alternative rather than programs operating in the margins of the criminal justice system, the intent to do so must be clearly defined (Bazemore & Walgrave, 1999b: 66).

In addition, Bazemore and Walgrave suggest that systemic reform will take on two basic types. The first type is the need for change to occur at every level crime is dealt with, including both the 'system' and community levels. The second type of reform refers to changing the functions of the mainstream justice system, which in a fully-

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[12] Van Ness and Strong (2002: 224) propose four models of a restorative system: Unified Model, Dual-Track Model, Backup Model, and Hybrid Model. They argue that the first three models could be used as a part of a strategy to attain a fully restorative system, which they suggest is the basis of Bazemore and Walgrave's approach.

[13] Van Ness and Strong (2002) suggest limitations of making such distinctions. First, such distinctions do not benefit restorative justice in public debate. Second, the term "retributive justice" can be used to refer to both the theory underpinning retribution and/or the mixing of several philosophies of justice that make up our current criminal justice system (43-45).

fledged restorative system would be carried out in a distinct manner from how things currently operate (*ibid.*, 64).

Adding to their argument, Walgrave (1999) argues that the use of restorative justice as a form of diversion from the contemporary criminal justice system is not sufficient. Due to the unsatisfactory way by which both the retributive and rehabilitative models respond to crime, a fully-fledged systemic alternative is necessary to prevent the integration of restorative programs into the existing system (*ibid.*, 131). As well, it does not make sense to leave "non-divertible" cases to a system that is so highly criticized (Bazemore & Walgrave, 1999c). Bazemore and Walgrave (1999b) point to the failure of modern reform efforts as being another reason to strive for complete systemic reform. They suggest that prior reforms "have been insular and one dimensional, and while *system-driven*, no reform has been truly *systemic*" (*ibid.*, 63).

In order for systemic change to occur, Bazemore and Walgrave (1999a: 5) insist that *value*-driven reform is mandatory. The process of change should be based on a vision of justice as a holistic approach that aims to repair harm through the involvement of the victim, offender and community (*ibid.*, 5). Such reform would create observable differences in how a restorative system responds to crime as compared to treatment/welfare or punishment-focused systems. These differences would be focused on:

> a distinctive *context* for intervention (eg. a new set of values/principles, new participants, new processes); a different *content* (eg. new outcomes, new intervention practices); and a different *structure* (eg. new roles for justice professionals and the agencies that support them) (*ibid.*, 5).

Bazemore and Walgrave caution that juvenile justice systems might only be open to cosmetic changes and that it would be easy for restorative justice to become "pigeonholed" into one aspect of the system, such as diversion or corrections (1999b: 64). Therefore, they are adamant that it is necessary for restorative justice to become the guiding principle when responding to youth crime.[14]

Potential Dangers When Implementing Restorative Justice

The Need for Flexibility

One of the fundamental principles of restorative justice is that restorative processes must remain *flexible* (Jackson, 1998: Bazemore & Walgrave, 1999b; Van Ness and Strong, 2002). The goal in developing restorative initiatives should not be to develop a single intervention manual that lists all the necessary components and techniques that make a good program *restorative*. Instead, variations of possibilities and options should be made available to practitioners so they can learn from past successes and failures (Bazemore & Walgrave, 1999c). This flexible approach will also allow practitioners to develop programs that are specifically tailored to the needs of their community (Pranis, 2000).

Proponents of restorative justice maintain that flexibility is also important when considering the cultural variations of those involved in restorative processes (Morris &

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[14] Bazemore and Walgrave's position is presented here because of the excellent arguments they make for the need of systemic change. It is must be noted that their approach has received its fair share of criticisms. For instance, Paul McCold (1999) warns that it is not ample for restorative justice to be the leading principle in a restorative system. He feels that a truly restorative system must include "only those elements of the restorative paradigm without elements of the 'obedience' (retributive/deterrent) and treatment paradigms" (*ibid*., 1). The acceptance of these other elements will result in the lack of a clear theoretical position and may only produce superficial modifications, which are the exact changes Bazemore and Walgrave plan to avoid.

Maxwell, 1997, 1998; Jackson, 1998; Daly, 2000). Speaking in terms of family group conferencing, Morris and Maxwell (1997: 125) insist that the entire process should be "culturally appropriate." However, these researchers also mention that having a culturally appropriate process does not mean it is based on indigenous methods of justice (1993a: 4).[15] Others point to the importance of not repackaging traditional decision making processes and presenting them to indigenous families as new and innovative ways of responding to conflict (Jackson, 1998: 44).

It has also been indicated that flexibility is imperative for procedural matters (Morris & Maxwell, 1993a; Jackson, 1998; Umbreit, 1999; Levine, 2000).[16] For instance, researchers in New Zealand (Morris & Maxwell, 1993a) and New South Wales (Trimboli, 2000) have found that statutory time-lines prevent facilitators from properly preparing, organizing and managing conferences.[17] In New South Wales, legislation requires conferences to be held within 21 days of the referral date. Research also shows that an average of 40.3 days elapse between the date of referral and the conference date. Moreover, only 15.0% of conferences were held within the statutory timeframe

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[15] Tauri (1998) argues that the family group conferencing process in New Zealand does not always address the needs and concerns of the Maori people. In fact, he points to empirical research (Morris & Maxwell, 1993) to demonstrate that the family group conferencing process has failed to distinguish itself as being based on Maori traditions of justice. However, Tauri deduces from this research the notion that family group conferences have improved the focus on specific Maori needs (1998: 174).

[16] Van Ness and Strong (2002: 169) indicate that restorative justice advocates have faced much criticism regarding the possibility that flexible processes will result in discrimination and negate the right to equal protection of the law. They suggest that some advocates are willing to embrace some inconsistencies, while others bring up the notion that restorative processes fulfill this right at least as much as the current criminal justice system. Braithwaite and Mugford (1994: 140) view the flexibility of process and outcome as a strength of the family group conferencing process.

[17] Levine (2000: 526) suggests that the need to meet tight deadlines has resulted in facilitators not doing the necessary community work for successful conferencing, such as identifying and obtaining information on community resources that might be suitable for a particular case.

(Trimboli, 2000: 62). Similar results were also found for family group conferences in New Zealand (Morris & Maxwell, 1993a: 71-72).[18]

The Role of the Community

According to Zehr, "Crime undermines the sense of wholeness in a community" (1990: 195). Others have suggested that crime problems often stem from community problems (ie. unemployment, drug abuse), and that communities are better at solving their own problems (Pranis, 2000; Van Ness & Strong, 2002).[19] In turn, the logic is that strengthening social and community relationships will inhibit crime (Bazemore, 1999; Pranis, 2000; Van Ness and Strong, 2002).[20]

An important step in implementing successful restorative justice practices is building community support (Pranis, 2000; Van Ness & Strong, 2002). According to Pranis (2000: 3), implementing restorative practices must mimic the principles themselves. Thus, all stakeholders must be involved in the process of implementation, including the victim and community (Pranis, 2000; Schiff, 1999).[21] Pranis argues the importance of implementing restorative justice process in a bottom-up fashion, as opposed to being mandated in a top-down authoritarian manner (see also Braithwaite,

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[18] Research by Morris and Maxwell (1993a: 71-72) found that only 22% of conferences were held within the statutory time period. However, if four weeks was given between the time of referral and the conference date, then it was possible to hold 77% of the cases. They suggest that statutory time limits do not give adequate time for the briefing of victims, families and/or extended family.

[19] According to Christie's "Conflicts as Property" (1977: 1, 8) the community should take ownership of crime rather than passing it over to the state. Moreover, the criminal justice system is the result of the state's theft of victim and offender conflict.

[20] Walgrave (1999: 135) contends that the growing trend of individualism in modern culture is a force counteracting the restorative movement (see also Shichor, 2000: 6, 22).

[21] See Pranis (2000: 3) for a list of guiding principles to building community support.

2002). Other restorative advocates support this argument by stating that without significant involvement from the leaders of a community and other community activists, programs will fall short of “comprehensive restoration” (Umbreit & Carey, 1995: 53).

Supporters argue that restorative processes have the most potential when they attempt to address the needs of victims, offenders and the community within individual community contexts (Pranis, 2000; Griffiths & Corrado, 1999).[22] However, it has been noted that governments tend to create policies that can be applied on a “generic basis” (Griffiths and Corrado, 1999: 254). History has shown that policy makers rarely consider any cultural, political, or geographical issues of specific communities (*ibid.*). Concerns have also been raised that community-government collaboration may result in the expansion of state controls, which is also referred to as net-widening (Van Ness & Strong, 2002: 166).[23]

Marginalization and McDonaldization

A number of restorative advocates warn of the possible hazards restorative justice could face if it is expected to handle the vast majority of criminal cases (Umbreit, 1999; Immarigeon, 1999; Bazemore & Walgrave, 1999a; Van Ness & Strong, 2002). It is argued that substantial caseloads might cause restorative programs to simply be turned into mirror images of the practices they are intended to replace (Immarigeon, 1999: 366).

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[22] Griffiths and Corrado (1999: 247) indicate that the success of a number of restorative initiatives across Canada has been due to the fact that the programs were developed by community members who focused on addressing the needs of their particular communities.

[23] Schiff suggests that the extent to which program goals are co-opted by governmental social control objectives must be constantly scrutinized (1999: 344). She also points to work by Braithwaite (1994) that suggests “community nets” might be strengthened and expanded rather than official governmental controls, which would be a positive result (*ibid*.).

Others argue that when implementing restorative initiatives "the most important challenge is to prevent restorative justice from becoming another trendy buzzword, or marketing tool, to increase the appeal of current policy and practice" (Bazemore & Walgrave, 1999a: 4). Some proponents even comment that the enthusiasm with which justice professionals use restorative programs as replacements for traditional punitive or rehabilitative methods is also a threat to the integrity of restorative justice (Walgrave, 1999: 150).

In his article "The Marginalization and 'McDonaldization' of Victim Offender Mediation: A Case Study in Moving Toward the Mainstream," Umbreit refers to the phenomenon of restorative justice initiatives becoming standardized and structurally imposed as the process of "McDonaldization" (1999: 214).[24] He suggests that when restorative initiatives are moved from the margins toward the mainstream of juvenile justice systems there will be a rush to set up new programs, which will create the tendency to neglect restorative values. Umbreit lists examples of possible dangers that might occur: the elimination of pre-mediation preparation,[25] the depersonalization of the mediation process, exclusive focus on restitution agreements, the lack of victim involvement,[26] and the trend to handle only the 'soft' or 'easy' cases (*ibid.*, 227-229).[27]

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[24] Umbreit suggests the "fast food" versions of mediation will cause these processes to be robbed of their restorative elements (1999: 214). He posits that priority might be given to aims such as solving the problem of the overcrowded court system rather than offering truly restorative conflict-solving approaches.

[25] See section: The Need for Flexibility (page 18).

[26] Umbreit (1999: 228) notes that an increasing number of probation departments in the U.S. have began to make use of mediation programs. He cautions that these traditionally offender-driven agencies may lack sensitivity towards victims and lose sight of the important role victims have in these processes. See section: Victim Sensitivity and Involvement (page 23).

[27] See section: Is Restorative Justice Only for 'Soft' or 'Easy' Cases? (page 28).

He declares it essential for restorative initiatives to remain true to the values of a restorative vision in order to prevent the downfalls of marginalization and McDonaldization.

Victim Sensitivity and Involvement

Advocates of restorative justice also forewarn that there is a risk inherent in having offender-oriented systems and agencies shift to a victim-centered approach to resolving crime (Pranis, 2000: 10). Those who advocate victim involvement in the justice process fear that victims may be used as "props" in the process of rehabilitating offenders (Daly & Hayes, 2001; Umbreit & Zehr, 1996). There is also the possibility that courts will impose 'restorative' activities that do not seek any type of victim involvement (Pranis, 2000).

Morris *et al.* (1993) report that 25% of victims in their study felt worse after participating in family group conferences. Reasons for this include feelings of being unable to express themselves clearly, justifications made by families for the offender's behaviour, and conferences being disproportionately focused on the offender (*ibid.*, 319). Research in New Zealand (Morris & Maxwell, 1993a: 115) also shows that victims were in attendance for roughly only half of the family group conferences.[28] This finding has resulted in more attention being paid to the involvement of victims. More recent research in New Zealand suggests the number of victims attending conferences has increased in the past few years (Morris & Maxwell, 1998: 8). These researchers suggest it is important to keep in mind that although the percentage of victims participating in

[28] Daly and Hayes point out that in all legislated conferencing models the role of victims is still generally seen as being secondary to the role of offenders (2001: 24).

restorative measures and being satisfied with the process seems low, they are surely higher than the percentages of victims who become involved in traditional court process and who are satisfied with judge-imposed sentences (Morris & Maxwell, 1998: 9).

The Punitive "Carousel"

It has been put forward that current juvenile systems were not constructed with the interests of restorative justice in mind (Bazemore & Walgrave, 1999c: 390). Adding to the problem is the fact that there are only scarce contributions made in popular culture and daily understandings of our justice system that promote restorative ways of thinking (Daly & Hayes, 2001: 7-8). There are also vast amounts of research demonstrating inhibiting forces such as the sensationalistic media portrayals of crime, the *belief* that the public holds punitive attitudes towards sanctioning, and the role politicians and the political realm play in developing public policy (Umbreit, 1998, 1999; Currie, 1999; Bazemore & Walgrave, 1999c; Sessar, 1999; Shichor, 2000; Hood, 2001; Van Ness & Strong, 2002; Hil, 2002). Bazemore and Walgrave contend that it is the combination of all these factors working together that contribute to a punitive "carousel" when attempting to deal with the crime problem (1999c: 391).[29]

Umbreit (1999: 224) suggests it is necessary for restorative activists and program facilitators to work with the media as a way of promoting the interests of restorative

[29] Bazemore and Walgrave suggest evidence has shown the media tends to favor sensationalized and over simplistic accounts of crime. These portrayals lead the public to think in terms of stereotypes and to believe that there are quick and easy solutions to preventing crime. Furthermore, politicians are often driven by the media and perceived attitudes of the public to campaign in favor of the "war against crime" as a way of getting electoral votes (1999c: 390-1).

justice.[30] He argues that if restorative programs take on an active rather than passive role in educating the media, the message will be effectively passed on to the general public. Umbreit (1998: 10) cites a 1992 Minnesota state wide public survey to dispel the myth that the public holds punitive attitudes when responding to crime. The study found that when given options, the majority of the public were inclined to select restitutionary, rehabilitative, and victim-sensitive responses to crime.[31] The results also demonstrated that 80% of respondents felt that in order to reduce crime more funding should be allotted to education, job training and community programs, in comparison to spending money to build more prisons (*ibid.*, 10). However, Van Ness and Strong (2002: 219) indicate that it is the same public who support the rehabilitation of offenders and community-based justice options that vote for politicians who call for "getting tough" on crime during election campaigns.

The Role of Professionals

The role of youth justice professionals is a significant concern in any discussion regarding the implementation of restorative approaches (Jackson, 1998; Griffiths & Corrado, 1999, Levine, 2000). First of all, researchers argue that it will be necessary for professionals to support and promote restorative-based developments (Griffiths &

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[30] Umbreit claims that mass media in general, and particularly television, are crucial components to the progression of restorative justice (1999: 224).

[31] This survey did not mention the term "restorative justice," but rather posed questions relating to the *restorative* approach. Umbreit (1998: 10) also suggests that the results of this survey are consistent with the increasing amount of public opinion research across North America. Sessar (1999: 301) conducted similar research in Germany. Her study also concludes that the conception of a punitive public attitude is a myth and that the public is accepting of private conflict solving approaches. See Doob (2000) for similar results in a Canadian context.

Corrado, 1999: 251). Second, it has been suggested that many professionals feel an overwhelming need to be a central part of the decision making process (Jackson, 1998: 42). Third, if family group conferences are facilitated by members of an agency, the overarching goals of conferencing may reflect bureaucratic issues rather than the fundamental principles of restorative justice (Bazemore & Walgrave, 1999c: Levine, 2000).

Research in New Zealand shows that many of the concerns raised by victims who participated in family group conferences regarded better training for facilitators at being more effective in the mediating process, as well as the need to have facilitators brief victims more effectively about what to expect at a conference (Morris and Maxwell, 1993b, 1998).[32] It has been argued by advocates that facilitators need to be effectively trained, focusing on the fundamental values of restorative justice, in order to prevent some of the negative effects of conferencing (Immarigeon, 1999; Pranis, 2000).[33] New Zealand research also found that professionals were too involved in the decision making process. For instance, results showed a correlation between low feelings of involvement by family members and the lack of private discussion time (Morris and Maxwell, 1999a: 121).[34]

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[32] Despite the potential threat of professional domination and lack of training, Morris and Maxwell (1993b) reported high levels of satisfaction with the professional members involved in conferences.

[33] Braithwaite (2002: 574) argues that although training is important, the "quality assurance" of good facilitators is even more crucial. He feels that most people are not suitable for the role of a restorative justice facilitator, including himself.

[34] In 42% of the cases, professionals remained in the conference and gave the family no private discussion time. Professionals included facilitators, youth justice workers and child welfare workers. (Morris & Maxwell, 1993a: 121).

Griffiths and Corrado (1999: 252) assert that youth justice personnel, such as judges,[35] lawyers, and probation officers, also pose a problem to the reformation of the system. They suggest that youth justice workers will be distrusting of communities' capacities to resolve conflict and also warn that professionals may perceive restorative justice as adding to their already overbearing workloads. Furthermore, Griffiths and Corrado question how judges, prosecutors, defence lawyers, and court administrators will respond and/or adapt if there are dramatic decreases in the number of youths being processed through the court system (*ibid.*).[36] Concern has also been expressed regarding the new and more central role that police will play in legislated restorative justice schemes (Griffiths & Corrado, 1999: Daly, 2000).

Due Process Protections

Apprehension has been raised regarding the ability of restorative justice to provide due process protections (Bazemore & Walgrave, 1999c; Van Ness & Strong, 2002). For example, the right to equal protection under the law, the right to freedom from torture and cruel, inhumane, and degrading punishment, the right to be presumed innocent, and the right to assistance of counsel, are often cited as rights that may be threatened by restorative justice (Van Ness & Strong, 2002: 168-172). Proponents have responded to these criticisms by claiming:

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[35] Bazemore conducted a study in which the results of focus groups with juvenile court judges and victims of juvenile crime showed that judges resist the idea of the victim being a "co-participant" in the process of justice (1998: 141).

[36] See Christie (2000) "Crime Control as Industry" for a breakdown of the number of people that were employed in the penal law sector in the United States during 1999 (Table 8.6-2: 141).

> Restorative processes will not inherently result in due process violations… programs observing good practices are far less likely to do so. This is in large part due to restorative values, such as respect for human dignity, voluntary participation, and creation of community harmony, that address underlying social injustices (*ibid.*, 172).

Is Restorative Justice Only for 'Soft' or 'Easy' Cases?

Concern has also been expressed about whether restorative justice practitioners will find it easiest to deal with only the 'soft' or 'easy' cases (Harris, 1998: 65). Programs may begin to take fewer risks involving the type of cases they handle in order to prevent any negative experiences that would jeopardize the acceptance of restorative justice into the mainstream criminal justice process (Umbreit, 1999: 228). Umbreit notes that during the early development of mediation practices they were primarily used to deal with property crimes and minor assaults. In recent years, there have been a greater number of programs handling more severe and violent cases (1998: 21). Proponents (Harris, 1998) and critics (Shichor, 2000) warn that focusing on 'soft' offences will only serve to increase the already substantial bifurcation in the system.[37]

Public Safety Concerns

In order for restorative justice to gain acceptance from the public it will be necessary to demonstrate that public safety will not be jeopardized (Bazemore & Walgrave, 1999a: 67). Advocates contend that public safety needs are most competently addressed once communities increase their ability to resolve conflicts (Van Ness &

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[37] See Harris (1998: 65-66) for the results of having a bifurcated system.

Strong, 2002; Pranis, 2000).[38] Guarino-Ghezzi and Klein (1999: 197) refer to this type of community effort as "protective restoration." Arguing that it is a cornerstone of restorative justice, they define the term by suggesting that strategies creating community cohesion serve to create a culture of safety in which citizens are encouraged to participate in the justice process (*ibid.*).[39] Guarino-Ghezzi and Klein add to this definition by stating: "In a protective restorative model, the focus on *community* incorporates the long-term goal of community safety" (1999: 199).

Funding Constraints

It is often claimed that restorative justice is less costly than retributive justice. Johnstone (2002: 24) argues that this makes restorative justice an attractive option for governments. However, he also comments that the logic used to make this claim is often misleading and based on false comparisons.[40] If restorative justice is viewed merely as a procedure (eg. a family group conference), then the claim that it is cheaper would have some merit. Be that as it may, most advocates conceptualize restorative justice more broadly to include the revitalization of communities and the availability of rehabilitative services within those communities. From this perspective, restorative justice is definitely not a less expensive option. Instead, Johnstone contends, "The claim should surely be

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[38] See section: The Role of the Community (page 20).

[39] Guarino-Ghezzi and Klein further suggest that protective restoration requires juvenile justice agencies to primarily focus on the goal of building community capacity. This represents a shift in philosophies for these organizations, as most are offender-oriented (1999: 197).

[40] See Johnstone (2002: 24) for an example of a false comparison that is often used by those who claim restorative justice is a cost-effective method.

made that restorative justice involves a more beneficial use of public resources (2002: 25).[41]

Evaluative Efforts

Continuing and proper evaluation are key to the process of implementing restorative justice.[42] Criminal justice history is filled with examples of goals and visions that were never reached because of the neglect to achieve such evaluative efforts (Van Ness & Strong, 2002: 155). Daly warns that government-sponsored assessments are "carried out quickly to suit ministers or department heads, [and] often lack empirical depth and theoretical grounding. Their main purpose is not to contribute to a stock of scientific knowledge, but rather to be accountable to bureaucratic elements" (2000: 27).

Advocates have suggested that evaluating success of restorative procedures is a difficult and time-consuming process (Johnstone, 2002; Presser & Van Voorhis, 2002).[43] Presser and Van Voorhis (2002: 162) argue that this process is daunting because of the diverse nature of restorative procedures and the fact that they strive to achieve multiple objectives. These researchers put forward that evaluations of restorative procedures

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[41] According to Levine (2000: 541), a number of countries have pointed to the lack of financial resources as a limitation to the effectiveness of family group conferences. In New Zealand, researchers feel that limited funding has inhibited the ability to develop new and creative community-based services (Levine, 2000: 540), and to provide adequate training for youth justice professionals and conference facilitators (Laurenson, 1993: 22).

[42] Van Ness and Strong (2002: 213) stress, "Evaluation is the backbone of any healthy program." They suggest restorative initiatives should revisit the vision, evaluate for impact, realign vision and practice, stay connected, and expect resistance (213-218).

[43] See Johnstone (2002: 24-25) for a discussion of this subject.

should be guided by the values of restorative justice, thus more emphasis should be placed upon evaluating restorative *processes* rather than *outcomes*.[44]

Implementation Strategies

The advocates mentioned in the preceding discussion all consider restorative justice to be the solution to our failing criminal justice system. They warn of the many dangers that may lie ahead if restorative justice seeks to establish a dominant position within the criminal justice spectrum. Yet, it is believed that many of these risks can be overcome by remaining true to the values of restorative justice (Pranis, 2000; Umbreit, 1999, Bazemore & Walgrave, 1999c; Van Ness & Strong, 2002). According to Van Ness and Strong, “the failure of the contemporary criminal justice system is not one of technique, but one of purpose: what is needed is not simply a new program, but a new pattern of thinking (2002: 209).

Proponents argue that the foundation of any implementation strategy is to clarify and pursue the restorative vision (Bazemore & Walgrave, 1999c; Van Ness & Strong, 2002). Those seeking this vision must ensure restorative justice “tests its practices, stretches its applications, and grows with the diversity and creativity of its proponents” (Van Ness & Strong, 2002: 218). Furthermore, it is beneficial for restorative supporters to collaborate and challenge those who hold differing visions and/or opposing agendas (*ibid.*). As well, they must gain knowledge from the past failures of reform and implementation efforts (Braithwaite, 2002: 575).

[44] Presser and Van Voorhis (2002: 171) make the distinction between *process* and *outcome* evaluations. Process evaluations focus on the quality of program procedures, whereas outcome evaluations establish the instant and long-term impact programs have on participants (victims, offenders and communities).

Pranis (2000) argues that education should be the primary strategy to gain support for restorative initiatives. She contends, "Building community support requires building capacity among all people at all levels to think about criminal justice issues from a restorative perspective (*ibid.*, 3). Other advocates highlight the need for strategic planning to guide the efforts of implementation (Van Ness and Strong, 2002). These "strategic attitudes" should rely on the principles of planned social change, as well as be grounded in the fundamental principles of restorative justice.[45]

According to Bazemore and Walgrave (1999c: 389), the process of implementation should include the promotion of restorative justice as the primary response to youth crime, with the ultimate goal being a fully-fledged restorative juvenile justice system. The process to achieving this utopian model consists of many sub-goals that will bring us closer to the overarching ideal of justice (*ibid.*).[46] However, these researchers note that even the most established, well-run, and meticulously evaluated programs will remain on the margins unless they are *not* promoted as additions to the retributive and/or rehabilitative systems. Overall, Bazemore and Walgrave claim that the development of a fully-fledged alternative response to youth crime is a "work-in-progress." (1999c: 394).

[45] See Van Ness & Strong (2002: 209-213) for strategic goals that should be aimed for when implementing restorative programs.

[46] Marshall notes that many supporters of restorative justice "take it for granted that the aim should be to implement restorative justice approaches as widely as possible *within* the existing criminal justice system (1998: 4). He suggests that others doubt whether restorative justice can be brought about in this way for two reasons. First, policy makers have a very narrow view of restorative justice. Second, some advocates suggest that it is impossible to administer restorative justice within a bureaucracy such as the criminal justice system.

Conclusions

In closing, it will require great vigilance to prevent the co-optation of restorative justice. Many of the concerns raised by proponents and critics alike must be addressed in direct manner to provide the opportunity for restorative justice to reach its maximum potential. For truly systemic change to occur, reformation is needed at every level crime is handled. It has been argued that the process of implementation should model the principles of restorative justice: a bottom-up process that includes the involvement of all stakeholders. Furthermore, restorative processes must remain flexible to adapt to the needs of participants and to address the specific problems in each community. Restorative justice must demonstrate that it can handle a large number of cases, including severe and violent offences, without deviating from restorative principles.

The need to focus on victim-involvement and educating the public, media, and politicians takes on paramount importance when aiming to prevent co-optation. There is also the requirement to respond to issues regarding due process protections, public safety concerns, funding constraints, and the need for proper evaluation. Overall, it will take a strong contingent of restorative supporters pursuing the restorative vision by adhering to the values and principles of the restorative philosophy, that will allow restorative justice to be effectively implemented into the youth justice system.

Chapter II – Methodology

Exploratory Research

The method used in this particular study was exploratory research. This type of research was conducted by attending conferences that addressed the topic of concern: the introduction of restorative processes in the new *Youth Criminal Justice Act* and the resulting changes to youth justice practices. These particular conferences were chosen for a couple of reasons. First, they simply fell into the time frame in which this research was being conducted. Second, these conferences offer an adequate account of the people who will be involved with the process of reformation: the community, governmental sector, and practitioners. As an additional means of gathering data, the author also attended a presentation by Karin Hartner (Vancouver Youth Court Pilot Project on Judicial Conferencing, Ministry of Child and Family Development) on the role of conferencing in the *YCJA*.[47]

According to some researchers, the goal of exploratory research (sometimes called formulative research) is "to gain familiarity with or to achieve new insights into a phenomenon, often in order to formulate a more precise research question or to develop hypotheses" (Palys, 1997: 77). For the present study, exploratory methods were chosen because of the time and space limitations associated with writing an Honours Thesis. However, in the future, this method may prove to be beneficial if this author chooses to take on further research in this area of study (ie. graduate studies). Not only has this

[47] The presentation was given to a Criminology class at Simon Fraser University, B.C., on February 13, 2002.

researcher become more knowledgeable on this topic, but has also identified possible variables that may aid in the development of future research questions.[48]

Exploratory studies can be an extremely valuable tool in social scientific research, especially when very little is known about a particular subject (Babbie, 1998: 79). Although much research and literature has been compiled on the implementation of restorative processes, there is only limited research pertaining to the implementation of restorative justice in a legislative framework. Thus, exploratory research would prove to be valuable in this instance, as it may give us new insights into this focused area of study. Furthermore, this research might also identify variables and/or situations that are unique to the Canadian context. In order to discover important variables and questions of interest, it is important that exploratory researchers remain open-minded and sensitive to different viewpoints. This will ensure that researchers do not become overly focused on particular perspectives and will allow for complete and unbiased analyses of all information (Babbie, 1998: 79).

One of the shortcomings of exploratory research is that satisfactory answers to research questions are rarely provided (Babbie, 1998: 91). Exploratory studies often hint at the answers to research questions, but seldom give any definitive information. Therefore, they are often used to explore research questions that are not easily understood through quantitative methods of observation (York, 1998: 8).

[48] According to Babbie (1998: 90), exploratory studies are most often completed "to satisfy the reader's curiosity and desire for better understanding, to test the feasibility of undertaking a more extensive study, and to develop the methods to be employed in any subsequent study."

Exploratory research is considered to be a qualitative method of research. However, according to Strauss and Corbin (1998: 11), qualitative research is more than just a set of techniques used to gather data. Instead, they define this type of research as:

> any type of research that produces findings not arrived at by statistical procedures or other means of quantification. It can refer to research about persons' lives, lived experiences, behaviors, emotions, and feelings as well as about organizational functioning, social movements, cultural phenomena, and interactions between nations (*ibid.*, 10-11).

The majority of analyses that take place in qualitative research are interpretive, and are carried out for the purpose of discovering relationships and/or concepts. The results can then be organized and used to induce theoretical frameworks (*ibid.*). This process of induction is also known as the generation of *grounded theory*, which occurs when theory emerges from research (Palys, 1997:79).

Corbin and Strauss list the ability to ground theory in data, as well as to generate theory, as a strength of qualitative research. They suggest that "grounded theories, because they are drawn from data, are likely to offer insight, enhance understanding, and provide a meaningful guide to action" (1998: 12). In qualitative research, *analysis* should be thought of as the interplay between researchers and the data. Therefore, it is important for researchers to remain both critical and creative when analyzing information obtained through this type of research (*ibid.*).

Literature Review

A literature review was also used as a method of gaining information for this study. In particular, literature pertaining to similar situations in New Zealand and Australia was examined. This portion of the research acted as background information

and allowed this author to distinguish particular variables that might be relevant to the situation being studied. For instance, when examining the literature on New Zealand's family group conferencing model, it was noted that statutory time lines were often problematic. After identifying this potential problem, it was logical to explore if this regulation might also be a downfall of the new Canadian youth legislation.

Conferences Attended

Burnaby Community Forums

The first conference I attended was the Burnaby Community Forum, which was titled "Justice as Healing – Dealing with Youth Crime and Conflict in a Restorative Way." This forum took place at the Confederation Community Centre in Burnaby, B.C. and consisted of two separate gatherings. The first gathering was held on October 2, 2002, while the second was held October 16, 2002. Organizers of the conference invited a number of youth justice professionals, youth workers, and other members of the community.

The first gathering consisted of a panel of speakers who presented brief overviews of the philosophies and principles underlying restorative justice. The panel consisted of Dr. Elizabeth Elliott (Assistant Professor, School of Criminology, Simon Fraser University), Meredith Egan (Coordinator, Centre for Restorative Justice, Simon Fraser University), and Justice Thomas Gove (Judge, Provincial Court of British Columbia). The conference organizer and moderator was Karin Hartner (Community Conferencing Facilitator, Vancouver Youth Court Pilot Project on Judicial Conferencing).

Dr. Elliott spoke to the principles underlying restorative justice and referred to the works of Howard Zehr (1990) and Susan Sharpe (1990).[49] Meredith Eagan facilitated an exercise and made use of audience participation to highlight the *values* of restorative justice. Justice Gove spoke in more practical terms by outlining a potential youth justice model for Burnaby that incorporates restorative procedures in light of the new *Youth Criminal Justice Act*. He also referred to successful case examples of conferencing in New Zealand (*Children, Young Persons and Their Families Act*, family group conferencing scheme) and Calgary (Calgary Community Conferencing Project).

Near the end of the first conference the focus shifted to an examination of restorative conferencing in the school setting. A student who had participated in a restorative program told her story of how conferencing prevented her from fighting another student and enabled them to settle their differences without physical means. Next, a group of students from Burnaby Central Secondary School gave a presentation and acted out a short skit on how peer facilitators attempt to resolve conflict within their school. The purpose of this first gathering was to inform the community about the principles of restorative justice and to demonstrate a few examples of restorative processes outside the criminal justice realm.

The second gathering of the Burnaby Community Forum consisted of a circle dialogue format. Restorative program directors/practitioners from other communities within the Lower Mainland region presented their programs to members of the Burnaby community. The following people gave short presentations on each of their programs: Sandy Burpee and Anna McCormick (Fraser-Burrard Community Justice Society), Barry

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[49] See Literature Review section of this paper for a discussion of these works.

Warhaft (Vancouver Aboriginal Transformative Justice Services), Jacquie Stevulak and Alana Abramson (North Vancouver Restorative Justice Society), Amy Powter (Youth Programs, John Howard Society of the Lower Mainland of B.C.), Stephen Morton (Under Twelve Conferencing, John Howard Society of the Lower Mainland of B.C.), and Margaret Manifold (City of Burnaby Social Planning).

The purpose of the second session was to show attendees a variety of restorative programs that have enjoyed success in other communities. Discussions took place regarding what worked, what did not work, how to get around certain obstacles (ie. funding), and how to gain community support. Overall, the objective of the Burnaby Community Forum was to create awareness of restorative justice, as well as interest among community members. Ultimately, the community forum was designed as a precursor to develop a coalition of people that would want to begin restorative programs from a grass-roots approach within the Burnaby area.

Family Court/Youth Justice Provincial Conference

The second conference I attended was the Family Court/Youth Justice Committee Provincial Conference, which was called "Be a Part of Change - How do the Family Court/Youth Justice Committees Respond to New Federal and Provincial and Community Challenges?" This conference was a three-day event (October 25th, 26th, and 27th, 2002) held in Victoria, British Columbia. The majority of attendees were members of Family Court/Youth Justice Committees from across the province. There were also representatives from various provincial ministries, including The Ministry of Child and

Family Development, The Ministry of Public Safety, and The Ministry of the Solicitor General. Members of community organizations also attended the conference.

The objective of the conference was to reflect on the current role of the Family Court/Youth Justice Committee, and to determine the direction and function this group should take in the future. Specifically, organizers wanted to distinguish five recommendations or priorities on which the Family Court/Youth Justice Committees should focus their efforts towards over the next year. Organizers also planned to forward this information to the Governor General, Ministry of Child and Family Development, Solicitor General, as well as the Provincial and Federal Governments.

Day 1 of the conference convened on Friday evening and included the opening ceremonies, a short skit by Project Respect (Victoria Women's Sexual Assault Centre), and a keynote address by the Honourable Justine Saunders (Provincial Court of British Columbia). Judge Saunders' speech, titled "Finding the Right Balance in Sentencing, Conferencing, and Addressing the Needs of Youth at Risk," focused on the shift in ideology that will result from the new *Youth Criminal Justice Act*. She defined both the retributive and restorative justice paradigms, and also discussed the one-month she spent in New Zealand studying the family group conferencing process.

Day 2 of the conference began with a panel discussion regarding the mandate for the Family Court/Youth Justice Committee. The panel of speakers (Appendix E) addressed the following issues: expansion of the role of the committees, community support for restorative justice, vision of the provincial government, and funding needs and resources. Next, Steve Howell (Policy Director, Ministry of Child and Family Development) gave a brief presentation that was titled "Anxiety and Opportunity: An

Overview of Youth Justice in British Columbia." Specifically, he addressed the *Youth Criminal Justice Act* and some of the resulting changes.

Following this discussion the audience was dispersed into a series of breakout discussion groups. I attended the group focusing on "Empowering the Victim and Community through Restorative Justice." Topics discussed during this breakout session included: Police and School-based programs, Family Group Conferencing, and Victim Perspectives (see Appendix F for the list of speakers and their topics).

On the final day of the conference, the Family Court/Youth Justice Committee held its Annual General Meeting. A motion was passed during the meeting to create a steering committee that would act as a 'go-between' for the Provincial Government and local communities. Members attending the conference also voted on which five recommendations the Family Court/Youth Justice Committee should strive to achieve during the next year (see Appendix G for the recommendations that were chosen).

Restorative Justice Seminar – Justice Institute of B.C.

The third conference I attended was titled "Community Justice and the *Youth Criminal Justice Act*: A Restorative Justice Seminar." It took place on November 2nd, 2002 at the Justice Institute of British Columbia. Keynote speakers included Judge Barry Stuart, Dennis Maloney (Director of the Department of Community Justice for the US Department of Justice), and Judge Steven Point (Provincial Court of British Columbia). A panel of speakers from a variety of criminal justice backgrounds also shared their experiences with restorative justice (Appendix H). Judge Barry Stuart and Dennis

Maloney moderated the seminar, and spoke to issues that were brought up by the panel and the audience.

Attendees of the conference included justice workers, community members, and students interested in the topic of restorative justice. The overall purpose of the seminar was to discuss the concept of restorative justice and to dispel some of the myths surrounding this approach. Focus was given to the new *Youth Criminal Justice Act* and to examples of international restorative justice efforts.

Chapter III - Discussion

Restorative Changes?

The first question that should be asked when examining the so-called 'restorative' provisions of the *YCJA* is whether or not these changes are truly restorative. To begin with, the *YCJA* does not explicitly reference the term "restorative justice." There is mention of restorative objectives and principles, such as "repair of harm," "courtesy, compassion and respect for victims," and "opportunity for victims to be informed and to participate." There is even mention of "restorative conferencing." Yet, these restorative phrases are not used in an overall approach that is designed to make the youth justice system truly restorative. Instead, these restorative principles are mixed with the vast array of objectives that make up the youth criminal justice system. While trying to avoid one of the criticisms of the *YOA* (the lack of clarity in the fundamental principles of the legislation), the *YCJA* has just added to the already confusing list of objectives.

Referring to the literature, Bazemore and Walgrave contend that in order for restorative justice to become a fully-fledged systemic alternative, the intent to do so must be clearly defined (1999b). Otherwise, restorative justice will remain on the margins of the criminal justice system as a form of diversion, which is insufficient. In their view, it does not make sense to have restorative justice offered merely as a method of diversion, as this leaves the majority of cases to a system that is so highly disregarded.

Having said this, the *YCJA* has created some notable changes in the way youth crime will be responded to in Canada. Many of these changes have to do with the 'restorative' provisions, such as the increased use of community-based alternatives and the introduction of restorative conferencing. The effectiveness of these changes is yet to

be determined, as it will depend on how these provisions are implemented. There are many potential complications and hazards that could hinder the evolution of these initiatives, many of which were identified at the conferences attended for this research.

Potential Dangers Identified in Conferences

Accessibility of Resources

One concern that has been raised regarding some of the provisions in the new *Act* is whether the absence of restorative initiatives in certain provinces or smaller geographic jurisdictions will constitute a violation of a young person's right to equal treatment anywhere in Canada (Griffiths & Corrado, 1999). For instance, the province of British Columbia has decided to hire ten facilitators to run judicially ordered non-court conferences. The jurisdictions that these facilitators are expected to cover do not include communities North of Prince George, Northern communities on Vancouver Island, and other remote locations around the province.[50] This leads to the question: What type of restorative options, if any, will be presented to young offenders, victims, and community members in these regions?

According to the Ministry of Child and Family Development, Integrated Case Management (ICM) conferences are the recommended alternative for jurisdictions that do not have access to family group conferencing (Ministry of Child and Family Development, n.d.). This alternative offers little in the way of a restorative response, as there is minimal involvement by the victim and community. It is believed that if family group conferences prove to be successful, then they may become available throughout the

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[50] Personal Communication. Karin Hartner, Vancouver Youth Court Pilot Project on Judicial Conferencing, Ministry of Child and Family Development. Presentation to a Criminology class at Simon Fraser University. Burnaby, B.C., February 13, 2003.

entire province.[51] However, until that time there will still be large portions of the province that will not have the opportunity to participate in restorative processes.

Funding Issues

One of the major points of contention with the *YCJA*, and a topic that was present in all of the conferences, centers around the lack of funding that will be provided for community-based programs. The implementation of the *YCJA* comes at a time when provincial governments are reducing budgets and cutting staff from youth justice agencies (Griffiths & Corrado, 1999). Adding to the problem is the fact that these programs will not receive any additional funding from the provincial government. Yet, the *Act* intends to make greater use of the already limited community resources, which will be depleted even further by upcoming cutbacks.

The majority of practitioners at the second Burnaby Community Forum argued that funding is an important issue and often a major stumbling block in the development of any community-based alternative. For instance, Sandy Burpee of the Fraser-Burrard Community Justice Society mentioned that his program obtained initial start-up funds from the provincial government in the amount of $5000, which was only a fragment of the program's annual operating budget of $100,000 - $150,000.[52] The Fraser Burrard Justice Society also received monetary support from four out of the five municipalities that the program serves, as well as funds from other community foundations.

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[51] Personal Communication. Steve Howell, Policy Director, Ministry of Child and Family Development, Family Court/Youth Justice Provincial Conference. Victoria, B.C., October 26, 2002.

[52] Personal Communication. Sandy Burpee, Fraser-Burrard Community Justice Society. Justice as Healing – Burnaby Community Forum. Burnaby, B.C., October 16, 2002.

Nevertheless, the program still struggled to find enough money to operate. Sandy Burpee further argued that the vast majority of available funding is for start-up costs, and the difficulty lies in finding sustained funding.

At the Victoria Conference, the issue of funding was brought up when Chris Beresford of the Ministry of the Attorney General discussed the new functions of Family Court/Youth Justice Committees under the *YCJA*. He suggested that funding would have to come from other resources, as the provincial government (B.C.) will not be providing any additional funding. Furthermore, he suggested that other provinces would also only be offering low levels of funding.[53] In response, a member of the audience asked why extra funding would not be provided when the government will be saving money by using restorative processes instead of the formal court system? Jacquie Stevulak from the North Vancouver Restorative Justice Society replied that many of the youth participating in these community programs would not have ended up in court and would most likely have been dealt with through Alternative Measures. Therefore a cost comparison between the two would not be valid.[54] During this discussion, Michael Bradshaw added, "If the community is going to take ownership of some of its problems, funding is one issue it is going to have to own."[55]

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[53] Personal Communication. Chris Beresford, Director of Family Justice Programs, Ministry of the Attorney General, Justice and Family Justice Services Branch. Family Court/Youth Justice Provincial Conference. Victoria, B.C., October 26, 2002.

[54] Personal Communication. Jacquie Stevulak, Executive Director, North Vancouver Restorative Justice Society. Family Court/Youth Justice Provincial Conference. Victoria, B.C., October 26, 2002.

[55] Personal Communication. Michael Bradshaw, New Westminster Family Court Committee. Family Court/Youth Justice Provincial Conference. Victoria, B.C., October 26, 2002.

At the Restorative Justice Seminar, Doug Hillian of the Ministry of Child and Family Development also explained that the new *Act* does not come with new resources.[56] Judge Barry Stuart responded by expressing his concerns with the *YCJA* and questioning the fact that the government is spending millions of dollars to create the new legislation, but not giving any funding to the community. Judge Stuart also stated, "I am sick that we have not created the resources needed."[57] He further stressed the importance of "bringing the system into the community" when developing restorative initiatives, as opposed to "the community being brought into the system." In his view, the *YCJA* is "a justice idea that is bringing their [criminal justice system] values into the community."

Dennis Maloney brought up another interesting aspect of the funding debate when he suggested that whenever creating change you must deal with the *incentive* system. For instance, in his home State of Oregon the youth justice system had created an incentive for communities to put youth in prison. He explained that if the community became tired of dealing with problematic youth, these youth would be sent to State prison so the community would not have to spend its own money.[58] It is quite possible that the *YCJA* could create a similar incentive-based system in Canada. By not providing the funding and resources needed to deal with high needs youth and/or repeat offenders, communities might be forced to manage only those youth that are 'less expensive.'

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[56] Personal Communication. Doug Hillian, Conferencing Implementation Consultant, Ministry of Child and Family Development. A Restorative Justice Seminar – Justice Institute of B.C., New Westminster, B.C., November 2, 2002.

[57] Personal Communication. Judge Barry Stuart, Yukon Territorial Court. A Restorative Justice Seminar – Justice Institute of B.C., New Westminster, B.C., November 2, 2002.

[58] Personal Communication. Dennis Maloney, Director of the Department of Community Justice for the U.S. Department of Justice. A Restorative Justice Seminar – Justice Institute of B.C., New Westminster, B.C., November 2, 2002.

Dennis Maloney explained that the incentive system was reversed in the state of Oregon when communities made a proposal to the State: if the community is going to supervise the youth, it should receive the money that would be spent on housing youth in state prison. The State agreed, and gave communities $58,000 (U.S.) for every young offender that was supervised by the community and kept out of State prison. In turn, communities used this money to fund non-profit organizations, preventative initiatives, and youth justice programs. This reversal of incentives caused a reduction in the incarceration rate of 70%, and a 40% reduction in the rate of repeat offenders.[59]

This type of solution falls in line with the argument made by Johnstone (2002: 24), who contends that restorative justice may not be the less expensive option, but rather makes better use of public resources. For justice to be truly restorative, funds and resources must be put toward the revitalization of communities and to ensure the availability of rehabilitative services within those communities (*ibid.*). Unfortunately, the Canadian government might be viewing restorative *programs* as the solution to youth crime, rather than envisioning the broader concept of restorative justice.

The Pubic, Media, and Politicians

An important step in implementing restorative processes into the youth justice system will be educating the public and gaining community support. Steve Howell addressed this issue at the Victoria Conference when he suggested the media played a large role in the public's distrust of the *YOA*. He went on to say that the media is a

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[59] Maloney, *supra* note 58.

business and has a need to "produce" stories. Thus, it will be essential to educate the public and allow them to make informed decisions.[60]

Sandy Burpee spoke of the need for community programs to have their story told in local newspapers, by word of mouth, etc., which is an approach that is consistent with the literature.[61] Umbreit (1999) suggests that restorative proponents need to take an active role in working with the media in order to promote the interests of restorative justice. An active approach could possibly put an end to what Bazemore and Walgrave refer to as the *punitive* "carousel" of justice (1999c: 391). By educating the media, and as a by-product informing the public, we can assume that this would cause politicians to get on board and start promoting restorative methods. As a result, this renewed carousel, which could be termed a *restorative* carousel, would encourage and establish restorative ways of thinking in popular culture and in our daily understandings of the justice system.

Offender-Oriented Agency and Staff

A potential downfall that was mentioned earlier, and could be of consequence with the implementation of *YCJA*, has to do with having members of an *agency* facilitate restorative conferencing. It was argued that such circumstances might cause the overarching goals of conferencing to reflect bureaucratic agendas, rather than promoting restorative principles (Bazemore & Walgrave, 1999c; Levine, 2000). This could possibly be the case in the province of British Columbia, as the conferencing specialist positions will be employed and supervised by the Ministry of Child and Family Development.

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[60] Howell, *supra* note 51.

[61] Burpee, *supra* note 52.

Associated with this concern is the fact the Ministry of Child and Family Development is an offender-oriented agency, as it manages youth probation services. Activists have argued that there is a risk inherent in having offender-driven agencies switch to a victim-centered approach (Pranis, 2000). Compounding this issue is the fact that the Ministry of Child and Family Development has announced it will be hiring probation officers to fill the conferencing specialist positions. These probation officers will have previously been trained in offender issues and have extensive experience in handling the specific needs of offenders. All this adds up to the potential neglect of victim issues, and possibly even community interests.

Although these facilitators will receive extensive training on issues such as victims' rights and the important role of victims and the community in the process of repairing harm, the tendency to place more emphasis on offender needs may be unavoidable. Moreover, pressure from the Ministry to respond in a certain manner may also increase the susceptibility of victims. Advocates of restorative justice also warn of the potential danger that victims may be used as "props" in the process of rehabilitating offenders (Daly & Hayes, 2001; Umbreit & Zehr, 1996). Canada must try to avoid a situation like what happened during the initial years of conferencing in New Zealand, where research shows victims often felt worse after participating in conferences (Morris *et al*., 1993). It is this type of finding that prompted Daly and Hayes (2001: 24) to argue that victims, in general, play a secondary role in all legislated conferencing schemes.

At the Family Court/Youth Justice Provincial Conference, Kay Charbonneau of The Ministry of Public Safety and Solicitor General expressed that she has "grave concerns regarding the implications of the new *Act*, especially when it comes to voluntary

participation of victims." She also suggested that the key issue in gaining victim participation is "who does the asking and how they go about doing it…at the heart of empowering victims is giving victims choice."[62] In response, Doug Hillian, Conferencing Implementation Consultant, commented that he is working closely with victim services to develop the training for youth justice conferencing specialists.[63]

Statutory Time-Lines

Canada has learned from the New Zealand and Australian experiences when it comes to the procedural issue of statutory time-lines. In New South Wales, legislation requires conferences to be held within 21 days of the date of referral. However, only 15% of conferences were held within this timeframe (Trimboli, 2000: 62). In New Zealand, only 22% of conferences were convened within the statutory time-line of three weeks. Yet, if four weeks elapsed between the date of referral and the conference day, it was possible to hold 77% of the conferences (Morris & Maxwell, 1993a: 71-72). Researchers have suggested that these short statutory time limits prevent facilitators from completing the necessary preparatory work prior to conferences (Morris & Maxwell, 1993a; Levine, 2000; Trimboli, 2000).[64]

The *YCJA* has been developed to allow a six to eight week adjournment period between the conference referral date and the next court date (Ministry of Child and

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[62] Personal Communication. Kay Charbonneau, The Ministry of Public Safety and Solicitor General. Youth Justice/Family Court Provincial Conference. Victoria, B.C., October 26, 2002.

[63] Hillian, *supra* note 56.

[64] Although it was not specifically mentioned at any of the conferences, it will be interesting to see the length and type of follow-up practices that will be a part of the restorative initiatives that will be implemented with the *YCJA*.

Family Development, n.d.). In the vast majority of cases, this should be sufficient time to organize, prepare and convene a conference. However, in rare circumstances when more time is needed, judges must remain flexible in granting extensions to this time period.[65] This flexibility will prevent facilitators from feeling pressured into convening conferences that have not been adequately prepared. According to Karin Hartner, the preparation stage is an extremely important part of the conferencing process and the lack of preparation may result in negative outcomes.[66]

Roles of Professionals and Youth Justice Workers

Another area of concern that will have to be kept under close scrutiny during the initial implementation phases of the *YCJA* is the role and attitude of youth justice professionals. In order for restorative processes to reach their greatest potential, it will be necessary for professionals to support these developments. As Griffiths and Corrado point out, "Even with a legislative framework conducive to the development of restorative justice initiatives, there is no requirement that justice system personnel support or encourage such developments" (1999: 251). These researchers also propose that youth justice personnel, such as lawyers, judges, and probation officers, might be unwilling to trust the ability of communities to respond and resolve conflict (Griffiths & Corrado, 1999).

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[65] When granting extensions, judges will also have to take into consideration the rights of the accused.

[66] Hartner, *supra* note 50.

At the Restorative Justice Seminar, Pierre Rousseau of the Department of Justice spoke of the need for prosecutors to be in touch with community values.[67] He mentioned that he is currently working with federal prosecutors and trying to encourage them to form community partnerships. Collaboration between prosecutors and the community will be increasingly important under the *YCJA*, as the Crown's discretionary powers will be expanded. Crown Attorneys will be given the authority to exercise Crown cautions, refer young people to extrajudicial sanction programs, and to convene or cause to be convened a conference for the purpose of deciding what type of extrajudicial measure to be appropriate (Department of Justice, 2002a). The Crown also has the duty to address sentencing considerations (*ibid.*), and would therefore require relationships with community members and programs.

Police officers will also receive increased discretionary powers under the *YCJA* (see Legislation section and Appendix B). Judge Barry Stuart suggested that police are fundamental to the process of developing restorative initiatives. He further noted that a major problem for small Northern communities is the high turnover of police.[68] Anna McCormick also addressed the importance of developing relations with police officers, and suggested this is particularly critical during the initial stages of program development.[69]

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[67] Personal Communication. Pierre Rousseau, Prosecutor, Department of Justice. A Restorative Justice Seminar – Justice Institute of B.C., New Westminster, B.C., November 22, 2002.

[68] Stuart, *supra* note 57.

[69] Personal Communication. Anna McCormick, Co-Director, Fraser-Burrard Restorative Justice Society. Burnaby Community Justice Forum. Burnaby, B.C., October 22, 2002.

One reason why youth justice personnel might be reluctant to support restorative initiatives is the possibility that they will view restorative processes as adding to their already demanding workloads (Griffiths & Corrado, 1999). Due to recent provincial government cutbacks, this is likely to be evident with the implementation of the *YCJA*. In the province of British Columbia, the Ministry of Child and Family Development is undergoing cutbacks that will result in a 22% reduction of its operating budget, along with a 23% reduction in staffing.[70] Researchers have suggested that unlike the formal youth justice system, restorative responses such as family group conferencing can be time-consuming processes for youth justice personnel (Griffiths & Corrado, 1999: 251). As a result, remaining Ministry staff will be left with increased workloads, which will only be expounded by the addition of restorative functions.

The implementation of the *YCJA* might also diminish the role of certain professionals in the youth justice system. According to The Department of Justice (2002a), the *YCJA* contains provisions that are intended to reduce the use of youth courts by making better use of non-court alternatives. Statistics show that 74% of the cases processed through youth courts in 1998-99 can be considered non-serious and non-violent offences (Statistics Canada, 2000). If the majority of these cases are handled through non-court responses, the court caseload will be drastically reduced. The Department of Justice (2002a) argues that this reduction will enable the court system to focus on more serious cases. However, the question remains of how judges, Crown prosecutors, and court administrators will respond if the number of youth processed

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[70] Personal Communication. Jane Cowell, CEO, Transition Team, Vancouver Island, Ministry of Child and Family Development. Family Court/ Youth Justice Provincial Conference. Victoria, B.C., October 26, 2002.

through the formal court system is significantly reduced? (Griffiths & Corrado, 1999: 252).

Although some professionals may be unreceptive to restorative changes, the experience in Canada thus far is that justice personnel are willing to accept and support restorative initiatives (Griffiths & Corrado, 1999: 252). Judge Barry Stuart contributes this willingness to his belief that "the criminal justice system is just as tough on those who work within the system as those who go through it."[71] Griffiths and Corrado (1999: 252) also view disenchantment with the traditional system as part of the reason why justice professionals are inclined to become involved with restorative efforts.

Marginalization and McDonaldization

Some advocates warn that substantial increases in the number of cases restorative programs are expected to handle will jeopardize the integrity of restorative initiatives (Umbreit, 1999; Immarigeon, 1999; Bazemore & Walgrave, 1999a; Van Ness & Strong, 2002). Furthermore, it has been suggested that when restorative initiatives are moved into the mainstream of youth justice systems, there will be a rush to set up new programs. Undoubtedly, this will occur with the introduction of the *YCJA*, as many communities will lack the programs that have been outlined in the *Act*. As an example, Karin Hartner suggested that problems might occur in jurisdictions that do not have pre-sentencing programs because police will have nowhere to refer youth.[72] Most likely, these jurisdictions will have to hurriedly set up new programs, which may result in the neglect

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[71] Stuart, *supra* note 57.

[72] Hartner, *supra* note 50.

of restorative values. In order to prevent this from occurring, one restorative practitioner suggested that it is necessary for programs to be cautious of moving "too fast" and to "take the time needed" to establish restorative values.[73]

Researchers have also suggested that bringing restorative initiatives into the mainstream of youth justice systems could result in these programs becoming standardized or structurally imposed (Umbreit, 1999). Umbreit argues that "fast food" versions of restorative justice will cause these processes to be robbed of their restorative elements. This goes back to what Judge Barry Stuart argued when he noted the importance of "bringing the system into the community." For these community initiatives to be most effective, they must be tailored to the specific needs of the communities they are intended to serve.

Community Related Issues

The fundamental principles of restorative justice speak to the necessity of community involvement in the process of repairing the harm. Advocates have argued that restorative initiatives have the most potential when they strive to address the needs of victims, offenders, and communities within individual community contexts (Pranis, 2000). A number of practitioners throughout all three conferences also argued the significance of having community-specific programs. For example, both Anna McCormick and Jacquie Stevulak listed community consultation as a key component in the development of any restorative program because of the fact that communities are so diverse. Anna McCormick expanded on her suggestion by stating, "It is really important

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[73] McCormick, *supra* note 69.

to find out what they [community members] need and want."[74] Jacquie Stevulak argued that the diversity of communities makes it difficult to transplant programs from one community to another.[75] As further illustration, Judge Barry Stuart mentioned that restorative processes, if developed in the correct manner, will allow the community to deal with the specific issues that face the community. In his view, restorative justice will help "bring these issues to the forefront and not smother them [like our current system]."[76]

Griffiths and Corrado (1999) pointed out that there have been a large number of restorative initiatives developed across Canada in the past decade. They suggest that one of the significant attributes of these programs is that they have been established at a community level, rather than the result of an imposed "generic" model of restorative justice (*ibid.*, 247). These researchers also put forth that governments tend to favour policies that can be applied on a "generic basis" and that policy makers rarely consider any cultural, political or geographical issues of specific communities (*ibid.*, 254).

It has been proposed that the decentralization of the provincial government in British Columbia into five regional authorities will minimize this problem. Steve Howell claimed that the creation of the five regional authorities would result in each region being more autonomous and having less control from the provincial government.[77] However, decentralization will not completely resolve this issue. It will be up to communities and

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[74] McCormick, *supra* note 69.

[75] Personal Communication. Jacquie Stevulak, Executive Director, North Vancouver Restorative Justice Society. Burnaby Community Forum. Burnaby, B.C., October 22, 2002.

[76] Stuart, *supra* note 57.

[77] Howell, supra note 51.

practitioners to ensure that restorative programs continue to be developed in the best interests of each specific community.

It has also been argued that communities are better able to solve their own problems (Pranis, 2000; Van Ness & Strong, 2002). For example, Judge Justine Saunders believes that it will be advantageous for communities to make decisions because they have more of an idea of what is going on at the individual community level.[78] Judge Barry Stuart used similar reasoning when he commented that elders and community members would have more experience in dealing with a particular community than judges, probation officers, police officers, or parole officers.[79] Hopefully, the increased use of community-based processes will enable communities to deal with some of the social issues that face their specific communities.

Another issue pertaining to the role of communities within a legislated framework is the concern that community-government collaboration might result in the expansion of state controls, which is also known as net-widening (Van Ness & Strong, 2002). This concern supports the argument that it is necessary for community-based programs to be independent from government operations. Once again, Judge Barry Stuart's comment about "bringing the system into the community" addresses the appropriate means of overcoming this concern.[80] Barry Warhaft gave an example of how this can be done when he discussed the Vancouver Aboriginal Transformative Justice Services. He explained that in order to develop a relationship with the justice system that kept the

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[78] Personal Communication. Judge Justine Saunders, Provincial Court of British Columbia. Keynote Address - Youth Justice/Family Court Provincial Conference. Victoria, B.C., October 25, 2002

[79] Stuart, *supra* note 57.

[80] Stuart, *supra* note 57.

system's values separate from the programs, he brought together justice professionals and asked them, "How can you help us?"[81]

Evaluative Efforts

It has been argued that evaluating restorative initiatives is often a difficult and time-consuming process (Johnstone, 2002; Presser & Van Voorhis, 2002). The complicated nature of this evaluation can be attributed to the notion that restorative procedures strive to achieve multiple objectives. For example, the goal of repairing harm caused by wrongful behaviour is often coupled with trying to meet the needs of the victim, offender, and community. Furthermore, restorative initiatives are often aimed at revitalizing communities, dealing with social issues, and providing an alternative response to wrongful acts that is both respectful and inclusive.

At all three conferences, continuous feedback was a common theme among the discussions regarding the evaluation of restorative processes. When explaining his Top Ten Lessons learned in developing restorative initiatives, Dennis Maloney argued that "you get what you measure" when assessing restorative processes. He further commented that evaluation should include a system of simple and routine measurements that allow programs to constantly see how they are performing.[82] Barry Warhaft suggested that evaluation should also be comprised of feedback from participants, as this will guide the ongoing development of programs. In his opinion, "community-driven

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[81] Personal Communication. Barry Warhaft, Vancouver Aboriginal Transformative Justice Society. Burnaby Community Forum. Burnaby, B.C., October 22, 2002.

[82] Maloney, *supra* note 58.

programs must always be willing to develop and re-develop."[83] Another means of receiving constant feedback was suggested by Jacquie Stevulak when she noted the importance of continually questioning the restorativeness of a program.[84] In the end, the evaluation of restorative initiatives should be guided by the values inherent in restorative philosophies (Presser & Van Voorhis, 2002). Therefore, evaluations should not concentrate on the amount of money saved by using restorative procedures, or the reduction in the rates of recidivism and incarceration.

Implementation Strategies

A crucial part of any implementation strategy of restorative initiatives is building community support. According to Pranis (2000), education should be the primary strategy to gaining support for restorative processes, which will require building capacity among all people at all levels to think about criminal justice issues from a restorative perspective. According to a practitioner at the Family Court/Youth Justice Provincial Conference, 50% of the work for her Community Accountability Program (CAP) has to do with public education.[85] Researchers have also suggested that along with educating the public, it will be necessary to challenge and possibly even enlighten those who hold opposing viewpoints. Ultimately, what is needed is not a new program, but a new pattern of thinking (Van Ness & Strong, 2002).

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[83] Warhaft, *supra* note 81.

[84] Stevulak, *supra* note 75.

[85] Personal Communication. Etta Connor, Peninsula Cross Roads Community Justice Society. Family Court/Youth Justice Provincial Conference. Victoria, B.C., October 26, 2002.

Another way of gaining community support is by making sure all stakeholders are involved in the implementation stages. Literature on this subject contends that the process of implementation should resemble the principles of restorative justice themselves. Thus, inclusion of both victims and community members in this bottom-up process is considered to be a consequential aspect of implementation (Pranis, 2000). Jacquie Stevulak took a similar stance when she argued that "Top-down restorative justice is an oxymoron," and further suggested that restorative justice will not be successful unless the community is involved.[86] Another panel member, Michael Bradshaw, validated this point when he claimed, "Leadership must be collaborative."[87] In response, Chris Beresford of the Ministry of the Attorney General claimed that he also wants government decision-making to be a joint effort.[88]

An outcome of this discussion was a motion to create a steering committee that will act as a liaison between local Youth Justice Committees and the provincial and federal governments.[89] Members of this steering committee will include selected members from existing Family Court/Youth Justice Committees from across the province. The formation of this committee corresponds to advice given by Judge Barry Stuart at the Restorative Justice Seminar. After addressing his concerns with the *YCJA*,

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[86] Stevulak, *supra* note 54.

[87] Bradshaw, *supra* note 55.

[88] Beresford, *supra* note 53.

[89] Changes in the *YCJA* will have a direct impact on the mandates of Family Court/Youth Justice Committees. Their functions will now include: giving advice on the use of extra-judicial measures, supporting victims, coordinating the roles of resources dealing with youth, advising provincial and federal governments, providing information to the public, acting as a conference, and any other function that is needed.

he suggested to "form Youth Justice Committees that are strong enough to make sure community voices are heard."[90]

Dennis Maloney also offered advice on the implementation of restorative initiatives. In his list of Top Ten Lessons Learned, he recommended that it is "better to do a few things well, rather than a lot of things poorly."[91] In his experience it was advantageous to focus on the fundamentals of restorative justice: repairing harm, reducing risk, and building community. He also stated, "It [restorative justice] is about creating safe places for difficult conversations. If that is all we are doing, then we are doing good." Practitioners at other conferences also made similar recommendations. For instance, Jacquie Stevulak suggested that it is beneficial to constantly ask, "Is this truly restorative?" In her opinion, this question will help ensure that initiatives are guided by the values of restorative justice.[92]

Another strategy that has been mentioned by both practitioners and researchers is to not rush the development of restorative justice as the primary response to crime. For example, Judge Barry Stuart proposed that some people are discouraged that progress is not happening fast enough. He eased these fears by reflecting back on what was happening ten years ago and suggested that much advancement has occurred, but the process will not happen overnight. Van Ness and Strong (2002: 216) have also argued that the movement towards a restorative-oriented system should be guided by the principle of "go slow to go fast."

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[90] Stuart, *supra* note 57.

[91] Maloney, *supra* note 58.

[92] Stevulak, *supra* note 75.

Other scholars suggest the process of implementation should include the promotion of restorative justice as the primary response to youth crime (Bazemore & Walgrave, 1999c: 389). It is suggested that the ultimate goal should be the achievement of a fully-fledged restorative youth justice system. The process to achieving this ideal model consists of many sub-goals that will bring us closer to the final goal of a truly restorative system (*ibid.*).

Conclusions

In light of this suggestion, should the *YCJA* be viewed as having reached a "sub-goal" in the process of creating a truly restorative system? Some people may believe that having the government recognize and incorporate restorative elements in legislation is a major accomplishment in the movement towards a fully restorative response. Others may argue that the legislation does not go far enough in allowing restorative principles to penetrate the contemporary system. They may also contend that the criminal justice system still remains, along with its values that are so different from those of restorative justice. Furthermore, the references to restorative principles in the *YCJA* might be viewed as diversionary add-ons to an overbearing and untrusting system. In the end, it will be the process of implementation, and the adherence to restorative values during this stage, that will ultimately decided the fate of the 'restorative programs' outlined in the *YCJA*.

Conclusions

Throughout this research there has been a number of variables identified as potential dangers when implementing restorative initiatives. These hazards will have to be watched closely and given careful consideration during the implementation phases of the *Youth Criminal Justice Act*. Although some of the variables identified in the literature review portion of this research were not brought up in the conferences (ie. public safety concerns, due process protections, the use of restorative justice for only 'soft' or 'easy' cases), and were not examined in the Discussion section, this does mean they are any less important to the Canadian situation. All of the possible downfalls discussed in this research will need to be continually scrutinized to make sure the restorative provisions and initiatives incorporated into the *YCJA* achieve their full capabilities.

Due to the exploratory nature of this research, this study should be viewed as a starting point in the process of generating and developing further research. All of the variables that have been recognized in this research can and should be studied in greater detail. If it were not for the time and space constraints related to this project, additional research methods could have proved to be beneficial. For instance, a survey of practitioners and youth justice workers may have resulted in more elaborate and comprehensive information. Having said this, the limitations of exploratory research are quite obvious: the data obtained through exploratory analysis can be limited as it is often generalized and vague.

Future research that examines each of these variables to a much greater extent, while using a variety of different methods, will be profitable. It will also be

advantageous to constantly evaluate these potential limitations, especially during the implementation stages. Throughout this research, the importance of constant and appropriate feedback has been emphasized. It must be remembered that evaluating restorative initiatives is often complicated by the multiple objectives of restorative justice. Furthermore, it has been suggested that evaluative efforts should be conducted in accordance with the values inherent to the restorative philosophy.

Beyond appropriate evaluation, there has also been a multitude of other suggestions that will facilitate the development of restorative initiatives. For example, the importance of community involvement has been an evident theme throughout this research. It has been argued that the community should be involved in the process of implementation, taking ownership of social problems, and finding solutions to problems such as inadequate funding. In addition, it has been stressed that "the system must be brought into the community" in order to maintain community values.

It will also be necessary for programs to be developed with the interests of specific communities in mind. The fact that restorative initiatives are not generically imposed on communities is a vital aspect to the success of restorative justice. The role of victims is also a serious issue that must be given attention. Practitioners strive for the empowerment of victims and ensure that victims do not play a secondary role in these initiatives.

One of the most important implications of this research has been the development of implementation strategies. It has been suggested that education is one of the fundamental aspects of creating acceptance and gaining support for restorative processes. Program facilitators and/or restorative advocates must inform the public of the principles

and advantages of the restorative approach. It is also necessary for restorative advocates to take an active role in educating both the media and politicians.

Another implementation strategy that has been suggested is the formation of Youth Justice Committees. In one of the conferences, it was argued that it will be necessary to have Youth Justice Committees that are strong enough to ensure community voices are heard. It was determined through this research that a centralized committee has been developed to act as a liaison between Youth Justice Committees in the province of B.C. and the provincial and federal governments. However, it remains to be seen if this committee will bring attention to the opinions of the communities it represents in a meaningful fashion.

Other strategies that have been discussed include the recommendation that it is more productive to do fewer things well, rather than many things poorly. It is also important to take the time necessary to develop initiatives that are truly restorative. When determining what aspects of a program should be given the most focus, it has been recommended to concentrate on the fundamental principles of the restorative philosophy: repairing harm, reducing risk and building community. Furthermore, it is imperative that the development of restorative programs and the movement towards restorative justice being the dominant response are not hastily moved along.

It has been argued that restorative initiatives should be developed with intentions of creating a restorative-oriented system. The overarching goal should be the formation of a fully-fledged systemic alternative to our current system of justice. However, one may question whether the restorative provisions in the *YCJA* have been developed with this goal in mind. Most restorative advocates would probably answer that these

provisions have not been created with these intentions. Furthermore, it could be argued that these restorative initiatives will be viewed as diversionary add-ons to the current system of justice. The purpose of these changes has even been questioned. Are they merely a means of lowering the youth incarceration rate, or are they an attempt to offer a real restorative response? Despite these numerous critiques, the restorative provisions of the new *YCJA* can be viewed as a step in the right direction, but only if they are properly implemented.

As demonstrated by the *YOA*, legislation alone will not produce sufficient change. For positive change to occur, the provinces of Canada must take the necessary steps to ensure that the *Youth Criminal Justice Act*, and its restorative provisions, are appropriately implemented. It will take a concerted effort from restorative advocates, practitioners, youth justice workers, communities, politicians, media and the public to make certain that these restorative provisions are *truly* restorative. To overcome many of the potential downfalls that have been outlined in this paper, the efforts of these players will have to be guided by the principles and values of restorative justice. It must be understood that this is a critical period in the evolution of restorative justice. As this philosophy makes its way into the mainstream of criminal justice, supporters must ensure that this is not another justice idea that falls by the wayside. In closing, I would like to end with a quote by Zehr (2002: 7) that emphasizes the importance of remaining true to the principles of the restorative philosophy:

> Our past experience with change efforts in the justice arena warns us that sidetracks and diversions inevitably happen in spite of our best intentions. If advocates for change are unwilling to acknowledge and address these likely diversions, their efforts may end up much different than they intended. In fact,

"improvements" can turn out to be worse than the conditions that they were designed to reform or replace.

One of the most important safeguards we can exert against such sidetracks is to give attention to core principles. If we are clear about principles, if we design our programs with principles in mind, if we are open to being evaluated by these principles, we are much more likely to stay on track.

Put another way, the field of restorative justice has grown so rapidly and in so many directions that it is sometimes difficult to know how to move into the future with integrity and creativity. Only a clear vision of principles and goals can provide the compass we need as we find our way along a path that is inevitably winding and unclear (Zehr, 2002: 6-7).

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Appendix A

Youth Criminal Justice Act (Bill C-7)

The Preamble includes the following statements:

- Society has a responsibility to address the developmental challenges and needs of young persons.
- Communities and families should work in partnership with others to prevent youth crime by addressing its underlying causes, responding to the needs of young persons and providing guidance and support.
- Accurate information about youth crime, the youth justice system and effective measures should be publicly available.
- Young persons have rights and freedoms, including those set out in the United Nations Convention on the Rights of the Child.
- The youth justice system should take account of the interests of victims and ensure accountability through meaningful consequences and rehabilitation and reintegration.
- The youth justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on incarceration.

The Declaration provides that:

- The objectives of the youth justice system are to prevent crime; rehabilitate and reintegrate young persons into society; and ensure meaningful consequences for offences. In these ways, the system can contribute to the long-term protection of society.
- The youth justice system must reflect the fact that young persons lack the maturity of adults. The youth system is different from the adult system in many respects, including: measures of accountability are consistent with young persons' reduced level of maturity; procedural protections are enhanced; rehabilitation and reintegration are given special emphasis; and the importance of timely intervention is recognized.
- Young persons are to be held accountable through interventions that are fair and in proportion to the seriousness of the offence.
- Within the limits of fair and proportionate accountability, interventions should reinforce respect for societal values, encourage the repair of harm done, be meaningful to the young person, respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal young persons and of young persons with special requirements.
- Youth justice proceedings require special guarantees to protect the rights of young people; courtesy, compassion and respect for victims; the opportunity for victims to be informed and to participate; and that parents be informed and encouraged to participate in addressing the young person's offending behaviour.

(Department of Justice, 2002a: 2-3)

Appendix B

Under the *YCJA*, police and Crown are authorized to make use of the following extrajudicial measures:

- *Taking no further action*.
- *Warnings* are informal warnings by police officers.
- *Police Cautions* are more formal warnings by the police. The *YCJA* authorizes provinces to establish police cautioning programs. Based on the experience in some jurisdictions, it is expected that police cautions will be in the form of a letter from the police to the young person and the parents or they may involve a process in which the young person and parents are requested to appear at a police station to talk to a senior police officer.
- *Crown Cautions* are similar to police cautions but prosecutors give the caution after the police refer the case to them. In one province where they are currently being used, the caution is in the form of a letter to the young person and the parents.
- *Referrals* are referrals of young persons by police officers to community programs or agencies that may help them not to commit offences. The referral may be to a wide range of community resources, including recreation programs and counselling agencies.
- *Extrajudicial sanctions*, the most formal type of extrajudicial measure, are what are known as alternative measures under the *YOA*. Unlike the other types of extrajudicial measures, they may be used only if the young person admits responsibility for the offence. The Attorney General of the province must determine that there is sufficient evidence to proceed with a prosecution of the offence. The sanctions must be part of an extrajudicial sanctions program designated by the Attorney General. The young person agrees to be subject to the sanction. If the young person fails to comply with the terms and conditions of the sanction, the case may proceed through the court process. Under the *YCJA*, an extrajudicial sanction could be used only if the young person cannot be adequately dealt with by a warning, caution or referral.

(Department of Justice, 2002a: 5)

Appendix C

Section 19 of the *Youth Criminal Justice Act* states:

(1) A youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker may convene a conference or cause to be convened a conference for the purpose of making a decision required to be mad under this Act.

(2) The mandate of a conference may be, among other things, to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans.

(3) The Attorney General or any other minister designated by the lieutenant governor in council of a province may establish rules for the convening and conducting of conferences other than conferences convened or caused to be convened by a youth justice court judge or a justice of the peace.

(4) In provinces where rules are established under subsection (3), the conference to which those rules apply must be convened and conducted in accordance with those rules.

(Ministry of Child and Family Development, n.d.)

Appendix D

A conference is broadly defined in the *YCJA* and is understood to include:

- A **multi-disciplinary**, or **integrated case management conference** – a meeting of all parties working with a youth and family, usually including the young person and parents, to develop an integrated service plan. Such conferences are common pre and post-sentence, dealing with issues including housing, supervision, treatment resources, and family support. Most youth probation officers work in multi-disciplinary teams, so are well-suited to convene conferences involving social workers, teachers, mental health personnel and other community agencies involved with a youth or family. Such conferences do not generally include victims.

- A **Family Group Conference** – designed to bring together a young offender and the person harmed by the offence, their respective families and supporters, other key people affected by the harm and relevant community members with the goal of finding a mutually beneficial resolution. This process is MCFD's preferred approach for judicially ordered restorative conferencing at the sentencing stage.

- A **community/neighbourhood accountability program** – a local program that accepts referrals from police and crown to resolve relatively minor offences as an alternative to court proceedings. In B.C., many programs have citizen participation and use restorative justice approaches, but practices and capacities differ by community. Some programs are volunteer-based and others professionally staffed through government contracts.

- **Youth Justice Committees** – as designated through the *Provincial Court Act* and *YOA* to provide an advisory capacity to the youth court. These committees serve voluntarily, many with municipal council representation, and do not generally have the capacity to run programs. Section 18 of the *YCJA* provides for an expanded role for Youth Justice Committees, including serving as a conference. In some provinces, there is an overlap between Youth Justice Committees and Accountability Programs, and there is some discussion about that option in BC.

- **Victim/Offender Reconciliation Programs** – a process to bring the two parties together with a trained mediator to resolve an offence, again generally as an alternative to court proceedings. There are presently two contracted programs in BC.

- An **Aboriginal Sentencing/Healing Circle** – an alternative to the normal practice of judge hearing crown and defence submissions and then passing sentence, a Sentencing Circle invites community involvement and victim,

offender, supporters and court officials all sit in the circle as participants. The judge or a respected community elder may chair the process, giving each participant a voice with the goal of reaching a consensus on sentencing. A Sentencing Circle remains a formal court proceeding, but attempts to give responsibility for resolution to the community. The process requires extensive time and resources and is not widely practiced in British Columbia at present, although examples can be found in the Sto:Lo territory among others.

(Ministry of Child and Family Development, n.d.)

Appendix E

Panel of Speakers
Day 2 – Family Court/ Youth Justice Committee Provincial Conference

Michael Bradshaw – New Westminster Family Court Committee

Chris Beresford – Ministry of Child and Family Development

Bill Bird – Victoria Family Court/Youth Justice Committee

Jacquie Stevulak – North Vancouver Restorative Justice Society

Appendix F

Speaker and Topics of Breakout Discussion Group:
"Empowering the Victim and Community through Restorative Justice"
Family Court/Youth Justice Committee Provincial Conference

Etta Connor and Pat Macgregor – Police and School-based Programs

Doug Hillian and Karin Hartner – Family Group Conferencing

Kay Charbonneau – Victims Perspectives

Appendix G

At the Family Court/Youth Justice Provincial Conference, the following five recommendations were chosen to be priorities for the Youth Justice Committees of B.C. over the next year:

- Organized advocacy for public support for funding of programs for drug and alcohol issues, in cooperation with community partners.

- Programs responding to high risk offenders need, ethno, racial and cultural programs and staffing, and in different languages.

- **Community education should be actively promoted to empower the victim and the community by the use of Restorative Justice.**

- To improve foster care with youth and families, programs should partner with relevant agencies so that care givers are aware of the children's cultural background and, if aboriginal, know their house or clan membership.

- Create public awareness through schools, communities and organizations of Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) (also known together as Fetal Alcohol Syndrome Disorder – FASD).

<u>Appendix H</u>

<u>Panel of Speakers</u>
<u>Restorative Justice Seminar – Justice Institute of B.C.</u>

Doug Hillian – Ministry of Child and Family Development, Conferencing Implementation Consultant

Keiron McConnell – Police Officer, *YCJA* Trainer at Justice Institute

Pierre Rousseau – Prosecutor, Department of Justice

Sandi Bergen – Community Justice Initiatives

Dave Gustavson – Community Justice Initiatives

Victim of Crime – Experience with Conferencing

Kathy Lewis – National Parole Board

Daisy – Adult Probation Officer